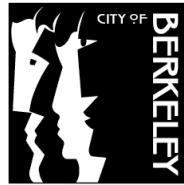


AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, October 13, 2020
6:00 PM**

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

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/88371105282>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** or **1-888-475-4499 (Toll Free)** or **1-833-548-0276 (Toll Free)** or **1-833-548-0282 (Toll Free)** and enter Meeting ID: **883 7110 5282**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, 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. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

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

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

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

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. 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. Amending Ordinance No. 7,692-N.S. extending the grace period for Fair Chance Housing Ordinance**
From: Mayor Arreguin (Author)
Recommendation: Adopt second reading of Ordinance No. 7,733-N.S. amending Ordinance No. 7,692-N.S. (Fair Chance Housing Ordinance) to extend the grace period for landlords to be held liable to January 1, 2021 so that staff has adequate time to complete the intended outreach prior to the ordinance going into full effect.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 2. Healthy Checkout Ordinance; Adding Berkeley Municipal Code Chapter 9.82**
From: Councilmember Harrison (Author), Councilmember Hahn (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Davila (Co-Sponsor)
Recommendation: Adopt second reading of Ordinance No. 7,734-N.S. requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas, and adding Berkeley Municipal Code Chapter 9.82.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 13, 2020**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: One-Time Grant Fund - \$325,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 4. Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS). The contract, which will run through June 30, 2021, is for multiple projects that DHCS administers across the State, including the Mental Health Services Act (MHSA), the Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs, and for county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. The City of Berkeley will only receive revenue through the MHSA for this contract.
Financial Implications: Approximately \$6,000,000 (revenue)
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

5. Lease Agreement for 225 University Avenue – Qasemi Abdul Moqim dba Berkeley Sportsman Center

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Qasemi Abdul Moqim, doing business as Berkeley Sportsman Center, at 225 University Avenue at the Berkeley Marina for a term of three years, with a two-year option.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

6. Measure T1 Phase 1 Project List Additions

From: City Manager

Recommendation: Adopt a Resolution authorizing the following additions to the Measure T1 Phase 1 project list with no additional funding: James Kenney Park play area (ages 2-5, and 5-12) and picnic area; Euclid Street (at Rose Garden); Cedar Street from 6th Street to San Pablo Avenue; Center Street from Martin Luther King Jr. Way to Shattuck Avenue; Rose Street from Le Roy Avenue to La Loma Avenue; Santa Fe Avenue from Gilman Street to Cornell Avenue/ Page Street; Shasta Road from Grizzly Peak Boulevard to east City limit; Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard; Dohr Street from Ashby Avenue to Prince Street; and West Street from Bancroft Way to Dwight Way.

Financial Implications: None

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

7. Resumption of Fees at Oregon Park Senior Apartments

From: City Manager

Recommendation: Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

8. Revenue Grant: Fiscal Year 2020-21 Alcoholic Beverage Control Grant

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager, and/or the Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$51,900 for one fiscal year, July 1, 2020 through June 30, 2021.

Financial Implications: Alcoholic Beverage Control Program Fund - \$51,900 (grant)

Contact: Andrew Greenwood, Police, (510) 981-5900

Consent Calendar

9. **Contract No. 31900124 Amendment: B Bros Construction Inc. for Adult Mental Health Services Center Renovations Project at 2640 Martin Luther King Jr Way**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900124 with B Bros Construction, Inc. to complete renovation and seismic upgrade work at the Adult Mental Health Services Center, increasing the current contract amount of \$5,386,293 by \$230,000 for a total amount not-to-exceed of \$5,616,293.
Financial Implications: T1 Fund - \$230,000
Contact: Liam Garland, Public Works, (510) 981-6300
10. **Contract Award: First Carbon Solutions, Inc. for California Environmental Quality Act Compliance for the Solid Waste & Recycling Transfer Station Replacement Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to award a contract with First Carbon Solutions, Inc. for California Environmental Quality Act compliance for the Solid Waste & Recycling Transfer Station Replacement Project for a total amount not to exceed \$500,000 for a contract term of November 1, 2020 through December 31, 2021.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 11a. **Compiling Commission Recommendations in a Reference Manual** (*Reviewed by Agenda & Rules Committee*)
From: Homeless Commission
Recommendation: The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.
(On August 31, 2020, the Agenda and Rules Committee took action to send Items 9a and 9b to the City Council with a Qualified Positive Recommendation to adopt the staff item in 9b to explore potential short term solutions and recommend that the commission recommendation be reintroduced to Council after the COVID-19 emergency is lifted.)
Financial Implications: See report
Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

Council Consent Items

11b. Companion Report: Compiling Commission Recommendations in a Reference Manual *(Reviewed by Agenda & Rules Committee)*

From: Homeless Commission

Recommendation: Refer the commission recommendation to the City Manager to 1) consider the impacts on staffing levels, approved Strategic Plan projects, and existing baseline services in the context of the projected budget shortfall for FY 2021 and the hiring freeze currently in effect; and 2) work within existing resources to facilitate information sharing among commissions on items referred from the City Council.

(On August 31, 2020, the Agenda and Rules Committee took action to send Items 9a and 9b to the City Council with a Qualified Positive Recommendation to adopt the staff item in 9b to explore potential short term solutions and recommend that the commission recommendation be reintroduced to Council after the COVID-19 emergency is lifted.)

Financial Implications: No direct fiscal impact

Contact: Mark Numainville, City Clerk, (510) 981-6900; Brittany Carnegie, Commission Secretary, (510) 981-5400

Council Consent Items

12. Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment

From: Councilmember Kesarwani (Author), Councilmember Wengraf (Co-Sponsor)

Recommendation: Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: -Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure; -Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas.

Financial Implications: See report

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

13. Oppose Proposition 22 on the November 2020 ballot

From: Councilmember Davila (Author), Councilmember Bartlett (Author), Councilmember Hahn (Co-Sponsor)

Recommendation:

1. Adopt a resolution opposing Proposition 22 on the November 2020 ballot.
2. Send a letter to the 'No on CA Prop 22' coalition.

Financial Implications: None

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

Council Consent Items

14. **Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process** *(Reviewed by Agenda & Rules Committee)*
From: Councilmember Davila (Author)
Recommendation: Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.
(On August 31, 2020, the Agenda and Rules Committee took action to send Item 10 to the City Council with a Negative Recommendation.)
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
15. **Letter of Support for Proposition 16: Repeal Proposition 209 Affirmative Action Amendment (2020)**
From: Councilmember Bartlett (Author); Councilmember Harrison (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: That the Mayor of Berkeley and Members of the City Council support Proposition 16--a ballot measure that would remove the ban on affirmative action--by sending 2 letters, 1) the YES ON 16, Opportunity for All Coalition Campaign and 2) State Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, and Buffy Wicks.
Financial Implications: None
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Council Consent Items

16. “Step Up Housing” Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue

From: Councilmember Bartlett (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor)

Recommendation: Adopt a resolution allocating approximately \$900,000 per year for 10 years, as well as a one-time allocation of approximately \$32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020—an allocation of \$2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.

Refer to the next meeting of the Budget and Finance Policy Committee to confirm the availability of requested funding for the 1367 University project and to set priorities for other Measure P-funded programs and services as part of the mid-year budget process.

Financial Implications: See report

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

17. Removal of Traffic Bollards on the Intersection at Fairview and California St. From: Councilmember Bartlett (Author)

Recommendation: Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.

Financial Implications: See report

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

18. Enforce Bi-Weekly (Once Every Two Weeks) Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley

From: Councilmember Bartlett (Author), Councilmember Hahn (Co-Sponsor)

Recommendation: Refer to the City Manager to promote equitable street cleaning practices and require biweekly (once every two weeks), cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the City Manager should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials.

Financial Implications: See report

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

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.

19. 2019 Crime Report and Five Year Use of Force Report (Continued from September 22, 2020)

From: City Manager

Recommendation: Review and discuss the presentation on Crime Report for 2019 and Use of Force Report for 2015-2019.

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900

Action Calendar – Public Hearings

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

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

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

20. California Municipal Finance Authority Bond Financing for 1717 University Avenue

From: City Manager

Recommendation: Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of the 1717 University Avenue rental housing development.

Financial Implications: See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Action Calendar – Public Hearings

21. ZAB Appeal: 1346 Ordway Street, Administrative Use Permit #ZP2018-0174
From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Administrative Use Permit #ZP2018-0174 to: legalize an existing 128 sq. ft. accessory building in the southwest corner of the subject lot; legalize an existing 5 ft. x 21 ft., 9-ft. tall trellis located within the south setback; legalize an existing 11-ft. tall hedge in the north and south setbacks; establish a front yard off-street parking space to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, under BMC's Reasonable Accommodation Section; and dismiss the appeal.

Financial Implications: None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar

22. Support Community Refrigerators *(Continued from September 22, 2020)*

From: Councilmember Davila (Author)

Recommendation:

1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.

Financial Implications: See report

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

23. Request the United States House of Representatives and/or Senate to introduce "The Breathe Act" *(Continued from September 22, 2020)*

From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)

Recommendation:

1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act"
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

Financial Implications: None

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

24. Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley *(Continued from September 22, 2020)*

From: Commission on Disability

Recommendation: Receive a presentation on the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley.

Financial Implications: See report

Contact: Dominika Bednarska, Commission Secretary, (510) 981-6300

Information Reports

25. **LPO NOD: 2277 Shattuck Avenue/#LMSAP2020-0001**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
26. **LPO NOD: 1915 Berryman Street/#LMIN2020-0003**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
27. **LPO NOD: 2328 Channing Way/#LMIN2020-0001**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400
28. **LPC Annual Report to City Council for the period May 2019 to May 2020**
From: Landmarks Preservation Commission
Contact: Fatema Crane, Commission Secretary, (510) 981-7400

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 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 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>

COMMUNICATION ACCESS INFORMATION:

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



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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*I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 1, 2020.*

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 through [Records Online](#).*

### **Item #2: Healthy Checkout Ordinance; Adding Berkeley Municipal Code Chapter 9.82**

1. Chris Labarbera
2. MP-fourtrax88@
3. Rico Vazquez
4. Vance Bean

### **Item #6: Measure T1 Phase 1 Project List Additions**

5. Susan Schwartz, on behalf of Friends of Five Creeks

### **Item #16: "Step Up Housing" Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue**

6. Donald Frazier

### **Homelessness and Encampments**

7. John Caner and Kristin MacDonald, on behalf of all the Berkeley Business Associations and the Chamber of Commerce (2)
8. Rodney Lerner, on behalf of Landry's Restaurants
9. Paul Canin
10. Jahlee Arakaki
11. Alyson Mitchell
12. Marcia Abcarian
13. Jesse McFarlan

**Street Trees**

14. Erica Cleary (2)
15. Nancy Carleton, on behalf of the Halcyon Neighborhood Association
16. Jeanne Panek

**Adeline Corridor Plan**

17. 20 similarly worded form letters (significantly increases)
18. 11 similarly worded form letters (broad support)
19. 29 similarly worded form letters (1, 2, 3)
20. Phyllis Orrick
21. Michael Katz
22. Tony Corman
23. David Kellogg
24. Jason Martens
25. Jennifer Natali
26. Ariella Granett
27. Larisa Cummings
28. Catherine Betts
29. Andrew Fox
30. Deborah Matthews
31. Jonathan Singh
32. Eileen Hughes
33. Zipporah Collins
34. John Selawsky
35. Angela Gallegos-Castillo
36. Pablo Diaz-Gutierrez
37. Charles Khan
38. Liza Lutzker
39. Serena Lim
40. Aaron Foxworthy
41. Matt Nichols
42. Jack Kurzeil
43. Theo Posselt
44. Adam Lenz

**COVID-19 Related**

45. Virginia Browning
46. Gina Rieger
47. Kelly Hammargren
48. David Lerman
49. City of Berkeley COVID-19 Information Services
50. russbumper

**Wildfire Dangers on Grizzly Peak**

51. Elizabeth Strode

- 52. Sylvie Sullivan
- 53. John Ruble
- 54. Jim Hanson
- 55. David Thill (3)
- 56. Mimi Nielsen
- 57. Mary Pat Farrell
- 58. Kathryn Levenson
- 59. Ramona Naddaff
- 60. Barbara Freeman (2)
- 61. Joseph Heil
- 62. Joe Van Steen
- 63. Bcf1@

**Berkeley Police Department**

- 64. Julia West
- 65. Michael Odiari
- 66. Zach Palchick
- 67. Christine Schwartz

**City-Run Real Estate Vulture Fund**

- 68. Barbara Gilbert

**Traffic Safety – Street Calming Devices**

- 69. Wendy Alfsen and Marilyn Cleveland

**5G**

- 70. Wanda Warkentin
- 71. Phoebe Anne Sorgen

**Rockefeller Foundation Scenarios**

- 72. Ming

**Support Vision 2025**

- 73. Gretchen Ellis
- 74. Barb Noon
- 75. Nilang (3)
- 76. Boona Cheema
- 77. Sandeep Pandya

**Needle Hazard**

- 78. Thomas Lord (2)

**Landlords are “Mom and Pop” Property Owners**

- 79. Anne Whyte

**Civic Center Vision**

80. Claire Kahane

81. Alison Lingo

**Downtown Berkeley Merchant Militia**

82. Carol Denny

**Use of Grove Park for the Public**

83. Mia Villanueva and Alex Torres

**Berkeley Schools Re-Opening**

84. Dana Kilian

**Berkeley #UNBOUND**

85. Cherilyn Parsons, on behalf of the Bay Area Book Festival

**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. 7,733-N.S.

AMENDING SECTION 2 OF ORDINANCE NO. 7,692-N.S., PROHIBITING THE USE OF CRIMINAL HISTORY IN HOUSING DECISIONS

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

Section 1. That Section 2 of Ordinance No. 7,692-N.S. is hereby amended to read as follows:

Effective Date

The provisions of this Chapter shall take effect upon thirty days after final adoption of this ordinance. A Housing Provider shall not be liable for a violation prior to January 1, 2021, unless the Housing Provider has first received a warning letter from the City regarding a violation of the Ordinance.

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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 15, 2020, 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. 7,734-N.S.

## ADDING CHAPTER 9.82 TO THE BERKELEY MUNICIPAL CODE "HEALTHY CHECKOUT"

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

Section 1. That the Berkeley Municipal Code is amended to read as follows:

**9.82.010. Findings and Purpose.**

The City of Berkeley hereby finds and declares as follows:

- A. Diets with an excess of added sugars and sodium are correlated to chronic health issues including diabetes, high blood pressure, and stroke.
- B. Food choices are strongly affected by the environments in which they are made. The placement of unhealthy snacks near a register increases the likelihood that consumers will purchase those foods and drinks, thus undermining consumer health choices and public health initiatives.
- C. It is in the interest of the health, safety, and welfare of all who live, work, and do business in the City that large stores offer healthy options and do not actively encourage the purchase of unhealthy foods.
- D. This Chapter is consistent with the General Provisions of Environmental Health of the City (Berkeley Municipal Code 11.04).

**9.82.020. Definitions.**

- A. "Added Sugars" means sugars added during the processing of food and beverages, or are packaged as such, and include sugars (free, mono and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type, as defined in Section 101.9 of Title 21 of the Code of Federal Regulations.
- B. "Artificial Sweetener" means sweeteners with few to no calories that have a higher intensity of sweetness per gram than sucrose.
- C. "Category List" means the list of foods and beverages which meet the standards of BMC 9.82.030.
- D. "Checkout Area" means any area that is accessible to a customer of the Large Retail Store that is either:
  - i. within a 3-foot distance of any Register; or
  - ii. designated primarily for or utilized primarily by customers to wait in line to make a purchase at a Register, up to and including the Checkout Endcap.
- E. "Checkout Endcap" means product displays placed at endpoints of areas designated primarily for or utilized primarily by customers to wait in line to make a purchase.
- F. "Register" means a device used for monetary transactions that calculates the sales of goods and displays the amount of sales for the customer.
- G. "Large Retail Store" means a commercial establishment selling goods to the public with a total floor area over 2,500 square feet and selling 25 linear feet or

more of food.

**9.82.030. Healthy Checkout Areas.**

Each Large Retail Store shall, at all hours during which the Large Retail Store is open to the public, ensure that all foods and beverages sold in all Checkout Areas meet the standards in Sec 9.82.030 A-C and comply with the list of qualifying food and beverage categories:

- A. Beverages with no added sugars and no artificial sweeteners.
- B. Food items with no more than 5 grams of added sugars, and 200 milligrams of sodium per labeled serving.
- C. Food items must be in the following categories: chewing gum and mints with no added sugars, fruit, vegetables, nuts, seeds, legumes, yogurt or cheese and whole grains.

City staff will provide technical assistance for implementation. Bi-annual review of qualifying food and beverage categories will be done by the Public Health Division. There will be a 120 day phase-in period if any changes are made.

**9.82.040. Enforcement.**

- A. The City is hereby authorized to issue all rules and regulations consistent with this ordinance, including, but not limited to, fees for re-inspection.
- B. Compliance with this Chapter shall be administered by the City during regular inspections of qualifying Large Retail Stores. The City may require a Large Retail Store to provide such information as may be necessary to determine the Large Retail Store's compliance with this Chapter.

**9.82.050. Violation--Penalty.**

- A. A Large Retail Store that violates any provision of this chapter may be subject to administrative citations pursuant to Chapter 1.28 of this Code.
- B. This section shall not limit the City from recovering all costs associated with implementing this chapter or investigating complaints pursuant to fee resolution.
- C. Remedies and penalties under this chapter are cumulative and not exclusive.

**9.82.060. Effective Date.**

This ordinance and the legal requirements set forth herein shall take effect and be in force March 1, 2021. Enforcement pursuant to 9.82.040 shall commence no sooner than January 1, 2022.

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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 22, 2020, 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.





Office of the City Manager

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 13, 2020

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$325,000

| <u>PROJECT</u>                                                                  | <u>Fund</u> | <u>Source</u>  | <u>Amount</u>    |
|---------------------------------------------------------------------------------|-------------|----------------|------------------|
| Consultant Services for Berkeley's 6 <sup>th</sup> Cycle Housing Element Update | 336         | One-Time Grant | \$325,000        |
| <b>Total:</b>                                                                   |             |                | <b>\$325,000</b> |

CURRENT SITUATION AND ITS EFFECTS

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

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on October 13, 2020

CONSENT CALENDAR  
October 13, 2020

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on October 13, 2020

- a) Consultant Services for Berkeley's 6<sup>th</sup> Cycle Housing Element Update

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



DATE SUBMITTED: October 13,2020

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                     | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                               | ESTIMATED COST   | BUDGET CODE TO BE CHARGED           | DEPT. / DIVISION                                                 | CONTACT NAME & PHONE      |
|--------------------|---------------------------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------------|------------------------------------------------------------------|---------------------------|
| 21-11414-C         | Consultant Services for Berkeley's 6th Cycle Housing Element Update | 11/4/2020            | 12/17/2020               | Consultant services to help prepare the City's 6th Cycle Housing Element Update, which will require community engagement, research, analysis, writing, potential updates to the Zoning Ordinance and General Plan, CEQA work. public hearings and adoption | \$325,000        | 336-53-584-622-0000-000-000-434110- | Planning and Development Department / Land Use Planning Division | Alene Pearson<br>981-7489 |
| <b>DEPT. TOTAL</b> |                                                                     |                      |                          |                                                                                                                                                                                                                                                            | <b>\$325,000</b> |                                     |                                                                  |                           |
| <b>GRAND TOTAL</b> |                                                                     |                      |                          |                                                                                                                                                                                                                                                            | <b>\$325,000</b> |                                     |                                                                  |                           |





Office of the City Manager

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services

Subject: Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS). The contract, which will run through June 30, 2021, is for multiple projects that DHCS administers across the State, including the Mental Health Services Act (MHSA), the Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs, and for county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. The City of Berkeley will only receive revenue through the MHSA for this contract.

FISCAL IMPACTS OF RECOMMENDATION

The Mental Health Division is projected to receive approximately \$6,000,000 in FY 2021 through the Mental Health Services Act. These funds will be deposited in ERMA GL Code 315-51-503-520-0000-000-000-432390-. These funds are included in the adopted FY 2021 budget.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives direct funding from the MHSA from the State of California. DHCS requires a contract with the City of Berkeley in order to specify the responsibilities and requirements connected with transferring these funds to the City of Berkeley.

BACKGROUND

The California Department of Health Care Services provides funding and oversight for mental health care plans administered primarily through County Health Plans. In 2011, the contract that delineates the responsibilities and requirements for receiving these funds was consolidated into a single "performance contract." When this consolidation occurred, the State of California stopped providing the City of Berkeley with a performance contract. This was because Berkeley was a part of the Alameda County

Mental Health Care Plan and had a contract with Alameda County Behavioral Health Care (ACBH) outlining that relationship.

DHCS is again requiring Berkeley to enter into a contract regarding funds received directly from the State. The standard State Performance Contract which DHCS is requiring Berkeley to enter in to covers a wide variety of possible funding streams. Among these funding streams, MHSA is the only one that the City of Berkeley directly receives from DHCS. Therefore, it is only the MHSA sections of the performance contract that are applicable to the City of Berkeley. Funding for the MHSA is approved through a robust community engagement process, including stakeholder meetings, a written plan that is posted for 30 days to receive public comment, a public hearing conducted by the Mental Health Commission, and adoption of the MHSA plan each year by City Council.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

In order to receive MHSA funding, Berkeley is required to enter into this performance contract with DHCS. As MHSA funding is the largest funding source for mental health services provided by the Health, Housing and Community Services Department, it is vital that HHCS continue to receive these funds to provide mental health services in Berkeley. These funds support numerous programs including Full Service Partnerships that provide specialized, comprehensive outpatient services to highest need individuals in Berkeley and to the Berkeley Wellness Center, which is available to support everyone in the City.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Steven Grolnic-McClurg, Manager of Mental Health, (510) 981-5249

#### Attachments:

- 1: Resolution
- 2: Performance Contract City of Berkeley FY18-21

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

REVENUE CONTRACT: DEPARTMENT OF HEALTH CARE SERVICES  
PERFORMANCE CONTRACT FOR CITY OF BERKELEY

WHEREAS, the California Department of Health Care Services requires the City of Berkeley to enter into a performance contract to receive funding from the Mental Health Services Act; and

WHEREAS, the Mental Health Division utilizes the Mental Health Services Act to fund a wide variety of mental health programs for residents of Berkeley. Funds from this revenue contract will be deposited in ERMA GL Code 315-51-503-520-0000-000-000-432390-

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with the California Department of Health Care Services for the Mental Health Services Act, Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

# Contractor Certification Clause

CCC 04/2017

## CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

|                                                                                                                   |                                 |
|-------------------------------------------------------------------------------------------------------------------|---------------------------------|
| Contractor/Bidder Firm Name (Printed)<br>City of Berkeley Department of Health, Housing and<br>Community Services | Federal ID Number<br>94-6000299 |
|-------------------------------------------------------------------------------------------------------------------|---------------------------------|

By (Authorized Signature)

Printed Name and Title of Person Signing

Dee Williams-Ridley, City Manager

|               |                                      |
|---------------|--------------------------------------|
| Date Executed | Executed in the County of<br>Alameda |
|---------------|--------------------------------------|

## CONTRACTOR CERTIFICATION CLAUSES

### STATEMENT OF COMPLIANCE:

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

### DRUG-FREE WORKPLACE REQUIREMENTS:

Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b) Establish a Drug-Free Awareness Program to inform employees about:
  - 1. the dangers of drug abuse in the workplace;
  - 2. the person's or organization's policy of maintaining a drug-free workplace;
  - 3. any available counseling, rehabilitation and employee assistance programs; and,

4. penalties that may be imposed upon employees for drug abuse violations.
- c) Provide that every employee who works on the proposed Agreement will:
1. receive a copy of the company's drug-free policy statement; and,
  2. agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

#### NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

#### CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

#### EXPATRIATE CORPORATIONS:

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

#### SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in

whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations [website](#) and Public Contract Code Section 6108.

- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

#### DOMESTIC PARTNERS:

For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

#### GENDER IDENTITY:

For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

#### DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

#### CONFLICT OF INTEREST:

Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

- a) Current State Employees (PCC 10410):
  1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
  2. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- b) Former State Employees (PCC 10411):
  1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-



making process relevant to the contract while employed in any capacity by any state agency.

2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

#### LABOR CODE/WORKERS' COMPENSATION:

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

#### AMERICANS WITH DISABILITIES ACT:

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

#### CONTRACTOR NAME CHANGE:

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

#### CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

- a) When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- b) "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
- c) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good

standing by calling the Office of the Secretary of State.

**RESOLUTION:**

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

**AIR OR WATER POLLUTION VIOLATION:**

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

**PAYEE DATA RECORD FORM STD. 204:**

This form must be completed by all contractors that are not another state agency or other government entity.

**Exhibit A**  
Program Specifications

**1. Service Overview**

The California Department of Health Care Services (hereafter referred to as DHCS or Department) administers the Mental Health Services Act, Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and oversees county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. Contractor (hereafter referred to as County in this Exhibit) must meet certain conditions and requirements to receive funding for these programs and community mental health services. The term County as used in this Exhibit means counties, counties acting jointly, and cities receiving funds pursuant to Welfare and Institutions Code section 5701.5. (Welf. & Inst. Code § 5650, subd. (e).) This Agreement, which is County's performance contract, as required by Welfare and Institutions Code (Welf. & Inst. Code) sections 5650, subd. (a), 5651, 5897, and California Code of Regulations (Cal. Code Regs.), Title 9, section 3310, sets forth conditions and requirements that County must meet in order to receive this funding. This Agreement does not cover federal financial participation or State general funds as they relate to Medi-Cal services provided through the Mental Health Plan Contracts. Conditions and requirements specific to the MHBG, PATH grant, and CCP programs are only applicable to a County receiving a direct allocation of grant funds from the Department. County agrees to comply with all applicable conditions and requirements described herein

DHCS shall monitor this Agreement to ensure compliance with applicable federal and State law and applicable regulations. (Gov. Code, §§ 11180-11182; Welf. & Inst. Code, §§ 5614, 5717, subd. (b), 5651, subd. (b)(10) & 14124.2, subd. (a).)

**2. Service Location**

The services shall be performed at appropriate sites as described in this contract.

**3. Service Hours**

The services shall be provided during times required by this contract.

**Exhibit A**  
Program Specifications

**4. Project Representatives**

A. The project representatives during the term of this Agreement will be:

| <b>Department of Health Care Services</b>                                                                               | <b>City of Berkeley Department of Health, Housing and Community Services</b>                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contract Manager: Ivan Bhardwaj<br>Telephone: (916) 345-7483<br>Fax: (916) 440-7621<br>Email: Ivan.Bhardwaj@dhcs.ca.gov | Steven Grolnic-McClurg<br>1521 University Ave, Berkeley, CA 94703<br>Telephone: (510) 981-5249<br>Fax: (510) 981-5235<br>Email: sgrolnic-mcclurg@cityofberkeley.info<br><br>Yvette Katuala<br>3280 Adeline Street, Berkeley, CA 94704<br>Telephone: (510) 981-7654<br>Fax: (510) 981-5255<br>Email: ykatuala@cityofberkeley.info |

B. Direct all inquiries to:

| <b>Department of Health Care Services</b>                                                                                                                                                                                                                                                                   | <b>City of Berkeley Department of Health, Housing and Community Services</b>                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Behavioral Health – Community Services Division/Contracts and Grants Management Section<br><br>Attention: Casey Heinzen<br>1500 Capitol Avenue, MS 2624<br>P.O. Box Number 997413<br>Sacramento, CA, 95899-7413<br><br>Telephone: (916) 713-8757<br>Fax: (916) 440-7621<br>Email: Casey.Heinzen@dhcs.ca.gov | Steven Grolnic-McClurg<br>1521 University Ave, Berkeley, CA 94703<br>Telephone: (510) 981-5249<br>Fax: (510) 981-5235<br>Email: sgrolnic-mcclurg@cityofberkeley.info<br><br>Yvette Katuala<br>3280 Adeline Street, Berkeley, CA 94704<br>Telephone: (510) 981-7654<br>Fax: (510) 981-5255<br>Email: ykatuala@cityofberkeley.info |

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

**Exhibit A**  
Program Specifications

**5. General Requirements for Agreement**

Welfare and Institutions Code section 5651, subdivision (b), provides specific assurances, which are listed below, that must be included in this Agreement. County shall:

- A. Comply with the expenditure requirements of Welfare and Institutions Code section 17608.05,
- B. Provide services to persons receiving involuntary treatment as required by Part 1 (commencing with section 5000) and Part 1.5 (commencing with section 5585) of Division 5 of the Welfare and Institutions Code,
- C. Comply with all of the requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 (commencing with section 5700) of Division 5 of the Welfare and Institutions Code, and submit cost reports and other data to DHCS in the form and manner determined by the DHCS,
- D. Ensure that the Local Mental Health Advisory Board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to Welfare and Institutions Code section 5604.2,
- E. Comply with all provisions and requirements in law pertaining to patient rights,
- F. Comply with all requirements in federal law and regulation, and all agreements, certifications, assurances, and policy letters, pertaining to federally funded mental health programs, including, but not limited to, the Projects for Assistance in Transition from Homelessness grant and Community Mental Health Services Block Grant programs,
- G. Provide all data and information set forth in sections 5610 and 5664 of the Welfare and Institutions Code,
- H. If County elects to provide the services described in Chapter 2.5 (commencing with section 5670) of Division 5 of the Welfare and Institutions Code, comply with guidelines established for program initiatives outlined in this chapter, and
- I. Comply with all applicable laws and regulations for all services delivered, including all laws, regulations, and guidelines of the Mental Health Services Act.

**Exhibit A**  
Program Specifications

**6. Services Authority**

**A. THE MENTAL HEALTH SERVICES ACT PROGRAM**

1) Program Description

Proposition 63, which created the Mental Health Services Act (MHSA), was approved by the voters of California on November 2, 2004. The Mental Health Services (MHS) Fund, which provides funds to counties for the implementation of its MHSA programs, was established pursuant to Welfare and Institutions Code section 5890. The MHSA was designed to expand California's public mental health programs and services through funding received by a one percent tax on personal incomes in excess of \$1 million. Counties use this funding for projects and programs for prevention and early intervention, community services and supports, workforce development and training, innovation, plus capital facilities and technological needs through mental health projects and programs. The State Controller distributes MHS Funds to the counties to plan for and provide mental health programs and other related activities outlined in a county's three-year program and expenditure plan or annual update. MHS Funds are distributed by the State Controller's Office to the counties on a monthly basis.

DHCS shall monitor County's use of MHS Funds to ensure that the County meets the MHSA and MHS Fund requirements. (Gov. Code §§ 11180-11182; Welf. & Inst. Code, §§ 5651, subd. (b)(10), 5897, subd. (d), & 14124.2, subd. (a).)

2) Issue Resolution Process

County shall have an Issue Resolution Process (Process) to handle client disputes related to the provision of their mental health services. The Process shall be completed in an expedient and appropriate manner. County shall develop a log to record issues submitted as part of the Process. The log shall contain the date the issue was received; a brief synopsis of the issue; the final issue resolution outcome; and the date the final issue resolution was reached.

3) Revenue and Expenditure Report

County shall submit its Revenue and Expenditure Report (RER) electronically to the Department and the Mental Health Services Oversight and Accountability Commission by December 31 following the close of the fiscal year in accordance with Welfare and Institutions Code sections 5705 and 5899, regulations, and DHCS-issued guidelines. The RER shall be certified by the County's Behavioral Health Director (also referred to as "mental health director") and the County's auditor-controller (or equivalent), using the DHCS-issued certification form. Data submitted shall be full and complete.

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If the RER does not meet the requirements, in accordance with the procedure in section 9 of this Agreement, DHCS may withhold payments from the MHS Fund until the County submits a complete RER. (Welf. & Inst. Code, §§ 5655; Cal. Code Regs., tit. 9, § 3510, subd. (c).)

- 4) Distribution and Use of Local Mental Health Services Funds:
- a. Welfare and Institutions Code section 5891, subdivision (c), provides that commencing July 1, 2012, on or before the 15th day of each month, pursuant to a methodology provided by DHCS, the State Controller shall distribute to County's Local Mental Health Services Fund (MHS Fund) (established by County pursuant to Welfare and Institutions Code section 5892, subdivision (f)) all unexpended and unreserved funds on deposit as of the last day of the prior month in the Mental Health Services Fund for the provision of specified programs and other related activities.
  - b. The expenditure for Prevention and Early Intervention (PEI) may be increased by County if DHCS determines that the increase will decrease the need and cost for additional services to severely mentally ill persons in County by an amount at least commensurate with the proposed increase. (Welf. & Inst. Code, § 5892, subd. (a)(4).)  
  
Local MHS Fund money distributed to counties by the State Controller's Office includes funding for annual planning costs pursuant to Welfare and Institutions Code section 5848. The total of these costs shall not exceed five percent of the total annual revenues received for the Local MHS Fund. The planning costs shall include money for County's mental health programs to pay for the costs of having consumers, family members, and other stakeholders participate in the planning process, and for the planning and implementation required for private provider contracts to be expanded to provide additional services. (Welf. & Inst. Code, § 5892, subd. (c).)
  - c. County shall use Local MHS Fund monies to pay for those portions of the mental health programs/services for children and adults for which there is no other source of funds available. (Welf. & Inst. Code, §§ 5813.5, subd. (b), 5878.3 subd. (a); Cal. Code Regs., tit. 9, § 3610, subd. (d).)
  - d. County shall only use Local MHS Funds to expand mental health services. These funds shall not be used to supplant existing State or County funds utilized to provide mental health services. These funds shall only be used to pay for the programs authorized in Welfare and Institutions Code sections 5890 and 5892. These funds may not be used to pay for any other program and may not be loaned to County's general fund or any other County fund for any purpose. (Welf. & Inst. Code, § 5891, subd. (a).)

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- e. All expenditures for County mental health programs shall be consistent with a currently approved three-year program and expenditure plan or annual update pursuant to Welfare and Institutions Code section 5847. (Welf. & Inst. Code, §§ 5891, subd. (d), 5892, subd. (g).)
- 5) Three-Year Program and Expenditure Plan and Annual Updates:
- a. County shall prepare and submit a three-year program and expenditure plan, and annual updates, adopted by County's Board of Supervisors, to the Mental Health Services Oversight and Accountability Commission (MHSOAC) and DHCS within 30 calendar days after adoption. (Welf. & Inst. Code, § 5847, subd. (a).) The three-year program and expenditure plan and annual updates shall include all of the following:
    - i. A program for PEI in accordance with Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with section 5840). (Welf. & Inst. Code, § 5847, subd. (b)(1).)
    - ii. A program for services to children in accordance with Part 4 of Division 5 of the Welfare and Institutions Code (commencing with section 5850), to include a wraparound program pursuant to Chapter 4 of Part 6 of Division 9 of the Welfare and Institutions Code (commencing with section 18250), or provide substantial evidence that it is not feasible to establish a wraparound program in the County. (Welf. & Inst. Code, § 5847, subd. (b)(2).)
    - iii. A program for services to adults and seniors in accordance with Part 3 of Division 5 of the Welfare and Institutions Code (commencing with section 5800). (Welf. & Inst. Code, § 5847, subd. (b)(3).)
    - iv. A program for innovation in accordance with Part 3.2 of Division 5 of the Welfare and Institutions Code (commencing with section 5830). (Welf. & Inst. Code, § 5847, subd. (b)(4).) Counties shall expend funds for their innovation programs upon approval by the Mental Health Services Oversight and Accountability Commission. (Welf. & Inst. Code, § 5830, subd. (e).)
    - v. A program for technological needs and capital facilities needed to provide services pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with section 5850). All plans for proposed facilities with restrictive settings shall demonstrate that the needs of the people to be served cannot be met in a less restrictive or more integrated setting. (Welf. & Inst. Code, § 5847, subd. (b)(5).)



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- vi. Identification of shortages in personnel to provide services pursuant to the above programs and the additional assistance needed from the education and training programs established pursuant to Part 3.1 of Division 5 of the Welfare and Institutions Code (commencing with section 5820). (Welf. & Inst. Code, § 5847, subd. (b)(6); Cal. Code Regs., tit. 9, § 3830, subd. (b).)
  - vii. Establishment and maintenance of a prudent reserve to ensure the County program will continue to be able to serve children, adults, and seniors that it is currently serving pursuant to Part 3 of Division 5 of the Welfare and Institutions Code (commencing with section 5800), Part 3.6 of Division 5 of the Welfare and Institutions Code (commencing with section 5840), and Part 4 of Division 5 of the Welfare and Institutions Code (commencing with section 5850), during years in which revenues for the Local MHS Fund are below recent averages adjusted by changes in the State population and the California Consumer Price Index. (Welf. & Inst. Code, § 5847, subd. (b)(7).)
  - viii. Certification by County's Behavioral Health Director, which ensures that County has complied with all pertinent regulations, laws, and statutes of the MHSA, including stakeholder participation and non-supplantation requirements. (Welf. & Inst. Code, § 5847, subd. (b)(8).)
  - ix. Certification by County's Behavioral Health Director and County's Auditor-Controller that the County has complied with any fiscal accountability requirements as directed by DHCS, and that all expenditures are consistent with the requirements of the MHSA pursuant to California Code of Regulations, Title 9, sections 3500 and 3505. (Welf. & Inst. Code, § 5847, subd. (b)(9).)
- b. County shall include services in the programs described in section 6, subparagraphs A, 5.a.i. through 5.a.v., inclusive, to address the needs of transition age youth between the ages of 16 and 25 years old, including the needs of transition age foster youth. (Welf. & Inst. Code, § 5847, subd. (c).)
  - c. County shall prepare expenditure plans for the programs described in section 6, subparagraphs A, 5.a.i. through 5.a.v., inclusive, and annual expenditure updates. Each expenditure plan and annual update shall indicate the number of children, adults, and seniors to be served, and the cost per person. The expenditure update shall also include utilization of unspent funds allocated in the previous year and the proposed expenditure for the same purpose. (Welf. & Inst. Code, § 5847, subd. (e).)

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- d. County's three-year program and expenditure plan and annual updates shall include reports on the achievement of performance outcomes for services provided pursuant to the Adult and Older Adult Mental Health System of Care Act, Prevention and Early Intervention, and the Children's Mental Health Services Act, which are funded by the Local MHS Fund and established jointly by DHCS and the MHSOAC, in collaboration with the County Behavioral Health Directors Association of California. (Welf. & Inst. Code, § 5848, subd. (c).) County contracts with providers shall include the performance goals from the County's three-year program and expenditure plan and annual updates that apply to each provider's programs and services
  - e. County's three-year program and expenditure plan and annual update shall consider ways to provide services to adults and older adults that are similar to those established pursuant to the Mentally Ill Offender Crime Reduction Grant Program. Funds shall not be used to pay for persons incarcerated in State prison or parolees from State prisons. (Welf. & Inst. Code, § 5813.5, subd. (f).)
- 6) Planning Requirements and Stakeholder Involvement:
- a. County shall develop its three-year program and expenditure plan and annual update with local stakeholders, including adults and seniors with severe mental illness, families of children, adults, and seniors with severe mental illness, providers of services, law enforcement agencies, education, social services agencies, veterans, representatives from veterans organizations, providers of alcohol and drug services, health care organizations, and other important interests. Counties shall demonstrate a partnership with constituents and stakeholders throughout the process that includes meaningful stakeholder involvement on mental health policy, program planning, and implementation, monitoring, quality improvement, evaluation, and budget allocations. County shall prepare and circulate a draft plan and update for review and comment for at least 30 calendar days to representatives of stakeholder interests and any interested party who has requested a copy of the draft plans. (Welf. & Inst. Code, § 5848, subd. (a); Cal. Code Regs., tit. 9, §§ 3300, 3310, 3315 & 3320.)
  - 1) County's mental health board, established pursuant to Welfare and Institutions Code section 5604, shall conduct a public hearing on the County's draft three-year program and expenditure plan and annual updates at the close of the 30 calendar day comment period. Each adopted three-year program and expenditure plan or annual update shall summarize and analyze substantive recommendations and describe substantive changes to the three-year program and expenditure plan and annual updates. The County's mental health board shall review the adopted three-year program and expenditure plan and annual updates and recommend revisions to the County's mental health department. (Welf. & Inst. Code, § 5848, subd. (b); Cal. Code Regs., tit. 9, § 3315.)

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- 2) The County shall provide for a Community Planning Process as the basis for developing the Three-Year Program and Expenditure Plans and updates. The County shall designate positions and or units responsible for the overall Community Program Planning Process; coordination and management of the Community Program Planning Process; ensuring stakeholders have the opportunity to participate; ensuring that stakeholders reflect the diversity of the demographics of the County; and providing outreach to clients and their family members. The Community Program Planning process shall, at a minimum, include involvement of clients and their family members in all aspects of the Process; participation of stakeholders; and training, as needed, to County staff and stakeholders, clients, and family members regarding the stakeholder process. (Cal. Code Regs., tit. 9, § 3300.)
- 3) The County shall adopt the following standards in planning, implementing, and evaluating the programs and/or services provided with MHSA funds:
- community collaboration, as defined in California Code of Regulations, Title 9, section 3200.060;
  - cultural competence, as defined in section 3200.100;
  - client driven, as defined in section 3200.050;
  - family driven, as defined in section 3200.120;
  - wellness, recovery and resilience focused; and integrated service experiences for clients and their families, as defined in section 3200.190.

The planning, implementation and evaluation process includes, but is not limited to, the Community Program Planning Process; development of the Three-Year Program and Expenditure Plans and updates; and the manner in which the County delivers services and evaluates service delivery. (Cal. Code Regs., tit. 9, § 3320.)

- 7) County Requirements for Handling MHSA Funds
- a. County shall place all funds received from the State MHS Fund into a Local MHS Fund. The Local MHS Fund balance shall be invested consistent with other County funds and the interest earned on the investments shall be transferred into the Local MHS Fund. (Welf. & Inst. Code, § 5892, subd. (f).)

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- b. When accounting for all receipts and expenditures of MHSA funds, County must adhere to uniform accounting standards and procedures that conform to the Generally Accepted Accounting Principles (GAAP), as prescribed by the State Controller in California Code of Regulations, Title 2, division 2, chapter 2, subchapter 1, Accounting Procedures for Counties, sections 901-949, and a manual, which is currently entitled "Accounting Standards and Procedures for Counties" and available at [http://www.sco.ca.gov/pubs\\_guides.html](http://www.sco.ca.gov/pubs_guides.html), (Gov. Code, § 30200), except County shall report as spent the full cost of an asset purchased with Capital Facilities and Technological Needs funds.
- 8) Department Compliance Investigations:
- DHCS may investigate County's performance of the Mental Health Services Act related provisions of this Agreement and compliance with the provisions of the Mental Health Services Act, and relevant regulations. In conducting such an investigation, DHCS may inspect and copy books, records, papers, accounts, documents and any writing, as defined by Evidence Code section 250, that is pertinent or material to the investigation of the County. For purposes of this Paragraph, "provider" means any person or entity that provides services, goods, supplies or merchandise, which are directly or indirectly funded pursuant to MHSA. (Gov. Code, §§ 11180, 11181, & 11182; Welf. & Inst. Code, §§ 5651, subd. (b)(9), 5897, subd. (d), & 14124.2.)
- 9) County Breach, Plan of Correction and Withholding of State Mental Health Funds:
- a. If DHCS determines that County is out-of-compliance with the Mental Health Services Act related provisions of this Agreement, DHCS may request that County submit a plan of correction, including a specific timeline to correct the deficiencies, to DHCS. (Welf. & Inst. Code, § 5897, subd. (e).)
  - b. In accordance with Welfare and Institutions Code section 5655, if DHCS considers County to be substantially out-of-compliance with any provision of the Mental Health Services Act or relevant regulations, including all reporting requirements, other than timely submission of a complete Revenue and Expenditure Report, the director shall order County to appear at a hearing before the Director or the Director's designee to show cause why the Department should not take administrative action. County shall be given at least twenty (20) days' notice before the hearing.
  - c. If the Director determines that there is or has been a failure, in a substantial manner, on the part of County to comply with any provision of the Welfare and Institutions Code or its implementing regulations, and that administrative sanctions are necessary, the Department may invoke any, or any combination of, the following sanctions per Welfare and Institutions Code section 5655:

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- 1) Withhold part or all State mental health funds from County.
- 2) Require County to enter into negotiations with DHCS to agree on a plan for County to address County's non-compliance.
- 3) Bring an action in mandamus or any other action in court as may be appropriate to compel compliance. Any action filed in accordance with the section shall be entitled to a preference in setting a date for hearing.

**B. BRONZAN-McCORQUODALE ACT**

1) Description

The Bronzan-McCorquodale Act realigned responsibility for administration of community mental health services, for the indigent population, to counties (Welf. & Inst. Code, § 5600) and provided a dedicated funding source. The County's primary goal in using the funds is to provide an array of treatment options to seriously emotionally disturbed children and adults who have a serious mental disorder, in every geographic area, to the extent resources are available to the County. (Welf. & Inst. Code, §§ 5600.3, 5600.35, 5600.4). The mission of California's mental health system shall be to enable persons experiencing severe and disabling mental illnesses and children with serious emotional disturbances to access services and programs that assist them, in a manner tailored to each individual, to better control their illness, to achieve their personal goals, and to develop skills and supports leading to their living the most constructive and satisfying lives possible in the least restrictive available settings. (Welf. & Inst. Code, § 5600.1)

2) County Obligations

County shall comply with all requirements in the Bronzan McCorquodale Act (Welf. & Inst. Code, § 5600 et. Seq.) and specifically, county shall comply with the following:

- a. County shall fund children's services pursuant to the requirements of Welfare and Institutions Code sections 5704.5 and 5704.6.
- b. County shall comply with reporting requirements developed by the Department. (Welf. & Inst. Code, §§ 5610, 5664, 5614, subd. (b)(4))
- c. To the extent resources are available, County shall maintain the program principles and array of treatment options required under Welfare and Institutions Code sections 5600.2 to 5600.9, inclusive. (Welf. & Inst. Code, § 5614, subd. (b)(4))
- d. County shall report data to the state required by the performance outcome systems for adults and children. (Welf. & Inst. Code, §§ 5610, 5664, 5614, subd. (b)(6))

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**C. LANTERMAN-PETRIS-SHORT ACT**

1) Description

The LPS Act was enacted to end indefinite involuntary commitment of persons with mental health disorders and to provide prompt evaluation and treatment, to establish consistent personal rights standards, and to provide services in the least restrictive setting for individuals served under the Act. (Welf. & Inst. Code § 5001.) Pursuant to Welfare and Institutions Code section 5400, DHCS administers the LPS Act and may adopt standards as necessary.

2) Reporting and Data Submission Requirements

- a. The County shall maintain data on the number of persons admitted for 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, and 180-day post-certification intensive treatment, the number of persons transferred to mental health facilities pursuant to Section 4011.6 of the Penal Code, the number of persons for whom temporary conservatorships are established, and the number of persons for whom conservatorships are established in the County. (Welf. & Inst. Code § 5402, subds. (a)-(b).) Upon request from DHCS, the County shall provide the aforementioned data or other information, records, and reports, which DHCS deems necessary for the purposes of Welfare and Institutions Code section 5402. (*Id.* at subd. (b).)
- b. The County shall maintain data on the number of persons whose rights were denied under the LPS Act and the right or rights which were denied. Quarterly, the County shall provide DHCS with a report of the number of persons whose rights were denied under the LPS Act and shall identify the right or rights which were denied. (Welf. & Inst. Code § 5326.1.)
- c. The County shall collect information and submit reports to DHCS as specified in Welfare and Institutions Code section 5326.15, subdivision (a).

3) Laura's Law

If the County operates an Assisted Outpatient Treatment Program pursuant to Welfare and Institution Code, Division 5, Part 1, Chapter 2, Article 9, (Laura's Law), it shall be required to comply with all applicable statutes including, but not limited to, Welfare and Institutions Code sections 5345 through 5349.5, inclusive. In addition, a County that has a Laura's Law program shall:

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- a. Maintain and provide data to DHCS regarding the services the county provides under Laura's Law. (Welf. & Inst. Code § 5348 (d).) The report shall include an evaluation of the effectiveness of the strategies employed by each program in reducing homelessness and hospitalization of persons in the program and in reducing involvement with local law enforcement by persons in the program. The County shall maintain and include in the report to DHCS all of the information enumerated in Welfare and Institutions Code section 5348, subdivision (d), paragraphs (1) through (14).
- b. Pay for the provision of services under Welfare and Institutions Code sections 5347 and 5348 using funds distributed to the counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund, funds from the Mental Health Account and the Behavioral Health Subaccount within the Support Services Account of the Local Revenue Fund 2011, funds from the Mental Health Services Fund when included in county plans pursuant to Section 5847, and any other funds from which the Controller makes distributions to the counties for those purposes. (Welf. & Inst. Code § 5349.)

**D. PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS PROGRAM (42 U.S.C. §§ 290cc-21 -290cc-35, inclusive)**

Pursuant to Title 42 of the United States Code, sections 290cc-21 through 290cc-35, inclusive, the State of California has been awarded federal homeless funds through the federal McKinney Projects for Assistance in Transition from Homelessness (PATH) formula grant. The PATH grant funds community based outreach, mental health and substance abuse referral/treatment, case management and other support services, as well as a limited set of housing services for the homeless mentally ill.

County shall submit its Request for Application (RFA) responses and required documentation specified in DHCS' RFA to receive PATH funds. County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/PATH.aspx>.

If County applied for and DHCS approved its request to receive PATH grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses.

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The PATH grant is a federal award within the meaning of Title 2 Code of Federal Regulations part 200. This contract is a subaward to County. County is a subrecipient and subject to all applicable requirements in Title 2 Code of Federal Regulations part 200 and Title 45 Code of Federal Regulations part 75, including, but not limited to, the County requirement to have a single audit performed for PATH funds in accordance with the audit requirements in Title 2 Code of Federal Regulations part 200, subpart F, or Title 45 Code of Federal Regulations part 75.

**E. COMMUNITY MENTAL HEALTH SERVICES GRANT PROGRAM (42 U.S.C. § 300x-1 et seq.)**

Pursuant to Title 42 United States Code section 300x-1 et seq., the State of California has been awarded the federal Community Mental Health Services Block Grant funds (known as Mental Health Block Grant (MHBG)). County mental health agencies utilize MHBG funding to provide a broad array of mental health services within their mental health system of care (SOC) programs. These programs provide services to the following target populations: children and youth with serious emotional disturbances (SED) and adults and older adults with serious mental illnesses (SMI).

County shall submit its RFA responses and required documentation specified in DHCS' RFA to receive MHBG funding. County shall complete its RFA responses in accordance with the instructions, enclosures and attachments available on the DHCS website at:

<http://www.dhcs.ca.gov/services/MH/Pages/MHBG.aspx>.

If County applied for and DHCS approved its request to receive MHBG grant funds, the RFA, County's RFA responses and required documentation, and DHCS' approval constitute provisions of this Agreement and are incorporated by reference herein. County shall comply with all provisions of the RFA and the County's RFA responses.

The MHBG is a federal award within the meaning of Title 2 Code of Federal Regulations part 200. This contract is a subaward to County. County is a subrecipient and subject to all applicable requirements in Title 2 Code of Federal Regulations part 200 and Title 45 Code of Federal Regulations part 75, including, but not limited to, the County requirement to have a single audit performed for MHBG funds in accordance with the audit requirements in Title 2 Code of Federal Regulations part 200, subpart F, or Title 45 Code of Federal Regulations part 75.



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**F. CRISIS COUNSELING ASSISTANCE AND TRAINING PROGRAM (42 U.S.C. § 5183)**

Pursuant to Title 42 United States Code section 5183, and upon the issuance of a Presidential declaration of a major disaster, the State of California may be awarded Federal Emergency Management Agency (FEMA) funding for the Crisis Counseling Assistance and Training Program (CCP). The CCP supports short-term interventions that involve assisting disaster survivors in understanding their current situation and reactions, mitigating stress, developing coping strategies, providing emotional support, and encouraging linkages with other individuals and agencies that help survivors in their recovery process. These funds are used to provide services to all individuals affected during a disaster.

- 1) The CCP is comprised of three funding terms:
  - a. Immediate Services Program (ISP) – Funding is provided for the CCP for 60 days from the date of the Presidential declaration;
  - b. Immediate Services Program Extension (ISP Extension) – Funding is provided to cover the period from the day after the end of the ISP to the award date of the Regular Services Program (RSP).
  - c. Regular Services Program (RSP) – Funding is provided for 9 months from award date to continue and expand the provision of crisis counseling program services.
- 2) Participation in the CCP is optional. County's request to the State of California that it apply for CCP funding on behalf of the County shall be County's agreement to comply with all applicable federal and State requirements, including the FEMA or Substance Abuse and Mental Health Services Administration (SAMHSA) approved funding application and budget; applicable requirements in the Notice of Award (from FEMA or SAMHSA) to the State, including special and standard program conditions or terms, supplemental grant information, and the federal Health and Human Services Grants Policy Statement; 44 Code of Federal Regulations part 206.171, 42 Code of Federal Regulations part 38 and FEMA or SAMHSA CCP secondary guidance that is in effect on the date County receives the award of funding.

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- 3) The CCP is a federal award within the meaning of Title 2 Code of Federal Regulations part 200. This contract is a subaward to County. County is a subrecipient and subject to all applicable requirements in Title 2 Code of Federal Regulations part 200 and Title 45 Code of Federal Regulations part 75, including, but not limited to, the County requirement to have a single audit performed for CCP funds in accordance with the audit requirements in Title 2 Code of Federal Regulations part 200, subpart F, or Title 45 Code of Federal Regulations part 75. CCP Funding shall not be used to supplant existing resources. County expenditure of CCP Funds are subject to State and federal oversight, including on-sight program performance reviews and federal audits. (44 C.F.R. § 206.171(k) & 42 C.F.R. § 38.9.)
- 4) For reference, FEMA Crisis Counseling Assistance and Training Program (FEMA secondary guidance), is accessible at the following link: <https://www.samhsa.gov/dtac/ccp-toolkit>.

**7. Reporting and Data Submission Requirements**

County shall comply with all data and information submission requirements specified in this Agreement.

- A. County shall provide all applicable data and information required by federal and/or State law in order to receive any funds to pay for its MHSA programs, PATH grant (if the County receives funds from this grant), MHBG grant (if the County receives funds from this grant), CCP program, or County provision of community mental health services provided with 1991 realignment funds (other than Medi-Cal). These federal and State laws include Title 42 of the United States Code, sections 290cc-21 through 290cc-35 and 300x through 300x-9, inclusive, Welfare & Institutions Code sections 5610 and 5664 and the regulations that implement, interpret or make specific, these federal and State laws and any DHCS-issued guidelines that relate to the programs or services.
- B. County shall comply with DHCS reporting requirements related to the County's receipt of federal or State funding for mental health programs. County shall submit complete and accurate information to DHCS, and as applicable the Mental Health Services Oversight and Accountability Commission, including, but not limited, to the following:
  - 1) Client and Service Information (CSI) System Data, as specified in Title 9 of the California Code of Regulations, section 3530.10. (See also section 7, subparagraph (C) of this Agreement.)
  - 2) MHSA Quarterly Progress Reports, as specified in the California Code of Regulations, Title 9, section 3530.20. MHSA Quarterly Progress Reports provide the actual number of clients served by MHSA-funded program. Reports are submitted on a quarterly basis.
  - 3) Full Service Partnership Performance Outcome data, as specified in the California Code of Regulations, Title 9, section 3530.30.

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- 4) Consumer Perception Survey data, as specified in the California Code of Regulations, Title 9, section 3530.40.
  - 5) The Annual Mental Health Services Act Revenue and Expenditure Report, as specified in Welfare and Institutions Code section 5899, subdivision (a), and the California Code of Regulations, Title 9, sections 3510, 3510.010, and 3510.020 and DHCS-issued guidelines.
  - 6) Innovative Project Reports (annual, final and supplements), as specified in the California Code of Regulations, Title 9, sections 3580 through 3580.020.
  - 7) The Annual Prevention and Early Intervention report, as specified in the California Code of Regulations, Title 9, sections 3560 and 3560.010.
  - 8) Three Year Program and Evaluation Reports, as specified in the California Code of Regulations, Title 9, sections 3560 and 3560.020.
- C. County shall submit CSI data to DHCS, in accordance with Title 9 of the California Code of Regulations, section 3530.10, and according to the specifications set forth in DHCS' CSI Data Dictionary. County shall:
- i. Report complete and accurate monthly CSI data to DHCS within 60 calendar days after the end of the month in which services were provided.
  - ii. If complete and accurate data are not reported within 60 calendar days, the county must be in compliance with an approved plan of correction..
  - iii. Make diligent efforts to minimize errors on the CSI error file.
  - iv. Correct all errors on the CSI error file.
  - v. Notify DHCS 90 calendar days prior to any change in reporting system and/or change of automated system vendor.
- D. In the event that DHCS or County determines that, due to federal or State law changes or business requirements, an amendment is needed of either County's or DHCS' obligations under this contract relating to either DHCS' or County's information needs, both DHCS and County agree to provide notice to the other party as soon as feasible prior to implementation. This notice shall include information and comments regarding the anticipated requirements and impacts of the projected changes. DHCS and County agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.

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## Program Specifications

- E. For all mental health funding sources received by County that require submission of a cost report, County shall submit a fiscal year-end cost report by December 31 following the close of the fiscal year in accordance with applicable federal and State law, regulations and DHCS-issued guidelines. (Welf. & Inst. Code § 5705; Cal. Code Regs., tit. 9, §§ 3500, 3505.) The cost report shall be certified as true and correct, and with respect to Local Mental Health Service Fund moneys, that the County is in compliance with the California Code of Regulations, Title 9, section 3410, Non-Supplant. The certification must be completed by the Behavioral Health Director and one of the following: the County mental health department's chief financial officer (or equivalent), an individual who has delegated authority to sign for and reports directly to the County mental health department's chief financial officer (or equivalent), or the County's auditor-controller (or equivalent). Data submitted shall be full and complete. County shall also submit a reconciled cost report certified by the Behavioral Health Director and the County's auditor-controller as being true and correct no later than 18 months after the close of the following fiscal year.
- F. If applicable to a specific federal or State funding source covered by this Agreement, County shall require each of its subcontractors to submit a fiscal year-end cost report to DHCS no later than December 31 following the close of the fiscal year, in accordance with applicable federal and State laws, regulations, and DHCS-issued guidelines.

**8. Special Terms and Conditions**A. Audit and Record Retention

(Applicable to agreements in excess of \$10,000)

- 1) County and/or Subcontractor(s) shall maintain records, including books, documents, and other evidence, accounting procedures and practices, sufficient to properly support all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The forgoing constitutes "records" for the purpose of this provision.
- 2) County's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- 3) County agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. County agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, County agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

**Exhibit A**

## Program Specifications

- 4) County and/or Subcontractor(s) shall preserve and make available his/her records (1) for a period of ten years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (a) or (b) below.
    - a. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
    - b. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the ten-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.
  - 5) County and/or Subcontractor(s) may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books, and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, County and/or Subcontractor(s) must supply or make available applicable devices, hardware, and/or software necessary to view, copy, and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
  - 6) County shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in 2 Code of Federal Regulations part 200.
- B. Dispute Resolution Process for Projects for Assistance in Transition from Homelessness Program Grant and Community Mental Health Services Grant Program

If a dispute arises between the Contractor and DHCS regarding Contractor compliance with Section 6 of this Agreement, subparagraph B, Projects for Assistance in Transition from Homelessness Program, or subparagraph C, Community Mental Health Services Grant Program, the Contractor must seek resolution using the process outlined below.

- 1) The Contractor must first informally discuss the problem with the DHCS Project Representative listed in subparagraph 3 below. If the parties are unable to resolve the problem informally, the Contractor must mail a written Statement of Dispute, with supporting evidence, to DHCS at the address listed in subparagraph 3 below. The Statement of Dispute must describe the issues in dispute, the legal authority or other basis for the Contractor's position, and the remedy sought.

**Exhibit A**

## Program Specifications

- 2) The Branch Chief of DHCS' Mental Health Management and Outcomes Reporting Branch will decide the dispute and mail a written decision to the Contractor within twenty (20) working days of receiving the Statement of Dispute from the Contractor. The decision will be in writing, resolve the dispute and include a statement of the reasons for the decision that addresses each issue raised by the Contractor. If applicable, the decision will also indicate any action Contractor must take to comply with the decision. The Branch Chief's decision shall be the final administrative determination of DHCS.
- 3) Unless otherwise agreed to in writing by DHCS, the Statement of Dispute, supporting documentation, and all correspondence and documents related to the dispute resolution process shall be directed to the following:

**Department of Health Care Services**

Behavioral Health – Community Services Division/Contracts and Grants Management Section  
 Attention: Casey Heinzen  
 1500 Capitol Avenue, MS2704  
 P.O. Box Number 997413  
 Sacramento, CA, 95899-7413

**C. Novation**

If County proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with County, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

**D. Welfare and Institutions Code section 5751.7 Waiver**

- 1) County shall comply with Welfare and Institutions Code section 5751.7 and ensure that minors are not admitted into inpatient psychiatric treatment with adults. If this requirement creates undue hardship to County due to inadequate or unavailable alternative resources, County may request a waiver of this requirement. County shall submit the waiver request on Attachment I of this Agreement to DHCS.
- 2) DHCS shall review County's waiver request and provide a written notice of approval or denial of the waiver. If County's waiver request is denied, County shall prohibit health facilities from admitting minors into psychiatric treatment with adults.
- 3) County shall submit the waiver request to DHCS at the time County submits this Agreement, signed by County, to DHCS for execution. County shall complete Attachment I and attach it to this Agreement. See Exhibit A,

**Exhibit A**

## Program Specifications

Attachment I, entitled "Request For Waiver" of this Agreement for additional submission information.

- 4) Execution of this Agreement by DHCS shall not constitute approval of a waiver submitted pursuant to this section.
- 5) Any waiver granted in the prior fiscal year's Agreement shall be deemed to continue until either party chooses to discontinue it, as specified in Exhibit A, Attachment I. Execution of this Agreement shall continue independently of the waiver review and approval process.
- 6) In unusual or emergency circumstances, when County needs to request waivers after the annual Performance Contract has been executed, these requests should be e-mailed, with the subject line "Performance Contract: Unusual or Emergency Circumstances", immediately to:

California Department of Health Care Services  
Behavioral Health – Community Services Division

Operations Branch  
Contracts and Grants Management Section  
e-mail: MHSa@dhcs.ca.gov.

- 7) Each admission of a minor to a facility that has an approved waiver shall be reported to the Local Behavioral Health Director.

**E. Americans with Disabilities Act**

Contractor agrees to ensure that deliverables developed and produced pursuant to this Agreement shall comply with the accessibility requirements of section 508 of the Rehabilitation Act and the Americans with Disabilities Act of 1973 as amended (29 U.S.C. § 794(d)), and regulations implementing that Act as set forth in Part 1194 of Title 36 of the Code of Federal Regulations. In 1998, Congress amended the Rehabilitation Act of 1973 to require federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code section 11135 codifies section 508 of the Act requiring accessibility of electronic and information technology.

**F. Change in County Behavioral Health Director**

County agrees to notify DHCS immediately if there is any change in the position of the County Behavioral Health Director. County shall provide DHCS the contact information for any new County Behavioral Health Director appointed.

**Exhibit A, Attachment I**  
Request for Waiver**Request for Waiver Pursuant To Section 5751.7 of the Welfare and Institutions Code**

\_\_\_\_\_ hereby requests a waiver for the following public or private health facilities pursuant to section 5751.7 of the Welfare and Institutions Code for the term of this contract. These are facilities where minors may be provided psychiatric treatment with nonspecific separate housing arrangements, treatment staff, and treatment programs designed to serve minors. However, no minor shall be admitted for psychiatric treatment into the same treatment ward as an adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate sexual or other violent behavior which would present a threat to the physical safety of others.

The request for waiver must include, as an attachment, the following:

1. A description of the hardship to the County/City due to inadequate or unavailable alternative resources that would be caused by compliance with the State policy regarding the provision of psychiatric treatment to minors.
2. The specific treatment protocols and administrative procedures established by the County/City for identifying and providing appropriate treatment to minors admitted with adults.
3. Name, address, and telephone number of the facility
  - Number of the facility's beds designated for involuntary treatment
  - Type of facility, license(s), and certification(s) held (including licensing and certifying agency and license and certificate number)
  - A copy of the facility's current license or certificate and description of the program, including target population and age groups to be admitted to the designated facility.
4. If applicable, the County Board of Supervisors' decision to designate a facility as a facility for evaluation and treatment pursuant to Welfare and Institutions Code sections 5150, 5585.50, and 5585.55.

To rescind the waiver, either party shall send a letter to the other party on official letterhead signed by their respective Behavioral Health Director or his or her designee indicating that the party no longer grants or requests a waiver. If not otherwise specified by the party in the letter to the respective party, the discontinuance shall be effective the date the letter to the party is postmarked and the facility shall no longer be waived as of this date.

When the Department denies or rescinds a waiver issued to a County, the facility and the County Behavioral Health Director or designee shall receive written notification from the Department, by certified mail or e-mail. The notice shall include the decision, the basis for the decision, and any supporting documentation.



**Exhibit B**  
**Funds Provision**

**1. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, DHCS shall have no liability to pay any funds whatsoever to City of Berkeley Health, Housing, and Community Services or to furnish any other considerations under this Agreement and City of Berkeley Health, Housing, and Community Services shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall have the option to either cancel this Agreement with no liability occurring to DHCS, or offer an agreement amendment to City of Berkeley Health, Housing, and Community Services to reflect the reduced amount.

**Exhibit D**

## Information Confidentiality and Security Requirements

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
  - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
  - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:
 

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS

**Exhibit D****Information Confidentiality and Security Requirements**

without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

6. The Contractor shall observe the following requirements:

**A. Safeguards.** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, including at a minimum the following safeguards:

**1) Personnel Controls**

- a. Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. Confidentiality Statement.** All persons that will be working with DHCS PSCI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PSCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. Background Check.** Before a member of the workforce may access DHCS PSCI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

**2) Technical Security Controls**

- a. Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PSCI must be encrypted using a FIPS 140-2 certified algorithm which

**Exhibit D**

## Information Confidentiality and Security Requirements

- is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- b. Server Security.** Servers containing unencrypted DHCS PSCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- c. Minimum Necessary.** Only the minimum necessary amount of DHCS PSCI required to perform necessary business functions may be copied, downloaded, or exported.
- d. Removable media devices.** All electronic files that contain DHCS PSCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PSCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PSCI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PSCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
  - Lower case letters (a-z)
  - Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- h. Data Destruction.** When no longer needed, all DHCS PSCI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PSCI cannot be retrieved.

**Exhibit D**

## Information Confidentiality and Security Requirements

- i. **System Timeout.** The system providing access to DHCS PSCI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PSCI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PSCI, or which alters DHCS PSCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PSCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- l. **Access Controls.** The system providing access to DHCS PSCI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. **Transmission encryption.** All data transmissions of DHCS PSCI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PSCI can be encrypted. This requirement pertains to any type of PSCI in motion such as website access, file transfer, and E-Mail.
- n. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PSCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**3) Audit Controls**

- a. **System Security Review.** All systems processing and/or storing DHCS PSCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. **Log Reviews.** All systems processing and/or storing DHCS PSCI must have a routine procedure in place to review system logs for unauthorized access.
- c. **Change Control.** All systems processing and/or storing DHCS PSCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

**Exhibit D**

## Information Confidentiality and Security Requirements

**4) Business Continuity / Disaster Recovery Controls**

- a. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PSCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- b. **Data Backup Plan.** Contractor must have established documented procedures to backup DHCS PSCI to maintain retrievable exact copies of DHCS PSCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PSCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

**5) Paper Document Controls**

- a. **Supervision of Data.** DHCS PSCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PSCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- b. **Escorting Visitors.** Visitors to areas where DHCS PSCI is contained shall be escorted and DHCS PSCI shall be kept out of sight while visitors are in the area.
- c. **Confidential Destruction.** DHCS PSCI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- d. **Removal of Data.** DHCS PSCI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- e. **Faxing.** Faxes containing DHCS PSCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- f. **Mailing.** Mailings of DHCS PSCI shall be sealed and secured from damage or inappropriate viewing of PSCI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PSCI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.

**Exhibit D**

## Information Confidentiality and Security Requirements

- B. Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.

**Discovery and Notification of Breach. Notice to DHCS:**

- (1) To notify DHCS **immediately** upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. This notification will be **by telephone call plus email or fax** upon the discovery of the breach. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of unsecured PSCI in electronic media or in any other media if the PSCI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by the contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of the contractor..

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to DHCS by the Social Security Administration, notice shall be provided by calling the DHCS EITS Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

- C.** Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI, the Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
  - 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- D. Investigation of Breach.** The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI. If the initial report did not include all of the requested information marked with an asterisk, then within seventy-two (72) hours of the discovery, The Contractor shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:

**Exhibit D**

Information Confidentiality and Security Requirements

**E. *Written Report.*** The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer, if all of the required information was not included in the DHCS Privacy Incident Report, within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.

**F. *Notification of Individuals.*** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.

**7. *Affect on lower tier transactions.*** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

**8. *Contact Information.*** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

| <b>DHCS Program Contract Manager</b>                                   | <b>DHCS Privacy Officer</b>                                                                                                                                                                                                                                                 | <b>DHCS Information Security Officer</b>                                                                                                                                                                                                                             |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| See the Scope of Work exhibit for Program Contract Manager information | Privacy Officer<br>c/o Office of Legal Services<br>Department of Health Care Services<br>P.O. Box 997413, MS 0011<br>Sacramento, CA 95899-7413<br><br>Email:<br><a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a><br><br>Telephone: (916) 445-4646 | Information Security Officer<br>DHCS Information Security Office<br>P.O. Box 997413, MS 6400<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a><br><br>Telephone: ITSD Help Desk<br>(916) 440-7000 or<br>(800) 579-0874 |

**9. *Audits and Inspections.*** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.



**EXHIBIT E****PRIVACY AND INFORMATION SECURITY PROVISIONS**

This Exhibit E is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit E consists of: (1) Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI); and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code Section 1798.3. Personal Information may include data provided to the Department by the Social Security Administration.

Exhibit E consists of the following parts:

1. Exhibit E-1, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.
1. Exhibit E-2, which provides for the privacy and security of PI in accordance with specified provisions of the Agreement between the Department and the Social Security Administration, known as the Information Exchange Agreement (IEA) and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit E-2 further provides for the privacy and security of PI under Civil Code Section 1798.3(a) and 1798.29.
2. Exhibit E-3, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit E in its entirety.

**EXHIBIT E-1****HIPAA Business Associate Addendum****1. Recitals.**

- A. A business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") between Department and Contractor arises only to the extent that Contractor creates, receives, maintains, transmits, uses or discloses PHI or ePHI on the Department's behalf, or provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department that are included in the definition of "business associate" in 45 C.F.R. 160.103 where the provision of the service involves the disclosure of PHI or ePHI from the Department, including but not limited to, utilization review, quality assurance, or benefit management. To the extent Contractor performs these services, functions, and activities on behalf of Department, Contractor is the Business Associate of the Department, acting on the Department's behalf. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit E-1 of this Agreement. This information is hereafter referred to as "Department PHI".
- C. The purpose of this Exhibit E-1 is to protect the privacy and security of the PHI and ePHI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act. To the extent that data is both PHI or ePHI and Personally

Identifying Information, both Exhibit E-2 (including Attachment B, the SSA Agreement between SSA, CHHS and DHCS, referred to in Exhibit E-2) and this Exhibit E-1 shall apply.

- D. The terms used in this Exhibit E-1, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

## 2. Definitions.

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Department PHI shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services on behalf of the Department as specified in Section 1.A. of Exhibit E-1 of this Agreement. The terms PHI as used in this document shall mean Department PHI.
- E. Electronic Health Records shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921 and implementing regulations.
- F. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- G. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual

or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR Section 160.103.

- H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.
- I. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.
- J. Required by law, as set forth under 45 CFR Section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit E-1 of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- M. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. Section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

### 3. Terms of Agreement.

#### A. Permitted Uses and Disclosures of Department PHI by Contractor.

Except as otherwise indicated in this Exhibit E-1, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit E-1 of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations or the limitations set forth in 42 CFR Part 2, or any other applicable law, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR Section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

#### B. Specific Use and Disclosure Provisions. Except as otherwise indicated in this Exhibit E-1, Contractor may:

- 1) **Use and Disclose for Management and Administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed, in accordance with section D(7) of this Exhibit E-1, that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
- 2) **Provision of Data Aggregation Services.** Use Department PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Contractor, as the Business Associate, on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department

#### C. Prohibited Uses and Disclosures

- 1) Contractor shall not disclose Department PHI about an individual to a health plan for payment or health care operations purposes if the Department PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. Section 17935(a) and 45 CFR Section 164.522(a).
- 2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI.

**D. Responsibilities of Contractor**

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law, including but not limited to 42 CFR Part 2.
- 2) **Compliance with the HIPAA Security Rule.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Section 164, subpart C, in compliance with 45 CFR Section 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.
- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, Data Security Requirements;

- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement; and
  - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 4) **Security Officer.** Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.
- 5) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit E.
- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit E of which it becomes aware.
- 7) **Contractor's Agents and Subcontractors.**
  - a. To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such Department PHI under this Exhibit E, and that require compliance with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI. As required by HIPAA, the HITECH Act and the HIPAA regulations, including 45 CFR Sections 164.308 and 164.314, Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit E-1 into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of

unsecured PHI be reported to Contractor.

- b. In accordance with 45 CFR Section 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:
  - i) Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or
  - ii) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

8) **Availability of Information to the Department and Individuals to Provide Access and Information:**

- a. To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- b. If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall



provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e) and the HIPAA regulations.

- 9) **Amendment of Department PHI.** To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526, in the time and manner designated by the Department, with the Contractor being given a minimum of twenty (20) days within which to make the amendment.
- 10) **Internal Practices.** To make Contractor's internal practices, books and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.
- 11) **Documentation of Disclosures.** To document and make available to the Department or (at the direction of the Department) to an individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of such PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009 and later, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- 12) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
  - a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or**

**fax** upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (2) To notify the Department **within 24 hours (one hour if SSA data) by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement or this Exhibit E-1, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Protection Unit (916.445.4646, 866-866-0602) or by emailing [privacyofficer@dhcs.ca.gov](mailto:privacyofficer@dhcs.ca.gov). Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PHI, Contractor shall take:

- i) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
- ii) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

b. **Investigation and Investigation Report.** To immediately

investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Information Protection Unit.

- c. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, and the HIPAA regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- d. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary (after obtaining prior written approval of DHCS). If a breach of

unsecured Department PHI involves more than 500 residents of the State of California or under its jurisdiction, Contractor shall first notify DHCS, then the Secretary of the breach immediately upon discovery of the breach. If a breach involves more than 500 California residents, Contractor shall also provide, after obtaining written prior approval of DHCS, notice to the Attorney General for the State of California, Privacy Enforcement Section. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.

- e. **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days after discovery of the breach. The Department Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.
- f. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

| <b>Department Program Contract Manager</b>                                | <b>DHCS Privacy Officer</b>                                                                                                                                                                                                                                                                                         | <b>DHCS Information Security Officer</b>                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| See the Exhibit A, Scope of Work for Program Contract Manager information | Information Protection Unit<br>c/o: Office of HIPAA<br>Compliance Department of Health Care Services<br>P.O. Box 997413, MS 4722<br>Sacramento, CA 95899-7413<br>(916) 445-4646; (866) 866-0602<br><br>Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a><br><br>Fax: (916) 440-7680 | Information Security Officer<br>DHCS Information Security Office<br>P.O. Box 997413, MS 6400<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a><br><br>Telephone: ITSD Service Desk (916) 440-7000; (800) 579-0874<br><br>Fax: (916)440-5537 |

13) **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit E-1, it shall take the following steps:

- a. Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the breach or end the violation within the time specified by Contractor; or
- b. Immediately terminate the Agreement if the Department has breached a material term of the Exhibit E-1 and cure is not possible.

14) **Sanctions and/or Penalties.** Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

**E. Obligations of the Department.**

The Department agrees to:

- 1) **Permission by Individuals for Use and Disclosure of PHI.** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose Department PHI, if such changes affect the Contractor's permitted or required uses and disclosures.
- 2) **Notification of Restrictions.** Notify the Contractor of any restriction to the use or disclosure of Department PHI that the Department has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.
- 3) **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose Department PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.
- 4) **Notice of Privacy Practices.** Provide Contractor with the web link to the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Visit the DHCS website to view the most current Notice of Privacy Practices at:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/NoticeofPrivacyPractices.aspx> or the DHCS website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) (select "Privacy in the right column and "Notice of Privacy Practices" on the right side of the page).

#### **F. Audits, Inspection and Enforcement**

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office for Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit E-1, Contractor shall immediately notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

#### **G. Termination.**

- 1) **Term.** The Term of this Exhibit E-1 shall extend beyond the

termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(J).

- 2) **Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(iii), upon the Department's knowledge of a material breach or violation of this Exhibit E-1 by Contractor, the Department shall:
  - a. Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department; or
  - b. Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit E-1 and cure is not possible.

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**EXHIBIT E-2****Privacy and Security of Personal Information and Personally Identifiable Information Not Subject to HIPAA****1. Recitals.**

- A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:
- 1) The California Information Practices Act of 1977 (California Civil Code §§1798 et seq.),
  - 2) The Agreement between the Social Security Administration (SSA) and the Department, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency. The IEA, including the CMPPA is attached to this Exhibit E as Attachment B and is hereby incorporated in this Agreement.
  - 3) Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2.
- B. The purpose of this Exhibit E-2 is to set forth Contractor's privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for or on behalf of Department pursuant to this Agreement. Specifically this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit E-1 of this Agreement, the HIPAA Business Associate Addendum; however, to the extent that data is both PHI or ePHI and PII, both Exhibit E-1 and this Exhibit E-2 shall apply.
- C. The IEA Agreement referenced in A.2) above requires the Department to extend its substantive privacy and security terms to subcontractors who receive data provided to DHCS by the Social Security Administration. If Contractor receives data from DHCS that includes data provided to DHCS by the Social Security Administration, Contractor must comply with the following specific sections of the IEA Agreement: E. Security Procedures, F. Contractor/Agent Responsibilities, and G. Safeguarding and Reporting Responsibilities for Personally Identifiable Information ("PII"), and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the Social Security



Administration. Contractor must also ensure that any agents, including a subcontractor, to whom it provides DHCS data that includes data provided by the Social Security Administration, agree to the same requirements for privacy and security safeguards for such confidential data that apply to Contractor with respect to such information.

- D. The terms used in this Exhibit E-2, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and Agreement. Any reference to statutory, regulatory, or contractual language shall be to such language as in effect or as amended.

## **2. Definitions.**

- A. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.
- B. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code section 1798.29(f).
- C. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).
- D. "Department PI" shall mean Personal Information, as defined below, accessed in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services specified in this Agreement on behalf of the Department.
- E. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS).
- F. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29 whose unauthorized access may trigger notification requirements under Civil Code section 1798.29. For purposes of this provision, identity shall include, but not be limited to, name, address, email address, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.
- G. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.

- H. “Personal Information” (PI) shall have the meaning given to such term in California Civil Code Section 1798.3(a).
- I. “Required by law” means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- J. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

### 3. Terms of Agreement

#### A. Permitted Uses and Disclosures of Department PI and PII by Contractor

Except as otherwise indicated in this Exhibit E-2, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

#### B. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and federal law.
- 2) **Safeguards.** To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or

integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, which incorporate the requirements of section 3, Security, below. Contractor will provide DHCS with its current policies upon request.

- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
- a. Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
  - b. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
  - c. If the data obtained by Contractor from DHCS includes PII, Contractor shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement, which are attached as Attachment B and incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. Contractor also agrees to ensure that any agents, including a subcontractor to whom it provides DHCS PII, agree to the same requirements for privacy and security safeguards for confidential data that apply to Contractor with respect to such information.

- 4) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PI or PII by Contractor or its subcontractors in violation of this Exhibit E-2.
- 5) **Contractor's Agents and Subcontractors.** To impose the same restrictions and conditions set forth in this Exhibit E-2 on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.
- 6) **Availability of Information to DHCS.** To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.
- 7) **Cooperation with DHCS.** With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).
- 8) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 9) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
  - a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired

by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (2) To notify the Department **within one (1) hour by email or fax** if the data is data subject to the SSA Agreement; and **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII in violation of this Agreement or this Exhibit E-1 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

- b.** Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic Department PI or PII, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS “Privacy Incident Report” form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select “Privacy” in the left column and then “Business Partner” near the middle of the page) or use this link:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> .
- c.** Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII, Contractor shall take:

  - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- d. Investigation and Investigation Report.** To immediately investigate such suspected security incident, security

incident, breach, or unauthorized access, use or disclosure of PHI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Information Security Officer.

- e. Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- f. Responsibility for Reporting of Breaches.** If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in CIPA, section 1798.29 and as may be required under the IEA. Contractor shall bear all costs of required notifications to individuals as well as any costs associated with the breach. The Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are

made. The Department will provide its review and approval expeditiously and without unreasonable delay.

- g. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.
- h. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

| <b>Department Program Contract</b>                                        | <b>DHCS Privacy Officer</b>                                                                                                                                                                                                                                                                            | <b>DHCS Information Security Officer</b>                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| See the Exhibit A, Scope of Work for Program Contract Manager information | Information Protection Unit<br>c/o: Office of HIPAA<br>Compliance Department of<br>Health Care Services<br>P.O. Box 997413, MS 4722<br>Sacramento, CA 95899-7413<br>(916) 445-4646<br>Email:<br><a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a><br>Telephone:(916) 445-4646 | Information Security Officer<br>DHCS Information Security Office<br>P.O. Box 997413, MS 6400<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a><br><br>Telephone: ITSD Service Desk<br>(916) 440-7000 or<br>(800) 579-0874 |

**10) Designation of Individual Responsible for Security**

Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit E-2 and for communicating on security matters with the Department.

**EXHIBIT E-3****Miscellaneous Terms and Conditions****Applicable to Exhibit E**

- 1) **Disclaimer.** The Department makes no warranty or representation that compliance by Contractor with this Exhibit E, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI, PI and PII.
  
- 2) **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit E may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. Upon either party's request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit E embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:
  - a) Contractor does not promptly enter into negotiations to amend this Exhibit E when requested by the Department pursuant to this section; or
  - b) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
  
- 3) **Judicial or Administrative Proceedings.** Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy law. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined. DHCS will consider the nature and seriousness of the



violation in deciding whether or not to terminate the Agreement.

- 4) **Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- 5) **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit E is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- 6) **Interpretation.** The terms and conditions in this Exhibit E shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA regulations. The parties agree that any ambiguity in the terms and conditions of this Exhibit E shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant state and federal laws.
- 7) **Conflict.** In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI, PI and PII from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.
- 8) **Regulatory References.** A reference in the terms and conditions of this Exhibit E to a section in the HIPAA regulations means the section as in effect or as amended.
- 9) **Survival.** The respective rights and obligations of Contractor under Section 3, Item D of Exhibit E-1, and Section 3, Item B of Exhibit E-2, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.

- 10) **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 11) **Audits, Inspection and Enforcement.** From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit E. Contractor shall promptly remedy any violation of any provision of this Exhibit E. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit E. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-compliant practice to Contractor does not constitute acceptance of such practice or a waiver of the Department's enforcement rights under this Agreement, including this Exhibit E.
- 12) **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit E and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and other applicable state and federal law, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit E.
- 13) **Term.** The Term of this Exhibit E-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I), and when all Department PI and PII is destroyed in accordance with Attachment A.
- 14) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI, PI or PII. Contractor shall continue to extend the protections of this Exhibit E to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.



**Attachment A**  
Data Security Requirements

**1. Personnel Controls**

- A. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the Department, or access or disclose Department PHI or PI must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.
- B. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. **Confidentiality Statement.** All persons that will be working with Department PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Department PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for Department inspection for a period of six (6) years following termination of this Agreement.
- D. **Background Check.** Before a member of the workforce may access Department PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

**2. Technical Security Controls**

- A. **Workstation/Laptop encryption.** All workstations and laptops that store Department PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as

Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Department Information Security Office.

- B. **Server Security.** Servers containing unencrypted Department PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. **Minimum Necessary.** Only the minimum necessary amount of Department PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. **Removable media devices.** All electronic files that contain Department PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. **Antivirus software.** All workstations, laptops and other systems that process and/or store Department PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. **Patch Management.** All workstations, laptops and other systems that process and/or store Department PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
- G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Department PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)
  - 2) Lower case letters (a-z)
  - 3) Arabic numerals (0-9)
  - 4) Non-alphanumeric characters (punctuation symbols)
- H. **Data Destruction.** When no longer needed, all Department PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Department Information Security Office.
- I. **System Timeout.** The system providing access to Department PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. **Warning Banners.** All systems providing access to Department PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Department PHI or PI, or which alters Department PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Department PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. **Access Controls.** The system providing access to Department PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. **Transmission encryption.** All data transmissions of Department PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing Department PHI can be encrypted. This requirement pertains to any type of Department PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Department PHI or PI that are accessible via

the Internet must be protected by a comprehensive intrusion detection and prevention solution.

### 3. **Audit Controls**

- A. **System Security Review.** Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Department PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. **Log Reviews.** All systems processing and/or storing Department PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. **Change Control.** All systems processing and/or storing Department PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

### 4. **Business Continuity / Disaster Recovery Controls**

- A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of Department PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. **Data Backup Plan.** Contractor must have established documented procedures to backup Department PHI to maintain retrievable exact copies of Department PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Department PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Department data.

### 5. **Paper Document Controls**

- A. **Supervision of Data.** Department PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk

or office. Unattended means that information is not being observed by an employee authorized to access the information. Department PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

- B. **Escorting Visitors.** Visitors to areas where Department PHI or PI is contained shall be escorted and Department PHI or PI shall be kept out of sight while visitors are in the area.
- C. **Confidential Destruction.** Department PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** Only the minimum necessary Department PHI or PI may be removed from the premises of the Contractor except with express written permission of the Department. Department PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractor's locations.
- E. **Faxing.** Faxes containing Department PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. **Mailing.** Mailings containing Department PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of Department PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Department to use another method is obtained.



STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 03/2019)

AGREEMENT NUMBER

18-95290

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Health Care Services

CONTRACTOR NAME

City of Berkeley Department of Health, Housing and Community Services

2. The term of this Agreement is:

START DATE

July 1, 2018

THROUGH END DATE

June 30, 2021

3. The maximum amount of this Agreement is:

\$0.00 (Zero Dollars)

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

| EXHIBITS    | TITLE                                                                | PAGES |
|-------------|----------------------------------------------------------------------|-------|
| Exhibit A   | Program Specification (including Special Terms and Conditions)       | 21    |
| Exhibit A   | Attachment I - Request for Waiver                                    | 1     |
| Exhibit B   | Funds Provision                                                      | 1     |
| Exhibit C * | General Terms and Conditions (GTC 04/2017)                           |       |
| Exhibit D   | Information Confidentiality and Security Requirements                | 7     |
| Exhibit E   | Privacy and Information Security Provisions (including Attachment A) | 32    |

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Berkeley Department of Health, Housing and Community Services

CONTRACTOR BUSINESS ADDRESS

2180 Milvia St., 2nd Floor, Berkeley, CA 94704

CITY

Berkeley

STATE

CA

ZIP

94704

PRINTED NAME OF PERSON SIGNING

Dee Williams-Ridley

TITLE

City Manager

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 03/2019)

|                                     |                                             |
|-------------------------------------|---------------------------------------------|
| AGREEMENT NUMBER<br><b>18-95290</b> | PURCHASING AUTHORITY NUMBER (If Applicable) |
|-------------------------------------|---------------------------------------------|

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Health Care Services

CONTRACTING AGENCY ADDRESS

1000 G Street, 4th Floor, MS 4200

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Carrie Talbot

TITLE

SSM I, Contract Section

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

W&I Code §14703



Office of the City Manager

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront

Subject: Lease Agreement for 225 University Avenue – Qasemi Abdul Moqim dba Berkeley Sportsman Center

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and necessary amendments with Qasemi Abdul Moqim, doing business as Berkeley Sportsman Center, at 225 University Avenue at the Berkeley Marina for a term of three years, with a two-year option.

FISCAL IMPACTS OF RECOMMENDATION

Total rent for the subject building will be \$3,200/month, increasing annually by 3%. This is approximately 30% more than the current rent paid for the premises. The tenant agrees to make an estimated \$65,000 in improvements to the building. Revenue from this lease will be deposited into the Marina Fund, budget code 608-52-544-592-0000-000-000-461120-.

CURRENT SITUATION AND ITS EFFECTS

In 2016, Ordinance 7,453-N.S. was established to authorize a lease agreement with the Berkeley Sportsman Center to operate the bait shop at the City-owned property at 225 University Avenue. The lease expired in 2019 and has been in month-to-month holdover status since then. In early 2020, City staff released a Request for Applications for the premises. The City received two complete applications and selected Mr. Moqim's proposal as best serving the Marina community. Mr. Moqim has a history of successfully operating the Bait Shop and will continue to open as early as 4:30am during crab and salmon seasons to serve the fishing community. Mr. Moqim will pay approximately 30% more in rent; and will invest an estimated \$65,000 in the building, including for improvements to build out a new pizza kitchen.

BACKGROUND

The premises, known as the Bait Shop, is located at 225 University Ave, in front of Hana Japan Restaurant, located at the Berkeley Waterfront. It is 1,800 Sq. Ft. of commercial area with 800 Sq. Ft. of basement. It has operated as a Bait Shop since 1996. In 2004, the premises was leased with Hana Japan to the Bay Point

Development. In 2013, Mr. Moqim took over operation of the Bait shop and later entered a 4-year lease term with the City the following year. In December 2019, the lease agreement expired and went into holdover clause, month-to-month. The business continues to operate as the Berkeley Sportsman's Center and is offering groceries, convenience items, sundries, fishing equipment, and frozen bait during the Shelter in Place orders.

#### ENVIRONMENTAL SUSTAINABILITY

Lease revenue generated at the Waterfront is required to be reinvested into the public trust lands overseen by the City, and supports the City's environmental/ecological educational programming at the Shorebird Park Nature Center, habitat maintenance at Cesar Chavez Park, and capital projects.

#### RATIONALE FOR RECOMMENDATION

If adopted, this lease agreement will bring a 30% increase in revenue to the Marina Fund. The tenant will also invest \$45,000-\$65,000 in the building, and open a pizza kitchen that will introduce a new amenity for the Marina community. This will provide needed revenue to the Marina Fund and improve waterfront services for the public.

#### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6711

Christina Erickson, Deputy Director, Parks, Recreation and Waterfront, 981-6703

Alexandra Endress, Waterfront Manager, Parks, Recreation and Waterfront, 981-6737

#### Attachments:

1: Ordinance

Exhibit A: Lease Agreement

ORDINANCE NO. -N.S.

LEASE AGREEMENT: QASEMI ABDUL MOQIM DBA BERKELEY SPORTSMAN  
CENTER, FOR THE PROPERTY AT 225 UNIVERSITY AVENUE

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

Section 1.

The City Manager or designee is hereby authorized to execute a three-year lease agreement with a two-year option with Qasemi Abdul Moqim dba Berkeley Sportsman Center, for the property at 225 University Avenue in Berkeley, CA. Such lease shall be on substantially the same terms as set forth in Exhibit A.

Section 2.

The rent will be \$3,200/month with an annual increase of 3%. Berkeley Sportsman Center will make improvements to the building estimated at \$65,000, including upgrades to open a pizza kitchen. Revenue from this lease will be deposited into the Marina Fund, budget code 608-52-544-592-0000-000-000-461120-.

Section 3.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of 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.

Exhibits

A: Lease Agreement

**CITY OF BERKELEY**  
**IMPROVED PROPERTY LEASE**

Between

THE CITY OF BERKELEY, A CHARTER CITY  
ORGANIZED AND EXISTING UNDER THE LAWS  
OF THE STATE OF CALIFORNIA

as Landlord,

and

Qasemi Abdul Moqim  
DBA Berkeley Sportsman Center ,

as Tenant.

For the Property at  
225 University Avenue  
Berkeley, CA

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**PROPERTY LEASE**  
**BASIC LEASE INFORMATION**

1. **Landlord:** City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Parks, Recreation & Waterfront  
Telephone: (510) 981-6700  
Facsimile: (510) 981-6710
  
2. **Tenant:** Qasemi Abdul Moqim dba Berkeley Sportsman Center  
3794 Castro Valley Blvd.  
Castro Valley, CA 94546  
Telephone: (510) 849-2727  
Facsimile: N/A  
Email: monesaq@yahoo.com
  
3. **Tenant Trade Name:** Tenant shall operate under the trade name **Berkeley Sportsman Center**
  
4. **Effective Date:** **November 1, 2020**
  
5. **Property:** The ground floor (approximately 1,800 square feet), the basement area (approximately 800 square feet), and the exterior hardscape to the south and east of the building (“**Premises**”) of the building commonly known and referred to as 225 University Avenue, Berkeley, CA 94710, (the “**Building**”).
  
6. **Permitted Uses:** Tenant shall operate a retail establishment on the property that provides a variety of convenience items, groceries, prepared foods and service the sale of fishing equipment, licenses and bait and tackle as described in Exhibit B- Scope of Services.
  
7. **Initial Term:** Three (3) Year(s) with an option to renew for two (2) Year(s), commencing as of November 1, 2020. (“**Commencement Date**”).
  
8. **Rent:** \$3,200.00 per month with 3% annual increase
  
9. **Security Deposit:** N/A
  
10. **Guarantor:** Not required with this Lease.
  
11. **Permitted Uses:** The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS \_\_\_\_\_

TENANT’S INITIALS \_\_\_\_\_

## LEASE

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and Qasemi Abdul Moqim DBA Berkeley Sportsman Center, a California corporation, doing business at 225 University Avenue in Berkeley, CA ("Tenant").

### WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

#### 1. DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

- A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.
- B. "Building" shall mean the ground floor (approximately 1,800 square feet), the basement area (approximately 800 square feet), and the exterior hardscape to the south and east of the building commonly known and referred to as 225 University, as more fully described on Exhibit A, attached hereto.
- C. "Lease Year" shall mean each consecutive twelve-calendar-month period during the term of the Lease commencing upon the effective date of the Lease.
- D. "Property" shall mean the property described on Exhibit A, including all building(s) and other improvements on, or appurtenances to, such property.

#### 2. TERM

- A. The Initial Term shall commence on the November 1, 2020 ("Lease Commencement Date") and expire on October 31, 2025 ("Lease Expiration Date").
- B. Tenant is granted the option ("Extension Option") to extend the initial term of this lease for an additional term of two (2) years ("Extension Term") provided all of the Extension Conditions are met.
- C. "Extension Conditions" shall mean, as a condition to Tenant exercising each Extension Option: (a) Tenant gives Landlord written notice no less than eight (8) months prior to the commencement of the Extension Term, as applicable, that Tenant is exercising the Extension Option; (b) at the date the applicable Extension Option is exercised, and at the commencement of the Extension Term, as applicable, no Event of Default has occurred and is continuing; and (c) Tenant has not been more than ten (10) days late in the payment of any or all rent more than a total of three (3) times for all periods prior to the commencement of the Extension Term.

D. If Landlord, in its sole discretion, determines that Tenant has complied with all Extension Conditions, at least sixty (60) days prior to the Lease Expiration Date, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant or increase in rent during the five-year Extension Term and shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees, at least thirty (30) days prior to the expiration of the Initial Term.

E. If, after Landlord's initial determination that Tenant has complied with the Extension Conditions but prior to the Lease Expiration Date, Landlord determines, at its sole discretion, that Tenant has failed to comply with any of the Extension Conditions, Landlord may revoke the granting of the Extension Term and seek applicable remedies under the Lease, including, but not limited to Paragraph 18.

F. At the Lease Expiration Date, or expiration of the Extension Term, or any sooner termination of this lease due to default, Tenant agrees to quit and surrender possession of the Property and its appurtenances to Landlord in good order and condition. Tenant agrees to reimburse the Landlord for any damage done to the Property caused by Tenant's occupation or tenancy excepting reasonable wear and tear and damage by the elements. Tenant shall not leave or allow to remain on the property any garbage, refuse, debris, or personal property. Tenant will pay Landlord any removal costs incurred by Landlord. At the end of the tenancy, Tenant agrees to deliver the property keys to the Landlord in person or by mail to the Landlord's designated agent.

**3. RENT.**

A. Fixed Rent. Tenant shall pay to Landlord as rent for its use and occupancy of the Property a monthly rent beginning at **Three Thousand Two Hundred Dollars (\$3,200.00)** per month, and escalating as summarized in the table below:

| Lease Period Beginning: | Monthly Rent Due | Annual Rent Due |
|-------------------------|------------------|-----------------|
| November 1, 2020        | \$3,200.00       | \$38,400.00     |
| November 1, 2021        | \$3,296.00       | \$39,552.00     |
| November 1, 2022        | \$3,394.88       | \$40,738.56     |
| November 1, 2023        | \$3,496.73       | \$41,960.72     |
| Option Year Beginning:  |                  |                 |
| November 1, 2024        | \$3,601.63       | \$43,219.54     |
| November 1, 2025        | \$3,709.68       | \$44,516.16     |

B. Special Event Percentage Rent. Tenant shall pay to Landlord 5% of Tenant's gross income earned from any special events. A "special event" shall be defined as a concession or revenue-generating event on the Property.

C. Records. Tenant shall keep complete and accurate books and accounts of its daily gross sales in every part of its business operating at any time during the currency of this Lease in any part of the Leased Property. Lessor and its agents and employees shall have the right at any time during regular business hours to examine and inspect all the books and accounts of Lessee related to gross sales, including sales tax reports, tax returns, or other reports to any

governmental agency, for the purpose of verifying the gross sales of the business.

D. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing. If the term shall commence on a day between the 1st of the month and the 14th of the month, the Lease Year shall be deemed to start on the 1st of the then current month. If the term shall commence on a day between the 15th and the end of the month, the Lease Year shall be deemed to start on the 1st day of the following month. Special Event Percentage Rent shall be due at the same time as Fixed Rent and shall be based on any and all special event income earned by Tenant in the prior month.

E. Tenant understands that this Lease does not guarantee that the City, in its regulatory capacity, will grant any particular request for a permit. Tenant understands that the City may grant or deny such permit in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

F. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse or cure any default hereunder by Tenant.

F. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subparagraph E. (1). No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

#### 4. PROPERTY AND OTHER TAXES

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Property by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Property by Landlord. Tenant acknowledges that Landlord has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. Landlord reserves the right to create additional districts and to terminate any such district(s). Landlord shall provide Tenant with written notice of each such assessment not later than sixty (60) days before such assessment is due and payable.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Property, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Property or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Property or by the cost or value of any improvements made by Tenant to the Property, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Property.

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

#### 5. USE OF PROPERTY

A. Landlord and Tenant specifically agree that a material consideration of this Lease is Tenant's agreement to continually operate, maintain and improve the Property as first-class commercial space, to be used in accord with the Public Trust Doctrine, and attract and serve visitors to the Berkeley Marina.

B. Tenant is authorized to use the Property for the purpose of operating a retail shop (establishment) to provide a variety of convenience items, groceries, prepared foods and services including the sale of fishing licenses and bait and tackle as described in Exhibit B- Scope of Services. Tenant proposes to build out a pizza kitchen that will sale pizza slices to go. Tenant may conduct ancillary uses only after requesting such uses in writing and receiving authorization by the Landlord prior to commencement.

C. Tenant shall operate its business in the Property in a manner consistent with the use permitted herein and the standards promulgated by Landlord.

D. Tenant shall not do or permit to be done in, on, or about the Property anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering the Berkeley Waterfront or the Property or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon the Berkeley Waterfront or the Property, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Property or the Berkeley Waterfront which increases the existing rate of such insurance upon Berkeley Waterfront or the Property or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of Berkeley Waterfront, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use or allow the Property to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Property or commit or suffer to be committed any waste in or upon the Property.

E. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Property nor shall any sign or advertisement regarding such activity be posted in or about the Property.

F. Tenant shall not use or permit the Property to be used in any manner or permit anything to be brought into or kept therein which would (i) violate the certificate of occupancy for the Property; (ii) make it impossible or extraordinarily difficult to obtain special form coverage, commercial general liability or other insurance required to be furnished by Tenant under this Lease; (iii) cause structural injury to any part of the Property or the Building; (iv) impair or interfere with the proper operation and maintenance of the Property and/or Berkeley Waterfront; or (v) violate any of Tenant's other obligations under this Lease.

G. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

H. Nothing shall be done in or about the Property by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of Berkeley Waterfront or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference, including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to designate action to Tenant, which Tenant will undertake to eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Property shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

## **6. USE OF BERKELEY WATERFRONT PROPERTY; PUBLIC TRUST**

A. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Property or the Berkeley Waterfront, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

B. Landlord at all times shall have the right and privilege of making such changes in and to the Berkeley Waterfront (other than the Building) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access to or visibility of the Property, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning the Berkeley Waterfront, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

C. Landlord at all times shall have the sole and exclusive management and control of the Berkeley Waterfront, including, without limitation, the right to lease, license or permit the use of space within the Berkeley Waterfront to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, special events (including but not limited to the Fourth of July, Bay Festival, Winter on the Waterfront, and Events approved through the City's Special Event Permit Application Process), and promotional activities and entertainment. Tenant acknowledges that this may impact access to the Waterfront on several occasions each year.

D. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's members, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Property, and for the safety of those using the Property pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for the Berkeley Waterfront or any portion thereof, Landlord does not represent,



guarantee or assume responsibility that Tenant or any person or entity will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. To induce Landlord to provide such security, if any, as Landlord in its sole discretion deems reasonable, appropriate and economically feasible, Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. Landlord shall not be obligated to provide any public liability or property damage insurance for the benefit of Tenant or any other person or entity, each such party being responsible for its own insurance.

E. Public Trust Tidelands Requirements. Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to Chapter 347 of the California Statutes of 1913, as amended ("the Grant"), subject to the conditions, restrictions, limitations, rights, powers, and duties reversionary rights and other rights created or reserved in the Grant. Tenant agrees that, notwithstanding anything in this Lease to the contrary, Tenant shall use the Building and the Property consistently with and in a manner that shall not result in a violation of the Grant or of provisions of the Berkeley City Charter, California law or the California Constitution.

F. Landlord reserves to itself and the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Property in locations that will not unreasonably interfere with Tenant's access to or use of the Property. Any interference shall be temporary, and all work on the Property shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Property. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Property, or any portion thereof, or to the Building, or other facilities located upon the Property, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant.

## 7. UTILITIES

A. Tenant, at Tenant's sole cost and expense, shall be responsible and shall directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Property, including, but not limited to, water, sewer, gas, electricity, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Property and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity, gas, or telecommunications

service serving the Property or the Berkeley Waterfront; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

## **8. ALTERATIONS AND IMPROVEMENTS**

A. Tenant acknowledges that Landlord owns the Building(s). Tenant accepts the Building(s) from Landlord in its "as is" conditions, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Building(s); (ii) the Property's suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Property or the Building(s), except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Property and the Building(s) and to conduct its own investigation as to the suitability of the Property and the Building(s) for Tenant's use.

B. If Tenant proposes to make or construct any alterations, improvements, additions or fixtures ("Alterations") that affect any portion of the Property or any structures located on the Property that are allowed under an existing use permit, Tenant shall first provide the Landlord with thirty (30) days prior written notice. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Tenant shall not attach any fixture or item of equipment to the Building without Landlord's prior written consent. All such Alterations shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiber glass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's work shall require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("BCDC") and/or any other governmental agency, Tenant shall not perform any of Tenant's Work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq.; to the extent, such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair, replace, or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenants, or any other party, from expanding uses or structures allowed on the Property beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings or docks, or construction of any new buildings or docks, or moving existing buildings onto the Property, are

all subject to the prior written approval of the Landlord and all improvements are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.<sup>1</sup>

E. Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Property without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed, provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the Property and which may be secured by any mechanic's, material men's or other lien against the Property or Landlord's interest therein.

F. Unless otherwise elected by Landlord as hereinafter provided, all Alterations made by Tenant shall become the property of Landlord and shall be surrendered to Landlord on or before the Lease Expiration Date, except as otherwise set forth in this Lease. Notwithstanding the foregoing, movable equipment, trade fixtures, personal property, furniture, or any other items that can be removed without material harm to the Property will remain Tenant's property (collectively, "Tenant Owned Property") and shall not become the property of Landlord but shall be removed by Tenant, at its sole cost and expense, not later than the Lease Expiration Date. When granting consent for any Alterations that require Landlord's consent, Landlord shall indicate whether it will require the removal of those Alterations prior to the Lease Expiration Date. Prior to making any Alterations not requiring Landlord's consent, Tenant shall request that Landlord notify Tenant whether Landlord requires Tenant to remove that Alteration prior to the Lease Expiration Date. Tenant shall repair at its sole cost and expense all damage caused to the Property or the Building by the removal of any Alterations that Tenant is required to remove or Tenant Owned Property. Landlord may remove any Tenant Owned Property or Alterations that Tenant is required but fails to remove at the Lease Expiration Date and Tenant shall pay to Landlord the reasonable cost of removal. Tenant's obligations under this Section 8F shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Landlord can elect within thirty (30) days of the termination of the Lease to require Tenant, at its cost, to remove any equipment that Tenant has affixed to the Property.

G. Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Property. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant. In the event Tenant fails to meet its obligations under this Section 8.G., Landlord's remedy shall be to enforce its indemnification rights under Section 12 below and/or seek specific performance.

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## 9. LIENS

Tenant shall keep the Property, the Building, and the Berkeley Waterfront free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Property any notices (including, without limitation, notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord, and the Property. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Property to allow Landlord to post such notices.

## 10. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Building(s) on the Property, and all leasehold improvements, fixtures, furniture, equipment and other improvements located on the Property in good-quality order, repair and condition, as further described in Exhibit B, Maintenance Standards. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building(s), whether required by deterioration or by operations of Tenant or otherwise. This obligation includes any repairs to the roof.

B. Tenant accepts responsibility to make improvements and repairs to the building at Tenant's sole cost, estimated at \$65,000, to facilitate a contemporary, clean, updated, functional, first class commercial business. Tenant acknowledges that failure to meet this deadline shall constitute an event of default under this Lease. Necessary improvements and repairs include, but are not limited to:

- New refrigeration system
- Kitchen remodel
- Complete build-out of pizza kitchen that will serve takeaway orders.
- replacement of broken kitchen equipment
- a deep cleaning
- a remodel/refresh of the interior (paint, wall and floor coverings, lighting, counter tops)
- repair/replacement of kitchen equipment if needed
- implementation of all necessary improvements to establish a safe, modern retail space.

Tenant shall not open the pizza business to the public without prior approval from Landlord, verifying that such improvements and repairs have been completed to the satisfaction of Landlord.

C. Waiver. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to untenable conditions of the Property or the Building.

D. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

E. Tenant shall provide its own janitorial service for the Property, and Tenant shall remove all of Tenant's rubbish to such location(s) on the Property or within the Berkeley Waterfront as may be designated by Landlord for pick-up and disposal.

F. Landlord shall maintain or cause to be maintained, at Landlord's expense, all exterior structural elements of the Building (including the structural walls).

G. City shall use good faith efforts in providing for the safe and reasonable use of the Building and the Berkeley Waterfront. In the event of a dispute, if Landlord and Tenant cannot informally resolve the dispute, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

H. Nothing in this Paragraph 10 shall be deemed to affect or impair Landlord's rights under Paragraph 7 of this Lease. Other than Landlord's commitment in Paragraph 8 to repair the sewer lateral, Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Property, or any part thereof. Landlord has made no representations respecting the condition of the Building, the Property, or the Berkeley Waterfront, except as specifically set forth in this Lease.

## **11. DAMAGE OR DESTRUCTION**

A. In the event the Property is damaged by fire, earthquake, flood, hurricane, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Paragraph 11) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its all equipment and leasehold improvements.

B. Anything in subparagraph A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Property or the Building, as the case may be, following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Property or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased property is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

## **12. INDEMNIFICATION**

Landlord and its Affiliates shall not be liable to Tenant and, to the fullest extent permitted by law, Tenant hereby waives all claims against each of them, for any injury to or death of any person or damage to or destruction of property in or about the Property, the Building or the Berkeley Waterfront by or from any cause whatsoever, including, without limitation, gas, fire, oil, electricity or leakage or invasion of water or contaminants of any character from the roof, walls, basement, subsurface or other portion of the Property, the Building or Berkeley Waterfront, except any injury to or death of any person or damage to or destruction of any property which is caused solely by the willful misconduct of Landlord or its Affiliates. Tenant shall indemnify each of said parties and hold them harmless from and against any and all penalties, liability, claims, losses, damages, (including consequential damages), injury, cost and expense, including attorneys' fees and disbursements, arising out of or related to (i) Tenant's breach of any obligations under this Lease, or (ii) claims of injury to or death of persons or damage to property resulting directly or indirectly from Tenant's use or occupancy of the Property or activities of Tenant, its employees, agents, contractors or invitees in or about the Property, Building or Berkeley Waterfront or (iii) claims of injury to or death of persons or damage to property by Tenant or third parties (except Landlord) resulting from any cause or causes whatsoever while in or upon the Property or the Building. Such indemnity shall include, without limitation, the obligation to reimburse all costs of defense, including the legal fees for counsel selected by Landlord.

## **13. INSURANCE**

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Property or the Building, with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one accident or occurrence and property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and property damage insurance, including personal injury, broad form property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Property or Berkeley Waterfront.

2. Special form property insurance for the full replacement cost of damage to the Building, including, without limitation, alterations, Tenant's Work, trade fixtures, furnishings, equipment, goods and inventory, and, during any term of construction of Tenant's Work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious

mischievous and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverage's except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insured and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Paragraph 33 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Property is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse Landlord for such expense.

D. If any of the insurance required in this Paragraph 13 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's property insurance policies insuring the Property and Tenant's property in the Property shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's property occurring during the Term to the extent to which Tenant is insured under a policy(ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

G. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

#### **14. COMPLIANCE WITH LAWS**

A. Tenant, at its sole expense, shall promptly comply with all laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Property, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Property or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Property (and, as applicable, the Building), or construct improvements in or to the Property, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Property and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Property, including but not limited to BCDC. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of



the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate, and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Property and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Property. By Landlord's entering into this Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Property or Berkeley Waterfront. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Property or Berkeley Waterfront. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Property to be used and occupied in accordance with all laws.

## **15. ASSIGNMENT AND SUBLEASE**

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Property or Tenant's interest in and to the Property (collectively, an "Assignment") or sublet the Property or any portion thereof or permit the Property or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without Landlord's prior written consent in each instance.

B. If Tenant is a partnership or a limited liability company, any cumulative transfer of more than fifty percent (50%) of the partnership or the limited liability company membership interests, as applicable, shall constitute an Assignment and shall require Landlord's consent. Without limiting the foregoing, it shall constitute an Assignment and shall require Landlord's consent if: (a) Tenant is a limited partnership, and there is a transfer of a general partner interest; or (b) if Tenant is a limited liability company, and there is a transfer of any managing members

interest. If Tenant is a corporation, any change in a controlling interest of the voting stock of the corporation shall constitute an Assignment and shall require Landlord's prior consent.

C. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Property shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

D. Tenant expressly waives any rights that it might otherwise be deemed to possess pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Property would be unreasonable.

## 16. INSPECTION

Landlord may enter the Property at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of non-responsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Property during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building or Berkeley Waterfront; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Property resulting from Landlord's entry into the Property or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Property (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Property. Tenant also shall provide Landlord with written notice of the name, address, telephone number and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Property. Any entry to the Property by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Property or an eviction (actual or constructive) of Tenant from the Property.

## 17. DEFAULT

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

A. Failure to Use Property. Failure to use the Property as specified in Paragraphs 5 and 6.

B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a

period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.

C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. General Assignment. A general assignment by Tenant for the benefit of creditors.

E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Property.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Property; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Property and/or the Berkeley Waterfront by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of the Berkeley Waterfront caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures

are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Substances. Any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the Property.

## **18. REMEDIES UPON DEFAULT**

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Property or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all property located therein, by any lawful means and to reenter the Property without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation After Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subparagraph A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relent the Property for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages Upon Termination. Should Landlord terminate this Lease pursuant to subparagraph A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Property, (2) in cleaning and making repairs and alterations to the Property reasonably necessary to return the Property to good condition for the use permitted by this Lease and otherwise to prepare the Property for reletting, (3) in removing all persons and property from the Property and transporting and storing any of Tenant's property left at the Property, although Landlord shall have no obligation to remove, transport, or store any of such property, and (4) in reletting the Property for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be

computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subparagraph C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

E. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

F. No Waiver. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Property by reason of Tenant's default.

## 19. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Property any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored, treated, disposed of or released from the Property by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance has been released on or beneath the Property, Tenant shall immediately notify the Berkeley Police Department and Toxics Management Division and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Property

or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Property or the Property without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Paragraph 12 hereof, Tenant shall indemnify, defend and hold Landlord and its Affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Property, or Berkeley Waterfront by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Property or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Property caused or permitted by Tenant results in any contamination of the Property or Berkeley Waterfront, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Property to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Property; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Property. Tenant's obligations under this Paragraph 19.C. shall survive the expiration or termination of this Lease.

## **20. LANDLORD'S RIGHT TO CURE**

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Paragraph 17, Landlord, without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

## **21. EMINENT DOMAIN**

A. If all or any part of the Property shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the date title vests in the condemning authority or such authority takes possession of the Property. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Property by written notice to the other within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless

the portion of the Property taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Property. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Property shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Property taken bears to the original rentable area of the Property. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal property, decorations, signs and contents) to restore the portion of the Property remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Property and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal property, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

## **22. SUBORDINATION**

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Property, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting Berkeley Waterfront, all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

## **23. NO MERGER**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or sub-tenancies or operate as an assignment to it of any or all such subleases or sub-tenancies.

## **24. TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of Berkeley Waterfront shall sell or convey the Property or the Building, or any portion thereof that includes the Property, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

## **25. ESTOPPEL CERTIFICATES**

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

## **26. HOLDING OVER**

If, without objection by Landlord, Tenant holds possession of the Property after expiration of the Term of the Lease, Tenant shall become a tenant from month-to-month upon all provisions of this Lease applicable immediately prior to the expiration of such Term, or as otherwise fixed from time to time by Landlord, except that the Rent shall be 120% of that applicable immediately prior to the expiration of such Term, payable monthly, in advance. Each party shall give the other at least thirty (30) days' written notice of its intention to terminate such month-to-month tenancy.

## **27. CHANGES BY LANDLORD**

A. The description of the Property and the location of any Property utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking



areas, stairs, landscaping, toilets, and other facilities and portions of Berkeley Waterfront, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Property.

## **28. GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

## **29. SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Property or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same. Upon Landlord's approval of the Sign Plans, Landlord shall issue a sign permit to Tenant authorizing installation of the sign(s) reflected on the Sign Plans.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed in writing by Landlord.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Property or Building contrary to the terms of this Paragraph 30. If Tenant fails to do so, Landlord may enter upon the Property and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants at the Berkeley Waterfront.

**30. NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

**31. NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:** Qasemi Abdul Moqim  
3794 Castro Valley Blvd. Castro Valley, CA 94546  
Telephone: (510) 849-2727  
Email: monesaq@yahoo.com

**To Landlord:** Director, Department of Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704

**With copies to:** City Manager Waterfront Manager  
City of Berkeley City of Berkeley  
2180 Milvia Street, 5th Floor 201 University Avenue  
Berkeley, CA 94704 Berkeley, CA 94710

Notices to Landlord regarding Hazardous Substances required by Paragraph 19 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Property.

Tenant will appoint an agent to receive the service of all proceedings, demands and notices the agent will be in charge of or occupying the Property at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Property.

**32. COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not

restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

**33. REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

**34. INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there be more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

**35. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

**36. AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

**37. UNAVOIDABLE DELAYS**

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Paragraph 39 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, payment of any sum due to Landlord under this Lease.

**38. TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

**39. BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Property or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Property or this Lease.

**40. CITY NON-DISCRIMINATION ORDINANCE**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Lease, Tenant agrees as follows:

1. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

2. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**41. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES.**

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

**42. CONFLICT OF INTEREST PROHIBITED**

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Lease.

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 *et seq.*) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

**43. NUCLEAR FREE BERKELEY.**

Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**44. REQUIRED ACCESSIBILITY DISCLOSURE**

Landlord hereby advises Tenant that the Project has not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Property or the Project in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

“A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp

inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to Landlord’s prior written consent.

**45. OPPRESSIVE STATES.**

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Lease, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant’s failure to comply with this paragraph shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Paragraph 18. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

**46. BERKELEY LIVING WAGE ORDINANCE (LWO)**

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley’s Living Wage Ordinance (LWO). If

Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Property. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 18 herein.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Property.

D. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 18.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

#### **47. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Paragraph 17 of this lease.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant’s failure to comply with this Paragraph shall constitute default of the lease, upon which City may terminate this lease pursuant to Paragraph 18.

In addition, at City’s sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant’s failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant’s breach.

**48. SANCTUARY CITY CONTRACTING**

Tenant hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Tenant agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:

A. “Data Broker” means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
- ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

B. “Extreme Vetting” means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:

- i. The City’s computer-network health and performance tools;
- ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

**49. AUDIT.**

In addition to Landlord’s financial audit rights set forth in Paragraph 3B., the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Lease, and with the payments made under this Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee.



City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

**50. CITY BUSINESS LEASE, PAYMENT OF TAXES, TAX I.D. NUMBER.**

Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

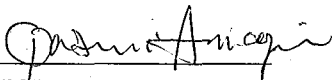
**51. SURVIVAL**

The provisions of Paragraphs 8, 9, 10, 12, 14, 19, and 40 and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive termination of this Lease shall survive such termination.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

TENANT:

Qasemi Abdul Moqim  
dba Berkeley Sportsman Center.

By:   
Owner

LANDLORD:

City of Berkeley  
a California municipal corporation

By: \_\_\_\_\_  
Dee Williams Ridley,  
City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

Attest:

\_\_\_\_\_  
City Clerk

Registered by:

\_\_\_\_\_  
City Auditor

**TENANT INFORMATION**

Tax Identification No.  
Incorporated: Yes  No   
Certified Woman Business Enterprise: Yes \_\_\_\_\_ No

Certified Minority Business Enterprise: Yes \_\_\_ No

Certified Disadvantaged Business Enterprise: Yes \_\_\_ No

City Business License No. 005391, or Exempt pursuant to B.M.C. Section \_\_\_

**EXHIBIT A-1**  
**PROPERTY DESCRIPTION**

The Property is located within the Berkeley Waterfront in the City of Berkeley, CA. The Property consists of the 1,800 square foot space known as the Bait Shop at 225 University Avenue, Berkeley, California, located on the southern side of the large building known as 235 University Avenue. This includes:

1. The name, Berkeley Sportsman Center
2. The primary phone number for Berkeley Sportsman Center, including (510)849-2727
3. A ground floor space of approximately 1,800 square feet located in the portion of the building known as 225 University Ave, Berkeley, California; and a basement floor space that contains laundry, bathroom, and storage space, bounded by a chain link fence on the north side. Also included is the outdoor plaza on the south side of the building, ending at the public sidewalk, and the hardscape area to the east of the building, ending at the curblin, containing the entryway to the shop and the picnic area, as shown in the depiction of the premises in Exhibit A-2.

**EXHIBIT A-2**  
**DEPICTION OF PREMISES**

EXHIBIT A-2 – DEPICTION OF PROPERTY  
LEASE LINE – 225 UNIVERSITY AVE PROPERTY  
CITY OF BERKELEY

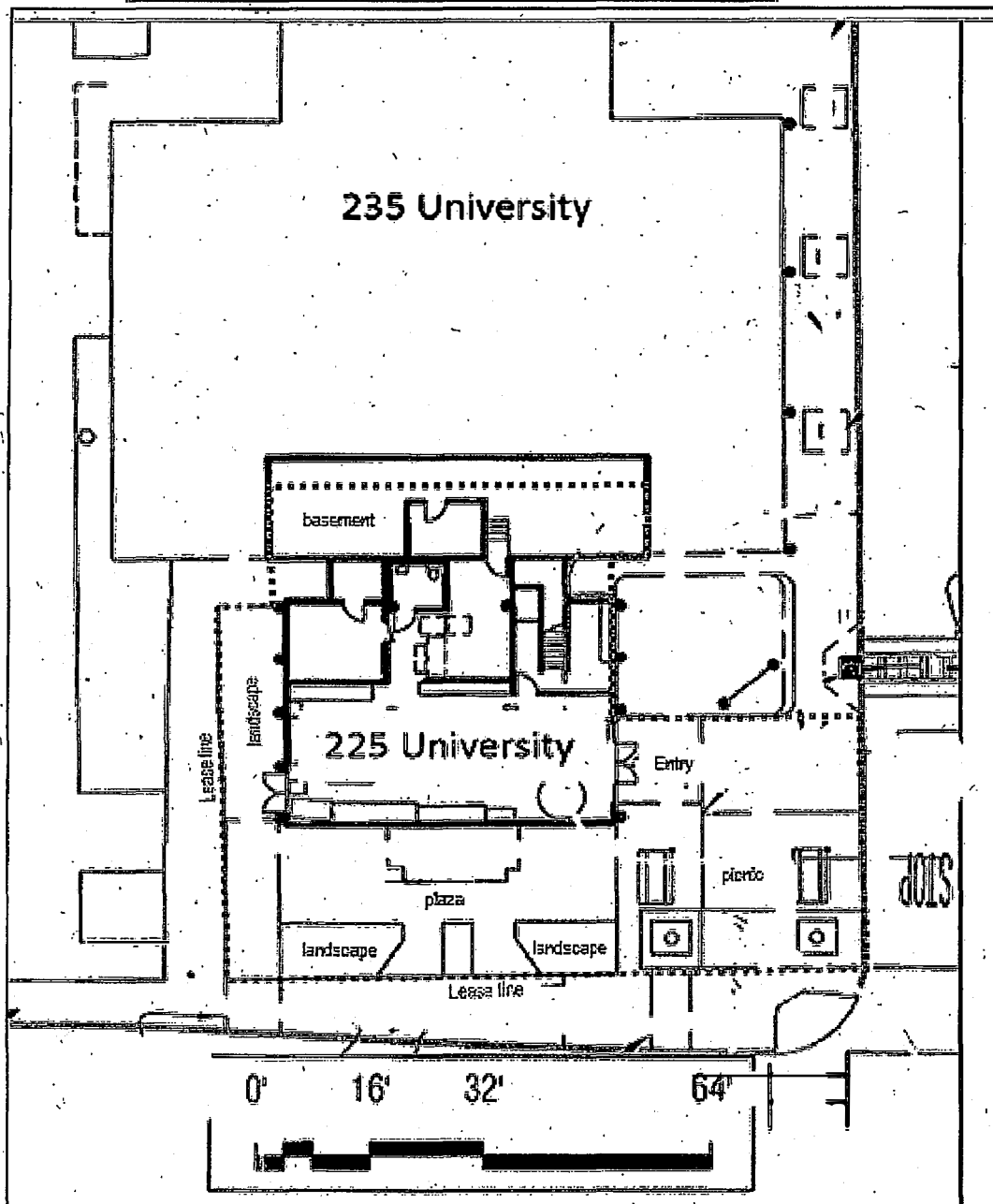


EXHIBIT A-2

## EXHIBIT B SCOPE OF SERVICES

- 1) Services: Lessee shall operate a retail establishment on the property that provides services to Marina visitors, employees and berthers. Specifically, Lessee shall operate a clean, commercially-appropriate retail space that at a minimum, provides a variety of convenience items and groceries; prepared foods; fishing licenses; as well as bait and tackle. Additionally, Lessee may and is encouraged to operate a pizza shop that sales pizza by the slice. They are also encouraged to build and sell custom fishing rods and/or other services defined below. Its design and décor would complement the Hana Japan Restaurant in the same building. In the operation of the retail establishment on the Property and the provision of those services, Lessee shall be permitted to engage in and conduct the following:
- a) Sale of groceries, convenience items, sundries, food and drink items. Lessee shall sell groceries, convenience items, sundries and food and drink items, including but not limited to, typical convenience store food and drink items (i.e., fresh, packaged, canned and frozen foods, packaged sandwiches, microwaveable packaged foods, candy, water, juice, energy drinks, chips etc.); sundries, including first aid, hygiene, cosmetic and other personal products; postcards, magazines, books and newspapers; cameras and film products; and similar items.
  - b) Sale of Prepared Foods: Lessee shall further be permitted to install and operate facilities to sell prepared foods, which would specifically include, but not be limited to typical coffee bar fare (i.e., espresso-style drinks, breakfast sandwiches and wraps, hot or cold cereal, pastries, bagels, etc.); typical lunch and light dinner fare (hot or cold sandwiches and wraps, hamburgers, pizza, hot dogs, soups, salads, etc.); and prepared fish or crab ready for consumption (steamed, boiled, raw, etc.).
  - c) Sale of Fishing Licenses, Bait, and Merchandise. Lessee shall sell State of California fishing licenses and bait and tackle. Lessee shall be permitted to sell all types of bait, whether live, fresh, or frozen.
  - d) Lessee shall be permitted to engage in retail and discount sales of fishing and related equipment. Including, but not limited to, fishing rods, fishing reels, fishing tackle, line winding, bait buckets, nets and other similar equipment together with marine apparel, sunglasses, sunscreen and other similar personal items. Further, Lessee shall be permitted to build and sell on the Premises custom fishing rods and other fishing equipment.
  - e) Lessee may use the Premises to sponsor events for children which involve the use of the Marina, after obtaining appropriate permits (if any are required), including but not limited to permits from the City which may be granted or denied in the City's sole discretion. The City will not, by granting or denying such permits, assume any responsibility for events sponsored by Lessee. Lessee agrees that the terms of this Agreement, including but not limited to Section 3 (Rent), Section 7(indemnification), and Section 6(insurance), and shall apply to such events, and that other conditions may be imposed before permits for particular events are granted.
  - f) Lessee may engage in other activities upon the Premises consistent with the foregoing, subject to the City Manager's prior written approval, which may be granted or denied at the City's sole discretion.
- 2) The hours of operation shall be as follows:
- a) Salmon/Crab Season: From 4:30 a.m. to 5:00 p.m., seven (7) days a week, weather permitting. If weather does not permit, then the hours of operation shall be from 8:00 a.m. to 5:00 p.m. The state of California, department of Fish and Game shall determine the dates of the Salmon Season.
  - b) Off Season (any dates outside of Salmon Season): From 8:00 a.m. to 5:00 p.m., seven (7) days a week.
  - c) Lessee may close its shop at 12:00 p.m. on Thanksgiving Day and maybe closed all day on Christmas Day.
  - d) Lessee, at its sole discretion, may increase the number of hours, days and months of operation to meet market

demand. Lessee may reduce its hour and days of operation below those specified above only with prior written approval of the Waterfront Manager.

Exhibit C

**PAYMENT**

- 1) The payments must be accompanied by an unaudited monthly statement of Gross Sales on Prepared Foods; Gross Sales on Fees and Licenses transacted during the preceding month.
- 2) Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department at 1947 Center Street, Berkeley, CA 94704. Copies of all payments and statements of gross receipts shall be provided each month to the City's Waterfront manager at 201 University Avenue.







Office of the City Manager

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks, Recreation and Waterfront  
 Liam Garland, Director, Public Works  
 Subject: Measure T1 Phase 1 Project List Additions

RECOMMENDATION

Adopt a Resolution authorizing the following additions to the Measure T1 Phase 1 project list with no additional funding:

- James Kenney Park play area (ages 2-5, and 5-12) and picnic area
- Euclid Street (at Rose Garden)
- Cedar Street from 6th Street to San Pablo Avenue
- Center Street from Martin Luther King Jr. Way to Shattuck Avenue
- Rose Street from Le Roy Avenue to La Loma Avenue
- Santa Fe Avenue from Gilman Street to Cornell Avenue/ Page Street
- Shasta Road from Grizzly Peak Boulevard to east City limit
- Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard
- Dohr Street from Ashby Avenue to Prince Street
- West Street from Bancroft Way to Dwight Way

FISCAL IMPACTS OF RECOMMENDATION

This is not a request for additional funding and there are no fiscal impacts associated with this action. The additional projects are already funded by non-T1 funds and are currently under construction.

CURRENT SITUATION AND ITS EFFECTS

The purpose of this item is to add projects to the Measure T1 Phase 1 Project List in order to ensure that the City meets the federal tax expenditure limit that requires municipalities to spend 85% of bond funds sold within three years of the sale. The City is currently on-target to meet this deadline, but in an abundance of caution, staff propose adding the above projects in case T1 funding needs to be expended by additional projects to meet this requirement. Per T1 guidelines, City Council approval is required to add or remove projects from the T1 Project List.

Under federal tax law, the City must have a reasonable expectation of spending at least 85% of bond proceeds within three years of the sale. This federal requirement is in

place so that municipalities don't sell bonds to solely earn funds off the interest of bonds sales. If 85% is not spent within three years, there are two consequences:

1. The unspent project funds must be yield-restricted, i.e. invested at a rate that generates less than the bond yield; and
2. If the City's bonds are audited, and the IRS determines that the City did not have a reasonable expectation at closing that it could spend 85% within three years, then the IRS could conclude that interest on the bonds is taxable, which could require a significant payment by the City to the IRS.

The City is currently working on 45 Measure T1 Phase 1 projects and is on-target to meet this 85% limit. However, there have been several Covid-19 related construction delays and unanticipated issues in some of larger projects that have resulted in lower expenditures at this point in time than was originally projected. Therefore, staff would like to add ten (10) current non-T1 construction projects to the Measure T1 Phase 1 list. These projects are fully funded with separate sources and are currently in construction, providing staff the opportunity to allocate Measure T1 funds if needed. If these additional projects are not allocated T1 funds, we will come back to Council to remove them at a later date.

Section 4.5 of the Measure T1 Policies and Procedures manual states the following: "When changes need to be made at the program-level, such as adding/removing a project or changing the project's level of completion, staff will review these options with the Lead Commissions and seek Council's approval to revise the approved list. This process is intended to ensure that any change to the approved Measure T1 project list is made with community input, Commission oversight, and Council approval." The recommended changes in this report have been reviewed the Parks and Waterfront Commission on August 12, 2020 and the Public Works Commission on October 1, 2020.

## BACKGROUND

In November 2016, Berkeley voters approved [Measure T1](#)<sup>1</sup> – a \$100 million dollar general obligation bond to repair, renovate, replace or reconstruct the City's aging existing infrastructure, including facilities, streets, sidewalks, storm drains, and parks. Measure T1 passed with 86.5% of the vote.

From December 2016 through June 2017, the City undertook a robust public process to gather input on the proposed projects. In addition to three Measure T1 Workshops for the general public, the Parks & Waterfront and Public Works Commissions invited and received input from the public and other City Commissions. They submitted a [joint report to Council in June 2017](#)<sup>2</sup> detailing their recommendations. The City Manager

<sup>1</sup> See <https://www.cityofberkeley.info/MeasureT1/>

<sup>2</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf)

incorporated this input and submitted a [final recommended list of projects](#)<sup>3</sup>. Council adopted this list and proposed plan for implementing Phase 1 of the T1 bond program on June 27, 2017.

On January 23, 2018, Council approved Resolution No. 68,290-N.S., authorizing \$2 million from Measure T1 Phase 1 funds to be allocated to the Adult Mental Health Clinic located at 2640 Martin Luther King Jr. Way.

On March 26, 2018, Council approved Resolution No. 68,802-N.S. authorizing \$5.3 million in additional funding to complete Measure T1 Phase 1 projects.

On July 23, 2019, Council approved Resolution No. 69,051-N.S., authorizing the removal of the King School Park bio swale project and the addition of 12 alternate green infrastructure projects to the Measure T1 Phase 1 project list.

On December 10, 2019, Council approved Resolution No. 69,221-N.S., authorizing the: 1) Removal of the Transfer Station Conceptual Master Plan and West Berkeley Service Center Conceptual Design; 2) Change of phase from construction to planning for the Berkeley Health Clinic, Public Safety Building, Hopkins Street (San Pablo to the Alameda) and Bancroft Way (Milvia to Shattuck); 3) Change of phase from design to planning for Berkeley Municipal Pier and Tom Bates (Gilman) Fields North Field House / Restroom; 4) Addition of San Pablo Park Play Structure Replacement (ages 2-5), Strawberry Creek Park – Play Structure Replacement, and Codornices Creek at Kains Avenue.

#### ENVIRONMENTAL SUSTAINABILITY

Measure T1 projects include environmentally sustainable elements, such as electrification for facilities projects, permeable pavers or bio swales for street projects, and energy saving lighting in parks.

#### RATIONALE FOR RECOMMENDATION

In order to meet the Federal Tax Law requirement for municipal bonds, the City must add projects to the Measure T1 Phase 1 project list in order to expend 85% of the Measure T1 bonds sold in November 2017.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 510-981-6700  
Liam Garland, Director, Public Works, 510-981-6300

#### Attachments:

1: Resolution

<sup>3</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/06\\_June/Documents/2017-06-27\\_Item\\_49\\_Implementing\\_Phase\\_1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-27_Item_49_Implementing_Phase_1.aspx)

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

ADDITIONS TO THE MEASURE T1 PHASE 1 PROJECT LIST

WHEREAS, on June 27, 2017, Council adopted Resolution 68,076-N.S., approving a list of projects for Measure T1 Phase 1; and

WHEREAS, on January 23, 2018, Council approved Resolution No. 68,290-N.S., authorizing \$2 million from Measure T1 Phase 1 funds to be allocated to the Adult Mental Health Clinic located at 2640 Martin Luther King Jr. Way; and

WHEREAS, on July 23, 2019, Council approved Resolution No. 69,051-N.S., authorizing the removal of the King School Park Bioswale project and the addition of 12 alternate green infrastructure projects to the Measure T1 Phase 1 project list; and

WHEREAS, existing T1 projects were added, changed level of completion or removed due to funding availability and/or project feasibility; and

WHEREAS, since the current Phase 1 list was approved by Council on June 27, 2017, the current list has not been revised to reflect the above changes; and

WHEREAS, the Measure T1 Phase 1 list must be revised to comply with Section 4.5 of the Measure T1 Bond Policies and Procedures Manual, which states “When changes need to be made at the program-level, such as adding/removing a project or changing the project’s level of completion, staff will review these options with the Lead Commissions and seek Council’s approval to revise the approved list. This process is intended to ensure that any change to the approved Measure T1 project list is made with community input, Commission oversight, and Council approval”; and

WHEREAS, the revised list was reviewed by the Parks and Waterfront Commission on August 12, 2020 and the Public Works commission on October 1, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Measure T1 Phase 1 Project List receive the additions contained in Exhibit A.

Exhibit

A: Additions to the Measure T1 Phase 1 Project List

Additions to the Measure T1 Phase 1 Project List (with no additional funding):

- James Kenney Park play area (ages 2-5, and 5-12) and picnic area
- Euclid Street (at Rose Garden)
- Cedar Street from 6th Street to San Pablo Avenue
- Center Street from Martin Luther King Jr. Way to Shattuck Avenue
- Rose Street from Le Roy Avenue to La Loma Avenue
- Santa Fe Avenue from Gilman Street to Cornell Avenue/ Page Street
- Shasta Road from Grizzly Peak Boulevard to east City limit
- Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard
- Dohr Street from Ashby Avenue to Prince Street
- West Street from Bancroft Way to Dwight Way





Office of the City Manager

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Interim Director, Planning and Development Department  
 Subject: Resumption of Fees at Oregon Park Senior Apartments

RECOMMENDATION

Authorize the City Manager to resume charging fees, including housing inspection service fees, at Oregon Park Senior Apartments (OPSA), located at 1425 Oregon Street, to increase the effectiveness of housing code enforcement.

SUMMARY

On March 14, 2017, City Council authorized a fee abeyance for OPSA until certain conditions were met, including conducting a financial audit, conducting an assessment of the structure and the facility needs and hiring a property manager. These conditions have not been met. In May 2017, Housing Code Enforcement received a complaint from a tenant at the property, inspected the unit and identified 21 violations of the housing code. As of September 1, 2020, OPSA has not corrected 17 of the violations including visible mold, wall damage, a kitchen sink drain leak, deteriorated plumbing fixtures, a roof leak and a severe tripping hazard on the exterior concrete entrance slab. The inability to charge housing inspection service fees since the abeyance was granted has hampered enforcement. By restoring the authority to charge inspection fees, the City will encourage the owner to correct the violations and restore basic habitability conditions for OPSA tenants.

FISCAL IMPACTS OF RECOMMENDATION

All owners of rental housing in the City of Berkeley are subject to fees for housing code enforcement inspections: \$400 for the first reinspection of any unit (only charged when violations are not corrected), \$600 for the second reinspection and \$800 for the third and any subsequent reinspections, which typically occur every 30 working days. Currently with fees in abeyance, the costs of City inspections are not being covered. If fees had not been held in abeyance, Housing Code Enforcement would have billed inspection service fees of \$15,000 for reinspections which occurred at the property between June 2017 and January 2020. These fees are not recoverable and will not be charged or collected. Inspection service fees will incur going forward. The indefinite abeyance also increases the risk that the City would become obligated to reimburse the unpaid inspection fees from General Fund revenues.

### CURRENT SITUATION AND ITS EFFECTS

OPSA is a 61-unit, resident-managed senior rental housing development in Southwest Berkeley. OPSA is legally organized as a non-profit organization, not as a limited equity or other type of housing cooperative. The property has private funding and is not regulated by any public agency. OPSA representatives reported that tenant incomes are restricted to 120% of median. Importantly, OPSA provides affordable housing for seniors in Berkeley, and many are low income people of color.

On March 14, 2017, the City Council held fines in abeyance for OPSA until certain conditions were met. These included OPSA conducting a financial audit, doing a full assessment of the building and facility needs, and hiring a property manager.

After the March 14, 2017 Council meeting, City staff met with the OPSA board at Oregon Park Senior Apartments to discuss the Council referral, answer questions and provide a personal contact. On May 31, 2017, staff from a law firm representing OPSA emailed the office of Councilmember Davila with a potential quote for a needs assessment. The email stated that OPSA's representatives would be meeting with a Certified Public Accountant that week, after other CPAs were unable to help. OPSA subsequently submitted a partial structural assessment and indicated that a fuller assessment would be completed and sent to the city. On July 21, 2020 the City sent a letter to the OPSA Board reminding them of the outstanding items, requesting that they be sent to the City and informing them that if they are not provided staff will request that City Council reinstate the fees for subsequent inspections. As of the drafting of this Council report, the City has not received further documentation to indicate compliance with Council's conditions from March 2017. The current situation is not incentivizing OPSA's Board to meet the conditions, since once completed the City would resume charging fees.

Housing Code Enforcement staff are concerned about tenant safety at the property currently due to longstanding violations in one of the units. In May 2017, the tenants of an apartment at Oregon Park Senior Apartments filed a complaint to Housing Code Enforcement, due to the unsafe conditions in their unit. On May 29, 2017, a Housing Inspector performed an initial inspection and identified 21 code violations, including visible mold, wall damage, a kitchen sink drain leak, deteriorated plumbing fixtures, a roof leak and a severe tripping hazard on the exterior concrete entrance slab. Between June 2017 and January 2020, the Housing Inspector performed 22 reinspections of the unit. Three violations have been corrected and 18 violations still need to be abated, more than three years after the initial inspection took place. The remaining violations most likely will require skilled workers to complete the remediation work, which includes exterior deck repairs, mold removal, wall patching repair, painting of the unit and floor repairs.

In addition to funding the cost of implementing the Residential Housing Safety Program, the inspection service fees motivate property owners to correct violations. Without that incentive, reinspections inconvenienced the tenants without further pressure for the



owner to make the needed repairs. The two elderly tenants pursued a civil lawsuit to try to get their unit repaired.

On August 27, 2020, a request for service was submitted by another tenant at 1425 Oregon Street complaining of mold, black fungus, a long-standing water pipe leak and the lack of a manager. A housing inspection took place on September 1, 2020 and confirmed there is a substantial leak from the sink/shower drain of a neighbor's unit. To correct this violation, OPSA will need to remove the damaged sheetrock, make the necessary repairs to stop the leak, and patch, paint and seal the bathroom walls.

With 21 cases at the property in the last ten years, involving multiple violations, Housing Code Enforcement does not believe these to be isolated instances. In 2017, OPSA filed a lien appeal related to \$9,240 in outstanding reinspection fees from pre-2017 code enforcement cases at the property, incurred prior to February 2017. This lien appeal request is still pending consideration.

#### BACKGROUND

At the March 14, 2017 Council meeting, Council reviewed the Housing Advisory Commission report "Support for Oregon Park Senior Apartments" and the City Manager "Companion Report: Support for Oregon Park Senior Apartments," (attached) and approved the fee abeyance with the following conditions:

1. Oregon Street Park Apartments will conduct a financial audit.
2. Oregon Street Park Apartments will conduct a full assessment of the structure of the building and the facility needs.
3. Oregon Street Park Apartments will hire a property manager to oversee the financials and the property.
4. The City will commit to holding the fines in abeyance until such time that conditions 1-3 are completed.

Since that time, OPSA has submitted a partial structural analysis.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

The purpose of Housing Code Enforcement is to ensure that all Berkeley tenants have safe, decent living conditions that meet housing code standards. Holding these fees in abeyance for three years has not led to improvements in the living conditions at OPSA. Staff recommend the resumption of inspection fees with the goal of incentivizing property management to complete the required repairs.

Housing Code Enforcement followed all prescribed regulations for investigating, documenting and citing violations of the Berkeley Housing Code. Approval of the

recommended action will allow the Planning and Development Department to continue its effective practices for obtaining compliance with Housing Code.

ALTERNATIVE ACTIONS CONSIDERED

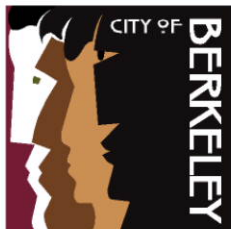
No alternative actions were considered.

CONTACT PERSON

Jenny McNulty, Resilient Buildings Program Manager, Planning, 981-7451

Attachment:

1: March 17, 2017 report to Council from Housing Advisory Commission, and staff companion report



Housing Advisory Commission

### ACTION CALENDAR

February 28, 2017

*(Continued from January 24, 2017)*

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Igor Tregub, Acting Chairperson, Housing Advisory Commission  
 Subject: Support for Oregon Park Senior Apartments

### RECOMMENDATION

Direct staff to work with Oregon Park Senior Apartments to undertake a physical needs assessment and to consider assistance with financing to address any issues identified in the physical needs assessment, and to hold the fines in abeyance in the interim.

### FISCAL IMPACTS OF RECOMMENDATION

None.

### CURRENT SITUATION AND ITS EFFECTS

Residents from the Oregon Park Senior Apartments (OPSA) seek the City's assistance for emergency improvements to their facilities. They are requesting a low-interest loan to be repaid promptly.

The OPSA complex is 43 years old and now requires considerable repair. In particular, the sewer, roof and sidewalk must be repaired as soon as possible before recently imposed City fines OPSA and costs for maintenance increase. The HAC identified the performance of a physical needs assessment that would provide City staff with a satisfactory understanding of current needs as the most immediate priority. Following such an assessment City staff could evaluate those needs and make a recommendation such that the City Council would be able to consider financing options to address the repairs.

### BACKGROUND

The OPSA is a non-profit 501(c)3. The City approved predevelopment funding for OPSA in 2005 and 2010 but the City and OPSA did not execute a loan either time. In 2014, disputes within the OPSA Board Directors contributed to serious financial problems. The situation devolved into a costly legal dispute that has hampered the OPSA's ability to make funding allocations from its budget to do necessary repairs for the sewer, roof, and sidewalk. With their legal problems now behind them, OPSA seeks to immediately make necessary repairs, but requires financial assistance.

At the November 3, 2016 meeting of the Housing Advisory Commission, the following action was taken:

Action: M/S/C (Wolfe/ Soto-Vigil) to request that City Council direct staff to work with Oregon Park Senior Apartments to undertake a physical needs assessment and to consider assistance with financing to address any issues identified in the physical needs assessment, and to hold the fines in abeyance in the interim.

Vote: Ayes: Abramson, Aguilar-Canabal, Crandall, Darrow, Lee-Egan, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Berg (excused) and Martinucci (excused).

ENVIRONMENTAL SUSTAINABILITY

There are no environmental implications identified for this recommendation.

RATIONALE FOR RECOMMENDATION

The OPISA's structure, as a cooperatively owned non-profit, makes it more difficult for the organization to secure funding from traditional sources. This facility and its cooperative members are a vital part of the Berkeley community, and an inquiry into the means by which the City may support them would be a low-cost and potentially highly beneficial approach to preserving our scarce affordable housing.

ALTERNATIVE ACTIONS CONSIDERED

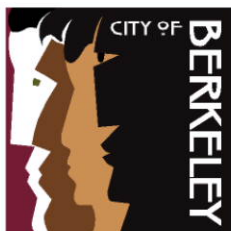
None.

CITY MANAGER

See companion report.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406



Office of the City Manager

## ACTION CALENDAR

March 14, 2017

*(Continued from February 28, 2017)*

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services Department

Subject: Companion Report: Support for Oregon Park Senior Apartments

### RECOMMENDATION

Refer the Housing Advisory Commission's recommendation that staff work with Oregon Park Senior Apartments (OPSA) to the Council prioritization process so that the Council can evaluate this recommendation in the context of other recommendations for the use of Housing & Community Services staffing resources.

### FISCAL IMPACTS OF RECOMMENDATION

More information and analysis is required before the fiscal impacts of funding OPSA can be estimated.

### CURRENT SITUATION AND ITS EFFECTS

OPSA is a 61-unit, resident-managed senior rental housing development. OPSA representatives reported that tenant incomes are restricted to 120% of median. The property has private funding and is not regulated by any public agency. At the November Housing Advisory Commission (HAC) meeting, OPSA representatives indicated a need for \$349,000 for repairs related to multiple housing code enforcement cases and sewer lateral work, including at least \$78,000 for work that had already been completed. They presented conceptual projections of future rent scenarios to support loan repayment.

The City previously offered to fund predevelopment work in 2005 and 2010, but OPSA did not agree to the terms of City funding either time. City funds supported capacity building technical assistance for the board before the development went into receivership a few years ago.

In light of the extent and duration of housing code enforcement issues at OPSA, the organization's capacity to complete repairs and maintain the property should be evaluated before providing public funds. Based on the age of the property and the housing code issues that have already been identified, it is likely that Oregon Park Senior Apartments has more extensive capital needs that should be assessed before the City funds repairs to ensure the longevity of this housing.

Typically requests for housing development funding go through the Housing Trust Fund (HTF). OPSA may not meet the HTF Guideline's standards for tenant incomes, which require a significant percentage of units in a building to be rented to tenants with income below 60% AMI and some to tenants below 30% AMI. Otherwise, however, OPSA is similar to other projects that have been funded through the City's HTF.

### BACKGROUND

The City approved predevelopment funding for the property in 2005 and 2010 in response to housing code violations. In 2005, City staff worked with OPSA on a predevelopment loan agreement to pay for independent legal counsel. OPSA decided against signing the loan agreement. Board members expressed concerns to staff at that time regarding agreeing to City oversight and repaying the loan. In 2010, staff and OPSA were unable to come to an agreement regarding predevelopment loan terms for \$15,000 to pay for a physical needs assessment.

Considering prior experiences, the HAC's recommendation would require substantial staff time, and would include working on at least the following issues:

- Legal status and make-up of the organization, in order to be able to enter into a contract for public funds. In 2010, staff determined that OPSA was organized as a nonprofit organization, not a cooperative.
- Financial capacity of the organization, including examining reserves available for repairs, income and expenses, and terms of the existing debt.
- Organizational capacity and technical expertise to complete the proposed work. The HTF guidelines, as an example, require that applicants demonstrate a successful track record with similar projects either with current staff or through consultants. This 61-unit property is larger than many HTF-funded developments.
- A comprehensive physical needs assessment and a study of OPSA's replacement reserve needs (funds set aside annually to fund regular maintenance). Housing code compliance issues from 2005 to present are an indicator that the property probably has more physical needs than those identified for emergency repair. Since City housing funds typically come with 55 years of restrictions related to incomes, rents, and building quality standards, the comprehensive needs and assessment of OPSA's interest in moving forward given City restrictions, should be evaluated before the City commits development funding.
- Evaluating existing income and rent restrictions along with current rents. It is relatively common for tenant-managed housing to keep rents very low, which can result in too little rental income to operate the property, maintain it, and fund reserves for larger repairs. At the November HAC meeting, OPSA representatives reported that tenancy was restricted to households with incomes at or below 120% of Area Median Income (AMI), with an average tenant rent of

less than \$800 per month. Currently, affordable one-bedroom rents for households at 120% of AMI are \$2,340, around three times as much. Staff would need to work with OPSA on reviewing tenant incomes and rents for sustainability before committing development funds.

The City would need to evaluate the availability of funds for OPSA in the context of funds available in the Housing Trust Fund (HTF) and other proposed projects, including the Berkeley Way project which has been identified as a priority by Council. Measure U1 business license tax revenue will start being collected soon, and revenue from the Harold Way development depends on if and when the project proceeds.

The City's recent experience with Strawberry Creek Lodge (SCL) and William Byron Rumford Sr. Plaza (WBR) provide examples that may have parallels with OPSA. Although not a cooperative, SCL (150 units developed in 1962) was owned by the Strawberry Creek Lodge Foundation (SCLF), which exists solely to support that development and its residents. In 2008, SCLF applied to the City for \$126,500 for repairs through the City's Public Facilities RFP. In recognition of the scale of the needs, the project was referred to the City's Housing Trust Fund. Ultimately, SCLF partnered with Satellite Affordable Housing Associates, which was able to secure low income housing tax credits and completed more than \$12 million in rehabilitation with just \$820,000 in City funds.

In the case of WBR (43 units developed in 1990), South Berkeley Community Housing Development Corporation partnered with Resources for Community Development (RCD) for rehabilitation. RCD eventually concluded that it would not be feasible to use low income housing tax credits since tenant incomes were too high to qualify. The City provided more than \$4.6 million to support the rehab, including refinancing \$1.3 in outstanding City loans. These projects illustrate the scale of recent rehabilitation projects, and benefits of low income housing tax credits for projects that can qualify. If directed to work with OPSA, staff will recommend that the OPSA board reach out to tenant leaders at SCL and WBR to learn about their experiences.

#### ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental effects associated with the content of this report.

#### RATIONALE FOR RECOMMENDATION

OPSA provides affordable housing for seniors, which are needed now more than ever. Housing code issues at OPSA evidence the need for more rehabilitation. Granting rehabilitation funds to this unrestricted property could assist with the current situation but would not address any underlying needs. Based on past experience, working with OPSA will require an investment of staff time and future funding, and should be evaluated alongside other housing priorities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406





Office of the City Manager

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew R. Greenwood, Chief of Police

Subject: Revenue Grant: Fiscal Year 2020-21 Alcoholic Beverage Control Grant

RECOMMENDATION

Adopt a Resolution authorizing the City Manager, and/or the Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$51,900 for one fiscal year, July 1, 2020 through June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley Police Department (BPD) will be the direct recipient of the grant in the amount of \$51,900 for fiscal year 2020-21. The grant provides \$51,900 dollars to support Berkeley Police Department operations and efforts to reduce underage drinking. Grant revenues will be deposited into the Alcoholic Beverage Control Fund. There is no required local match of funds to obtain the grant. Appropriation of the expenditures is being included in the First Amendment to the Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Over the years, BPD staff have worked diligently to reduce the number of alcohol related problems within the residential areas surrounding the University of California at Berkeley (UCB), especially the Greek community. Despite the education and preventative work conducted each year, we continue to experience alcohol related tragedies, many of which could have been prevented. The BPD and Berkeley Fire Department (BFD) have continued to experience an increase in calls for service. This increase hampers and strains emergency services across the entire city. A report prepared by the BFD and provided to City Council, highlighted that over 1,500 people were transported in 2014 and 2015. Of those calls, more than 600 involved alcohol and approximately half of the intoxicated students were under the legal drinking age of 21. One-hundred and twenty of the intoxicated patients were under 18 years of age.

During the 2015-16 grant, a total of 482 alcohol-related citations and arrests were made. The BPD has provided responsible beverage training for over 100 Berkeley managers and employees representing over 40 Berkeley businesses.

BACKGROUND

The BPD has been receiving the Alcoholic Beverage Control grant for over eleven years. Each school year brings an influx of new students, as well as, new employees to various businesses which sell alcohol. The BPD will continue to inform, educate, and enforce under-age drinking laws in an effort to reduce and/or prevent alcohol related tragedies within the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

Fewer calls to first-responders will result in lower local air pollutants and greenhouse gas emissions due to reduced fuel consumption.

RATIONALE FOR RECOMMENDATION

The BPD has been awarded a Department of Alcoholic Beverage Control grant in the amount of \$51,900 to address the critical need to address underage drinking and alcohol availability to those individuals under the age of 21. Without this funding, the BPD would not have the resources to adequately reduce the alcohol-related incidents which can have life-altering results for many young adults.

ALTERNATIVE ACTIONS CONSIDERED

If the award is not accepted, the City would not be able to provide these vital services to our community.

CONTACT PERSON

Andrew R. Greenwood, Chief of Police, 981-5700

Attachment:

1. Resolution

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

REVENUE GRANT: STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL GRANT FOR FISCAL YEAR 2020-21

WHEREAS, the Police Department is committed to providing a safe and secure environment through vigorous law enforcement within the City of Berkeley; and

WHEREAS, underage drinking and excessive drinking is currently a problem within the City of Berkeley; and

WHEREAS, there has been a longstanding problem with underage drinking and the availability of alcohol to persons under the age of 21 throughout the City; and

WHEREAS, despite years of education and preventive work, alcohol related problems persist; and

WHEREAS, the young adult community continues to acquire alcohol through fake identification, merchants who fail to check identification or asking someone to purchase alcohol for them; and

WHEREAS, several liquor stores can be magnets for criminal activity; and

WHEREAS, the police do not have sufficient resources within the existing budget to expand their work on these problems; and

WHEREAS, the Berkeley Police Department desires to undertake a certain project to limit access to alcohol by minors funded in part from state funds from the Department of Alcoholic Beverage Control (hereafter referred to as ABC); and

WHEREAS, the funds have been appropriated into the Alcoholic Beverage Control Program Fund with the agreement that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, and/or the Chief of Police, is hereby authorized to execute a contract and any amendments or extensions with the State of California in order to accept funds in the amount of \$51,900 from the Department of Alcoholic Beverage Control for the enforcement of alcohol related laws for one fiscal year, July 1, 2020 through June 30, 2021.

BE IT FURTHER RESOLVED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and ABC disclaim responsibility for any such liability.

BE IT FURTHER RESOLVED that this award is not subject to local hiring freezes.





Office of the City Manager

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Public Works  
Subject: Contract No. 31900124 Amendment: B Bros Construction Inc. for Adult Mental Health Services Center Renovations Project at 2640 Martin Luther King Jr Way

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 31900124 with B Bros Construction, Inc. to complete renovation and seismic upgrade work at the Adult Mental Health Services Center, increasing the current contract amount of \$5,386,293 by \$230,000 for a total amount not-to-exceed of \$5,616,293.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment is subject to appropriation in the First Amendment to the FY 2021 Annual Appropriations Ordinance (AAO1) in the T1 Fund (511) in the Public Works budget. The \$230,000 requested for this amendment is within the original \$2,000,000 T1 allocation for this project. No other funding is required.

|                                         |             |
|-----------------------------------------|-------------|
| Original Contract (not to exceed) ..... | \$4,886,293 |
| Previous Amendment.....                 | \$500,000   |
| This Amendment.....                     | \$230,000   |
| Amended Contract Amount (not to exceed) | \$5,616,293 |

The additional funding is necessary since it will provide for upgrades to the Adult Mental Health Services Center that improve the day-to-day operations of the building and minimize disruption to City staff and patients when facility maintenance needs come up during regular business hours. Some of these improvements also provide additional security to the building, City staff, and patients being cared for.

### CURRENT SITUATION AND ITS EFFECTS

On December 10, 2019, City Council adopted a resolution authorizing the City Manager to amend the contract with B Bros Construction, Inc. (B Bros) to complete renovation and seismic upgrade work at the Adult Mental Health Services Center (Center), increasing the contract amount by \$500,000 for a total amount not-to-exceed (nte) of \$5,386,293. The increase was necessary to address unforeseen conditions that only became apparent when B Bros commenced with construction of the Adult Mental Health Services Center on April 4, 2019.

More recently, Health, Housing & Community Services Department (HHCS) requested improvements to the project that increase the scope of the original contract documents. These additions were requested to improve the day-to-day operations of the building, some of which include:

- Installation of water isolation valves throughout the building. These minimize disruption to the entire building and operation when working on a specific location within the structure's water system.
- Water proofing the janitorial closet to avoid excessive wear and water damage in the future.
- Installation of additional audio-visual networking infrastructure throughout the building.
- Installation of two dual electric vehicle charging stations along the building's Derby Street frontage.
- Installation of keyless locking mechanisms (fobs) on all interior and exterior doors to the building.
- Adding a bottle fill station in the staff communal area.
- Installation of a security and emergency alarm system to the building.

The proposed amendment for \$230,000 will cover the operational improvements requested above and address miscellaneous unforeseen closeout items that occur on building facility upgrade projects of this size and complexity.

The provided services will support the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and providing state-of-the-art, well-maintained facilities.

### BACKGROUND

The City of Berkeley Mental Health Services Center provides invaluable mental health and related social services to Berkeley and Albany community members and their families living with serious and persistent mental illness. Program efforts include case management and support services, coordination and consultation with other agencies and groups, providing linkages and referrals to community resources, assessments and crisis response. Some of the work of Mental Health staff is conducted in the field when

staff meets clients in the community for service provision. There have been significant problems with the Center for many years. The building did not have a layout conducive to a welcoming environment for consumers, nor was it properly configured for safety. In 2015 and 2016, these long-standing issues were exacerbated by air quality problems, water intrusion, and an ongoing infestation of vermin, raccoons, and rodents. Although the building had many treatments, the problems were ultimately deemed so systemic that the building was closed in June 2016, pending this long planned major rehabilitation.

The current rehabilitation work being performed is significant and will result in a welcoming, inviting, clean, durable, energy efficient, and secure facility that will be used to help seriously mentally ill residents in Berkeley and Albany to live better lives.

The upgraded Center will provide a central location and will provide comprehensive services that maintain personal and community stability, supporting over 350 adults with ongoing clinical case management services per year.

#### ENVIRONMENTAL SUSTAINABILITY

A goal of the new mental health facility is to incorporate as many net zero energy facility improvements as is feasible. A net zero energy facility has a positive environmental impact and has economic advantages over the long-term. Some net-zero features in this project include solar panels, heat pumps, or low flow fixtures.

#### RATIONALE FOR RECOMMENDATION

The requested facility upgrades will improve the day-to-day operations of the building, and in turn, minimize disruption to City staff and the patients of the Adult Mental Health Services Center when facility maintenance needs come up during regular business hours. Some of these improvements also provide additional security to the building facility itself, as well as City staff and the patients being cared for.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works, (510) 981-6396  
Joe Enke, Acting City Engineer, Public Works, (510) 981-6411

Attachment:  
1: Resolution

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

CONTRACT NO. 31900124 AMENDMENT: B BROS CONSTRUCTION INC. FOR ADULT MENTAL HEALTH SERVICES CENTER RENOVATIONS PROJECT AT 2640 MARTIN LUTHER KING JR WAY

WHEREAS, the project consists of interior and exterior renovations and seismic upgrades of the Adult Mental Health Services Center; and

WHEREAS, The City has neither the labor nor the equipment necessary to undertake this renovation and seismic upgrade project; and

WHEREAS, an invitation for bids (Plans and Specifications No. 19-11267-C) was duly advertised, and B-Bros Construction Inc. was determined to be the lowest responsive and responsible bidder; and

WHEREAS, Resolution No. 68,752-N.S. authorized 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 B-Bros Construction Inc. for the Mental Health Services Center Renovation Project at 2640 Martin Luther King, Jr Way, in an amount not to exceed \$4,886,293; and

WHEREAS, Resolution No. 69,230-N.S. authorized the City Manager to execute an amendment to increase the contract amount by \$500,000 for a total contract not to exceed amount of \$5,386,293.

WHEREAS, due to requested building facility upgrades an additional increase of \$230,000 is necessary to fund the improvements; and

WHEREAS, funds will be appropriated in the First Amendment to the FY 2021 Annual Appropriations Ordinance in the FY 2021 in the T1 Fund (511).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 31900124 with B Bros Construction, Inc. for renovation and seismic upgrade work at the Adult Mental Health Services Center increasing the current contract amount of \$5,386,293 by \$230,000 for a total contract amount not to exceed \$5,616,293.





Office of the City Manager

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Contract Award: First Carbon Solutions, Inc. for California Environmental Quality Act Compliance for the Solid Waste & Recycling Transfer Station Replacement Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to award a contract with First Carbon Solutions, Inc. for California Environmental Quality Act compliance for the Solid Waste & Recycling Transfer Station Replacement Project for a total amount not to exceed \$500,000 for a contract term of November 1, 2020 through December 31, 2021.

SUMMARY

City will contract with First Carbon Solutions, Inc. per its July 2, 2020 submittal. Their staff and subcontractors are well versed in conducting all required studies, soliciting all regulatory and community input, and compliance with California Environmental Quality Act's (CEQA) requirements for the proposed Solid Waste & Recycling Transfer Station (SW&RTS) replacement.

This contract will evaluate the two (2) concepts developed by the Solid Waste and Recycling Transfer Station Feasibility Study and reviewed at the City Council's November 5, 2019 Work Session<sup>1</sup> for the replacement of the City's existing Transfer Station and Material Recovery facilities.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract has been appropriated in the FY 2021 Zero Waste Fund budget.

CURRENT SITUATION AND ITS EFFECTS

Gaining CEQA compliance for the Solid Waste & Recycling Transfer Station Replacement Project advances several of the City's Strategic Plan priorities:

- Be a customer-focused organization and facilities that provides excellent, timely, easily accessible services and information to the community,

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/Solid%20Waste%20and%20Recycling%20Transfer%20Station%20Feasibility%20Study%20Report%20to%20Council%2011.5.19%20Part1.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/Solid%20Waste%20and%20Recycling%20Transfer%20Station%20Feasibility%20Study%20Report%20to%20Council%2011.5.19%20Part1.pdf)

- Provide state-of-the-art and well-maintained infrastructure, amenities, and facilities, and
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

Without the replacement of the existing facilities, the City cannot meet its Zero Waste or 2009 Climate Action Plan goals. These facilities are beyond their projected and useful life; making it challenging to comply with continuously evolving environmental requirements and safety regulations.

On July 24, 2018, City Council<sup>2</sup> authorized retaining Zero Waste Collaborative, Inc. to conduct a Solid Waste & Recycling Transfer Station Feasibility Study (Study). The Study's goal was the development of conceptual layouts (minimum of two concepts) with collaborative, robust and extensive community and business members' input.

Consistent with the Zero Waste Commission's prior support and City Council's input and direction, the City is ready to take this necessary next step in the process to ensure CEQA compliance and ultimately replace these facilities.

## BACKGROUND

The current Transfer Station (TS) was built in 1983 and various recycling facilities added in the 1980s and 90s. These facilities handle all of the City's and vendor curbside collected and self-haul refuse; dual stream recycling; and green/food waste materials on a 7.45 acre site. The current facilities consist of:

- Transfer Station 20,700 sq. ft.
- Late 1980s addition of Berkeley's Recycling, which includes:
  - 1) Material Recovery Facility (MRF) 21,900 sq. ft.
  - 2) Residential recyclable materials drop-off 4,400 sq. ft.
  - 3) Residential Universal Waste drop-off 700 sq. ft.
  - 4) California Redemption Value (CRV) Buyback Center 6,600 sq. ft.
- In 1990s, residential recycle collection vendor was allocated 6,000 sq. ft. space for an office/operations yard.

In 2019, the TS handled 78,000+ tons of refuse; 15,000+ tons of construction and demolition debris; 33,000+ tons of compostable organic (green/food) materials, and 2,500 tons of miscellaneous recyclable materials. The MRF annually accepts, processes and markets approximately 15,000+ tons of mixed paper; cardboard; rigid plastics; and plastic, aluminum, steel and glass containers.

An integrated facility would ensure the City's flexibility to accept a variety of materials and provide the ability to increase diversion. In addition, it would ensure environmentally compliant methods will be implemented—not only for today but for many decades to

<sup>2</sup> [https://www.cityofberkeley.info/.../2018-07-24\\_Item\\_39\\_Contract\\_Zero\\_Waste\\_Collaborative.aspx](https://www.cityofberkeley.info/.../2018-07-24_Item_39_Contract_Zero_Waste_Collaborative.aspx)

follow—in the handling and processing of refuse, fiber and container recyclables, and compostable materials.

The current facilities are not integrated and operations cannot be coordinated to provide the facilities' customers easy access to drop-off refuse, recyclable and organic waste materials. These facilities do not meet current seismic requirements, have not been upgraded or improved since constructed, have exceeded their useful and serviceable life, and are unable support the City's Zero Waste Goal.

The primary goals of the Solid Waste & Recycling Transfer Station Feasibility Study (Study) were to:

- Solicit extensive community members' and stakeholders' ideas, direction,
- Put these ideas on paper and solicit additional community members input and direction, and
- To provide input on the community's vision for a Material Resource Park (name to be determined by community members with City Council input and concurrence).

Community members and stakeholders envisioned a facility that would allow the City to divert additional materials for reuse or recycling that are currently being landfilled. The two (2) concepts were the result of many hours of input by City staff, community members and business members, and vendors (that are contracted with the City through the Zero Waste Division's operations). These listening/input sessions and meetings were conducted throughout the City and included:

- September 27, 2018: Zero Waste Collaborative, Inc., presented to the Interim Deputy City Manager (now DCM); Public Works, Planning, Finance and Information Technology Department Directors; and other staff on the Study's goals and milestones.
- November 7, 28, and December 1, 2018 (Central Public Library, South Berkeley Senior Center, Live Oak Community Center): Community member and stakeholder initial visioning and listening sessions to solicit input on their ideas for the facility's development to meet zero waste goals (totaling 8 hours).
- January 16, 17 and 18, 2019 (James Kenney Community Center): community presentations of the facility's development options based on the input from the initial listening sessions followed with robust and extensive community members' and stakeholders' input on the facility's development options (totaling 9 hours).
- March 14, 15 and May 22, 2019 (James Kenney Community Center, North Berkeley Public Library, West Branch Public Library: Presentation to all community members and stakeholders based on the January 2019 input and revisions of facility's development options (totaling 8 hours).
- June 24, 2019: Presentation of the finalized facility's development options and

potential environmental impacts to the Zero Waste Commission<sup>3</sup>.

As noted above, the Study's contractor was tasked to transfer these community members' best ideas into concept(s) on paper and then to solicit additional community members' input. With this significant public input, the Study<sup>4</sup> identified two (2) concepts with up to a 10% design level and included preliminary budgetary cost estimates and potential financing options.

At a November 5, 2019 City Council Work Session, the Council reviewed the two preliminary concepts to provide feedback and direction on the replacement of the Solid Waste & Recycling Transfer Station (SW&RTS) located at 1201 Second Street. The two (2) concepts proposed for the site's existing footprint are:

**Concept A:** Material Recovery Facility & Transfer Station is one (1) building that includes:

- Drop-off and California Redemption Value Buyback 32,000 sq. ft.
- Material Recovery Facility 33,000 sq. ft.
- Transfer Station 41,000 sq. ft.
- Landscaping and Codornices Creek walk 49,000 sq. ft.
- Admin. Office with Education Center, classrooms 7,300 sq. ft.
- Vehicle Maintenance Building 6,000 sq. ft.
- Vehicle parking (110+ service vehicles) 62,000 sq. ft.
- Permeable paved area 22,000 sq. ft.
- Sidewalks 39,500 sq. ft.
- Asphalt and concrete paving area 82,000 sq. ft.

**Concept B:** Material Recovery Facility & Transfer Station in two (2) separate buildings that includes:

- Drop-off and California Redemption Value Buyback 24,000 sq. ft.
- Material Recovery Facility 35,000 sq. ft.
- Transfer Station 46,000 sq. ft.
- Landscaping and Codornices Creek walk 42,000 sq. ft.
- Admin. Office with Education Center, classrooms 9,100 sq. ft.
- Vehicle Maintenance Building 7,000 sq. ft.
- Vehicle parking (110+ service vehicles) 79,000 sq. ft.
- Permeable paved area 14,000 sq. ft.
- Sidewalks 39,500 sq. ft.
- Asphalt and Concrete paved area 80,000 sq. ft.

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/2019%20June%2024%20Agenda%20Packet%20v2.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/2019%20June%2024%20Agenda%20Packet%20v2.pdf)

<sup>4</sup> [https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Solid\\_Waste/Solid%20Waste%20and%20Recycling%20Transfer%20Station%20Feasibility%20Study%20Report%20to%20Council%2011.5.19%20Part1.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Solid_Waste/Solid%20Waste%20and%20Recycling%20Transfer%20Station%20Feasibility%20Study%20Report%20to%20Council%2011.5.19%20Part1.pdf)

For the City to sustain or expand its infrastructure required to support the City's waste reduction efforts and to meet its Zero Waste Goal, the City will need to replace these significantly aged facilities. To maximize these program services and infrastructure flexibility, these facilities need to be integrated and function seamlessly together to support the City's Climate Action Plan and Zero Waste Goal.

The City Council authorized a Resolution for Request for Proposal (RFP) Specification No. 20-11390-C on February 11, 2020<sup>5</sup>. First Carbon Solutions, Inc. submitted the most qualified and responsive proposal as required by the RFP's solicitation.

### ENVIRONMENTAL SUSTAINABILITY

The proposed conceptual plans and CEQA compliance efforts will ensure that, as an enterprise funded operation, the City's Public Works Zero Waste Division will have state-of-the-art Solid Waste & Recycling Transfer facilities to support:

- Customers' ease of use and interface of these facilities to promote additional recycling and reuse opportunities,
- The expansion of the City's efforts to meet its Zero Waste Goals, which are a key component of the 2009 Climate Action Plan,
- Compliance with legislation to increase and enhance recycling; organic diversion and composting; and the City's single use disposable foodware and litter reduction ordinance,
- Handling of all residential, multi-family and commercial curbside collection of: refuse; dual stream recyclable materials processing and marketing; and green/food waste, and
- Flexibility to handle anticipated long-term market volatility in the recycling commodity markets.

As Berkeley continues to reduce the volume of materials being landfilled and to move more recyclable materials from the refuse carts/bins to the recycle and compost carts/bins, the City's infrastructure has to follow suit. Yet it is in drastic need of replacement to support the City's ambitious efforts to reduce waste, increase diversion, and accomplish a Zero Waste future.

### RATIONALE FOR RECOMMENDATION

In part based on the robust community process to date, including Council Members' feedback at the November 5, 2019 Work Session, staff reviewed four (4) proposals submitted in response to the RPF for CEQA Compliance. First Carbon Solutions, Inc. submitted the most responsive and comprehensive proposal. This CEQA compliance work is required prior to SW&RTS' final engineering design and the permitting for construction and solicitation of bids for its construction.

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<sup>5</sup> [https://www.cityofberkeley.info/uploadedFiles/Finance/Level\\_3\\_-\\_General/20-11390-C%20-%20SWRTS%20CEQA%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Finance/Level_3_-_General/20-11390-C%20-%20SWRTS%20CEQA%20FINAL.pdf)

ALTERNATIVE ACTIONS CONSIDERED

Continue reliance on the existing Transfer Station and the non-integrated recycling facilities, which are unable to support or expand the City's efforts to meet its Zero Waste Goals and are past their design and useful life. The existing facilities do not meet State or City safety and building codes. Given the age and structural conditions of the existing structures, reconstruction of these structures would be financially prohibitive.

CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, Public Works – Zero Waste, 981-6359

Attachment:

1: Resolution

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

CONTRACT: FIRST CARBON SOLUTIONS, INC. FOR CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE FOR THE SOLID WASTE & RECYCLING TRANSFER STATION REPLACEMENT PROJECT

WHEREAS, July 24, 2018, City Council authorized retaining a third party consultant to conduct a Solid Waste & Recycling Transfer Station Feasibility Study with robust and extensive community and business members' input; and

WHEREAS, November 5, 2019 City Council Work Session, the Council reviewed the two preliminary concepts to provide feedback and direction on the replacement of the Solid Waste & Recycling Transfer Station; and

WHEREAS, February 11, 2020, City Council authorized a Resolution to release a Request for Proposal for California Environmental Quality Act compliance for the Solid Waste & Recycling Transfer Station; and

WHEREAS, without the replacement of the existing facilities, the City cannot meet its Zero Waste or 2009 Climate Action Plan goals. These facilities are beyond their projected and useful life; making it challenging to comply with continuously evolving environmental requirements and safety regulations; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley authorizing the City Manager to award a contract with First Carbon Solutions, Inc. for California Environmental Quality Act (CEQA) compliance for the Solid Waste & Recycling Transfer Station (SW&RTS) Replacement Project for a total amount not to exceed \$500,000 for a contract term of November 1, 2020 through December 31, 2021.







Homeless Commission

## CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council  
 From: Homeless Commission  
 Submitted by: Carole Marasovic, Chairperson, Homeless Commission  
 Subject: Compiling Commission Recommendations in a Reference Manual

### RECOMMENDATION

The Homeless Commission recommends that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

### POLICY COMMITTEE RECOMMENDATION

On August 31, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Wengraf/Hahn) to send Items 9a and 9b to the City Council with a Qualified Positive Recommendation to adopt the staff item in 9b to explore potential short term solutions and recommend that the commission recommendation be reintroduced to Council after the COVID-19 emergency is lifted. Vote: All Ayes.

### SUMMARY

This recommendation would create a reference manual which would track the work of City advisory commissions and the outcomes and implementation of their recommendations. It would serve to provide information-sharing between commissions when they work on similar or overlapping issues. It would provide a reference manual for all City commissioners, Mayor and Council, staff and members of the public.

### FISCAL IMPACTS OF RECOMMENDATION

Staff would have to assess the cost, and staff time, of providing this manual and maintaining it. The cost would seem to be outweighed by the benefits of information sharing and coordination between commissions and providing easily accessible information to all including the public.

### CURRENT SITUATION AND ITS EFFECTS

Currently, commissions often operate without knowledge of how other commissions are approaching similar or overlapping issues. There is no single resource to go to view information other than reviewing individual commissions' minutes. Recommendations occasionally have not been tracked and have fallen by the wayside. The work output of commissions, producing recommendations, cannot always be evaluated or reviewed in detail because there is no reference manual for commission recommendations. At a recent strategic plan session conducted by the City Manager's office educating commissioners, across all commissions, of the strategic plan, when receiving input from commissioners in attendance, several commissioners, from multiple commissions, indicated that they wanted to access additional knowledge how other commissions are addressing the same or similar, related issues. In addition, some commissions have placed information sharing between commissions on their agendas and/or addressed the need for information sharing, between commissions, on their agendas

### BACKGROUND

The Homeless Commission voted on March 11, 2020 as follows:

**Action:** M/S/C Hirpara/ Hill to approve and send the recommendation to Council as written.

**Vote:** Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara, Behm-Steinberg  
Noes: None. *Abstain:* Andrew. *Absent:* Mulligan.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects except the use of a nominal amount of additional paper.

### RATIONALE FOR RECOMMENDATION

Binders, and online access, as described in the recommendation would provide for better tracking of recommendations and outcomes including Council action and subsequent implementation of outcomes. This reference manual would provide better coordination between commissions when they are addressing similar or overlapping subject matters. This reference manual would also provide easily accessible information for not only commissioners but also Mayor and Council, staff and members of the public.

### ALTERNATIVE ACTIONS CONSIDERED

An alternative would be for no action to be taken.

CITY MANAGER

See companion report.

CONTACT PERSON

Brittany Carnegie, Homeless Commission Secretary, HHCS, 510-981-5415





Homeless Commission

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk  
Brittany Carnegie, Homeless Commission Secretary

Subject: Companion Report: Compiling Commission Recommendations in a Reference Manual

RECOMMENDATION

Refer the commission recommendation to the City Manager to 1) consider the impacts on staffing levels, approved Strategic Plan projects, and existing baseline services in the context of the projected budget shortfall for FY 2021 and the hiring freeze currently in effect; and 2) work within existing resources to facilitate information sharing among commissions on items referred from the City Council.

POLICY COMMITTEE RECOMMENDATION

On August 31, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Wengraf/Hahn) to send Items 9a and 9b to the City Council with a Qualified Positive Recommendation to adopt the staff item in 9b to explore potential short term solutions and recommend that the commission recommendation be reintroduced to Council after the COVID-19 emergency is lifted. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

The City is facing an unprecedented \$28.5 million shortfall in the FY 2021 budget. As a part of the measures taken to close the gap, all departments are facing 15% reductions in personnel and non-personnel expenditures. In addition, a hiring freeze has been implemented by the City Manager and vacant positions are not being filled.

Commission secretaries have a full time employee's regular duties and the additional responsibilities of supporting a commission. The City Clerk Department is also newly affected by several new additions to baseline responsibilities including the Citizens Redistricting Commission, the Lobbyist Registration Ordinance, the Public Financing Program for Candidates, and support of the City Council Policy Committees.

The tracking and reporting as described in the commission recommendation is a significant new task added to the baseline responsibilities of the City Clerk Department and commission secretaries. The commission item extends the tracking requirement beyond agenda items to also include letters from a commission to the Council, which are more difficult to track.

Currently, the City does log commission referrals in the ServiceNow program to keep track of the adopted referrals. Some expansion of the tracking and reporting in ServiceNow could be a possible method to meet some of the commission's request, but this would require purchasing new software licenses for commission secretaries. The estimated cost for 40 licenses at \$242 each is \$9,680 annually. This additional cost is not currently funded in the FY 2021 budget.

Under the current guidelines in the Commissioners' Manual, commission secretaries are tasked with keeping the commission informed of the referrals adopted by Council for their commission and also to notify other commissions of items that may be of overlapping jurisdiction among multiple commissions. The City Manager and the City Clerk Department can reach out to all secretaries to highlight this responsibility and inquire about ways in which the City Clerk Department can support secretaries with information sharing among commissions.

#### BACKGROUND

On March 11, 2020 by a 5-0-1-1 vote, the Homeless Commission adopted a recommendation that Council refer to staff to develop a procedure for staff secretaries to all City of Berkeley commissions to compile all commission recommendations, whether in report or letter form, in a binder. Such binder shall also track the outcomes of all commission recommendations including action taken by Council and subsequent implementation of Council action. One copy of the binder shall remain with the staff secretary; another copy of the binder shall be available as a resource in the City Clerk's office. The City Clerk shall index all subject matters of commission proposals so that there is cross-referencing of all subjects that commissions have addressed. This reference manual shall be available for use by commissions to share information, the Mayor and Council, staff and members of the public. The City Clerk shall also provide this information online.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects except the use of a nominal amount of additional paper.

#### RATIONALE FOR RECOMMENDATION

Due to current budgetary and staffing limitations, there are not adequate staffing resources to implement the full measure of the commission's request.

CONTACT PERSON

Mark Numainville, City Clerk, 510-981-6900

Brittany Carnegie, Homeless Commission Secretary, HHCS, 510-981-5415







Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
October 13, 2020

TO: Mayor and Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Susan Wengraf (Co-Sponsor)

SUBJECT: Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment

RECOMMENDATION

Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina:

- Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure;
- Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas.

FISCAL IMPACT

Approximately \$120,000 for eight security camera locations at seven marina berther lots, including installation, signage, and other supplies.

CURRENT SITUATION AND ITS EFFECTS

The past several months have seen a dramatic uptick in reported crime incidents at the Berkeley marina. From March 6, 2020 through September 4, 2020, a total of 156 incidents were reported to the Berkeley Police Department and/or marina staff. The vast majority of the incidents have been reported more recently: since July 1, 2020, a total of 135 incidents were reported, with August alone seeing a total of 86 incidents. These incidents range in severity from disturbances, vandalism, and trespassing to assaults,

## Installation of Security Cameras at Berkeley Marina and Safety Assessment

boat theft, auto burglary<sup>1</sup> and vehicle theft<sup>2</sup>. From the second day in August onward, every day of the month saw at least one incident report, with August 23 seeing nine reported incidents, while August 13, 16, 17 and 27 each had five reported incidents per day.

In the table below, we provide a summary of the type and frequency of reported crime incidents that have occurred since early March 2020. We note that the Office of Councilmember Rashi Kesarwani has requested crime statistics for the same period in 2019 and 2018 in order to gain a better understanding of recent crime trends.

### Types and frequency of selected reported crimes at the Berkeley Marina, March 6 to Sept. 4, 2020

| Type of Crime           | Number of Incidents |
|-------------------------|---------------------|
| Assault                 | 2                   |
| Attempted Vehicle Theft | 22                  |
| Auto Burglary           | 30                  |
| Disturbances            | 11                  |
| Felony Theft            | 2                   |
| Theft                   | 9                   |
| Trespassing             | 6                   |
| Vandalism               | 14                  |
| Vehicle Theft           | 4                   |
| Weapons Found           | 2                   |

Source: Berkeley Police Department and Marina staff

Councilmember Rashi Kesarwani has met with several of the Marina live-aboard community members and berthers (people who pay to dock a boat at our marina) who have reached out to the District 1 Office for assistance. Our constituents have expressed frustration, fear, and dismay at the recent dramatic rise in reported incidents.

<sup>1</sup> In this case, according to California Penal Code 459, auto burglary can be defined as: forced entry into a locked automobile with the intent to steal the car or property within it. See: [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PEN&division=&title=13.&part=1.&chapter=2.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=13.&part=1.&chapter=2.&article=)

<sup>2</sup> Refer to the U.S. Department of Justice Federal Bureau of Investigation Criminal Justice Information Services Division (<https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/property-crime/mvtheftmain>) which notes: "In the FBI's Uniform Crime Reporting (UCR) Program, motor vehicle theft is defined as the theft or attempted theft of a motor vehicle."

## Installation of Security Cameras at Berkeley Marina and Safety Assessment

This item additionally requests an environmental safety assessment of the parking areas for the Berkeley marina. Because there is a varied nature to the types of crimes committed, a multi-pronged safety approach is necessary to help address the many concerns of the community and reduce the number of incidents. Constituent communications indicate that there is an urgency to addressing these issues using a variety of approaches as deterrents.

### BACKGROUND

A 2011 report from The Urban Institute's Justice Policy Center notes that cameras can be an effective, fiscally prudent tool for preventing crimes and supporting investigations; and installation and maintenance of security cameras is less costly than the associated costs with crimes that take place without them.<sup>3</sup>

"Stationary security cameras affixed to City property or facilities" are not regulated under the Surveillance Technology Ordinance. (See BMC Section 2.99.020.1.i). As a result, stationary camera installation at the marina would be exempt from the requirements of BMC Chapter 2.99.

### ENVIRONMENTAL SUSTAINABILITY

This item has no impact on environmental sustainability.

### CONTACT

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

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<sup>3</sup> See La Vigne, Lowry, Markman and Dwyer's 2011 report: "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention" [https://www.urban.org/sites/default/files/publication/27556/412403-evaluating-the-use-of-public-surveillance-cameras-for-crime-control-and-prevention\\_1.pdf](https://www.urban.org/sites/default/files/publication/27556/412403-evaluating-the-use-of-public-surveillance-cameras-for-crime-control-and-prevention_1.pdf)





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila (Author), Ben Bartlett (Co-Author),  
and Sophie Hahn (Co-Sponsor)

Subject: Oppose Proposition 22 on the November 2020 ballot

RECOMMENDATION

1. Adopt a resolution opposing Proposition 22 on the November 2020 ballot.
2. Send a letter to the 'No on CA Prop 22' coalition.

BACKGROUND

Current state law, AB 5, established a criteria-based test that is designed to determine a worker's status as an employee or an independent contractor for the purposes of deciding whether a worker was entitled to benefits and regulations found in the California Wage Orders.<sup>1</sup> In relation to app-based drivers, this law seeks to protect gig company employees who are not receiving labor protections and benefits, such as unemployment insurance, paid time off, overtime pay, workers' compensation, a guaranteed minimum wage, and the ability to unionize.<sup>2</sup> Despite the passing of AB 5, Uber and Lyft have insisted on misclassifying their workers as independent contractors in order to avoid providing their workers with a minimum wage, healthcare, paid sick leave, unemployment insurance, and other critical employee benefits.

Multibillion-dollar corporations such as Uber, Lyft, and DoorDash have invested \$181 Million to exempt themselves from current state law, AB-5, which requires companies to hire their drivers and deliverers as employees, not independent contractors. This law would ensure that Uber, Lyft and other app companies provide the same basic rights and protections to their drivers that all other employers provide to their workers in California.

These same Multibillion-dollar corporations have paid to place Proposition 22 on this November ballot. They hired lawyers to write misleading initiatives and paid political operatives millions to collect the voter signatures they needed.

Proposition 22 is a special exemption that would allow Uber and other app companies to continue denying their drivers the rights and protections they are owed - for example paid sick and vacation leave, workers compensation or unemployment benefits.

<sup>1</sup> [https://ballotpedia.org/California\\_Assembly\\_Bill\\_5\\_\(2019\)](https://ballotpedia.org/California_Assembly_Bill_5_(2019))

<sup>2</sup> <https://www.vox.com/2019/9/11/20850878/california-passes-ab5-bill-uber-lyft>

Proposition 22 only applies to Uber and the app companies. It is designed to maximize their profits by shifting the cost of doing business onto their drivers. 78% of whom are people of color, and 70% of drivers work more than 30 hours a week. Proposition 22 will exploit marginalized communities and further reify a substantial role in systems of oppression and inequity that harm Black, Brown, and Indigenous workers, and other workers of color. No other California business would benefit from this special exemption.

Current state law requires Uber and the app companies to provide their drivers with rights and protections, just like every other California business. The Attorney General recently sued them for breaking this law.

Proposition 22 was written by multibillion-dollar companies, not drivers nor workers. The City of Berkeley must take a stance against Proposition 22 and ensure that every employee, especially app-based drivers, in California receive what they are entitled to: a minimum wage for all hours worked, overtime pay, health and unemployment insurance, and the right to unionize. That's why we must oppose Proposition 22.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our workers during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

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#### ATTACHMENTS:

1. Resolution
2. Letter to No on CA Prop 22 Coalition

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,  
OPPOSING PROPOSITION 22 ON THE NOVEMBER 2020 BALLOT

WHEREAS, Current state law, AB 5, established a criteria-based test that is designed to determine a worker's status as an employee or an independent contractor for the purposes of deciding whether a worker was entitled to benefits and regulations found in the California Wage Orders. In relation to app-based drivers, this law seeks to protect gig company employees who are not receiving labor protections and benefits, such as unemployment insurance, paid time off, overtime pay, workers' compensation, a guaranteed minimum wage, and the ability to unionize. Despite the passing of AB 5, Uber and Lyft have insisted on misclassifying their workers as independent contractors in order to avoid providing their workers with a minimum wage, healthcare, paid sick leave, unemployment insurance, and other critical employee benefits; and

WHEREAS, Multibillion-dollar corporations such as Uber, Lyft, and DoorDash have invested \$181 Million to exempt themselves from current state law, AB-5, which requires companies to hire their drivers and deliverers as employees, not independent contractors. This law would ensure that Uber, Lyft and other app companies provide the same basic rights and protections to their drivers that all other employers provide to their workers in California; and

WHEREAS, These same Multibillion-dollar corporations have paid to place Proposition 22 on this November ballot. They hired lawyers to write misleading initiatives and paid political operatives millions to collect the voter signatures they needed.

WHEREAS, Proposition 22 is a special exemption that would allow Uber and other app companies to continue denying their drivers the rights and protections they are owed - for example paid sick and vacation leave, workers compensation or unemployment benefits; and

WHEREAS, Proposition 22 only applies to Uber and the app companies. It is designed to maximize their profits by shifting the cost of doing business onto their drivers. 78% of whom are people of color, and 70% of drivers work more than 30 hours a week. Proposition 22 will exploit marginalized communities and further reify a substantial role in systems of oppression and inequity that harm Black, Brown, and Indigenous workers, and other workers of color. No other California business would benefit from this special exemption; and

WHEREAS, Current state law requires Uber and the app companies to provide their drivers with rights and protections, just like every other California business. The Attorney General recently sued them for breaking this law; and

WHEREAS, Proposition 22 was written by multibillion-dollar companies, not drivers nor workers. The City of Berkeley must take a stance against Proposition 22 and ensure that every employee, especially app-based drivers, in California receive what they are entitled to: a minimum wage for all hours worked, overtime pay, health and unemployment insurance, and the right to unionize. That's why we must oppose Proposition 22.

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Berkeley oppose Proposition 22 on the November 2020 ballot; and

BE IT FURTHER RESOLVED, that the City Council for the City of Berkeley send a letter to the 'No on CA Prop 22' coalition.

## Attachment 2

October XX, 2020

No on CA Prop 22 coalition

Re: Vote No on Proposition 22 or "Exempts App-Based Transportation and Delivery Companies from Providing Employee Benefits to Certain Drivers"

Dear No on CA Prop 22 coalition,

The Berkeley City Council respectfully opposes Proposition 22, which would consider app-based drivers as contractors instead of employees and create different labor and wage policies for these drivers. It would also prevent components related to app-based drivers in California Assembly Bill 5 from being affected.

Proposition 22 will disrupt the rights of and exploit workers by creating a legal channel for gig companies to not provide their workers with critical employment benefits. In addition, this proposition will have an inequitable impact on communities of color who make up most of the population of app-based drivers. As a result, we must vote NO on Proposition 22 and ensure that every employee, especially app-based drivers, in California receive what they are entitled to: a minimum wage for all hours worked, paid sick leave, overtime pay, health and unemployment insurance, and the right to unionize.

The City of Berkeley is in solidarity with the No on CA Prop 22 coalition.

Respectfully,

The Berkeley City Council





Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Amending Council Rules of Procedures such that items submitted by the Mayor or Councilmembers be placed directly on the City Council Agenda to allow the whole City Council to review and take action on the submitted item to ensure equity in the process.

RECOMMENDATION

Adopt a Resolution to amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.

POLICY COMMITTEE RECOMMENDATION

On August 31, 2020, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Wengraf) to send Item 10 to the City Council with a Negative Recommendation. Vote: All Ayes.

BACKGROUND

Section C-1 of the Council Rules and Procedures states, "All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council." This section should be amended to state: "all submitted items by the Mayor or a Councilmember shall be placed on the requested Council Meeting Agenda, and have the whole City Council review the submitted items, take action, and/r or refer to a commission or Council Policy Committee."

Section G-1 of the Council Rules and Procedures states, "All agenda items begin with submission to the Agenda & Rules Committee." Instead, it shall be amended to state: "All agenda items shall go straight to the full City Council for review and action." The Agenda & Rules Committee should not determine the placement of an item in the first place.

Section G-1 furthers that, "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda." Items submitted by the Mayor or Councilmembers should be placed directly onto the City Council agenda since many items are urgent and cannot be held up in individuals committees. It shall be amended to state:

“Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts shall be placed on the requested Council meeting date, be place on the Council meeting agenda, and have the whole City Council review the item and take necessary action.”

Most cities across California do not follow the procedure of deferring council items to commissions or committees, rather all policy items are brought before the Council at meetings and are considered for approval in one single action. If needed, the City Councilmembers have the opportunity to remove an item from the consent calendar for purposes of discussion and further amendment. It is imperative that the City of Berkeley also adopt similar procedures in order to maintain the momentum of policymaking. The full Council should have an opportunity to discuss each item and choose to refer to a commission or Council Policy Committee. Currently, the Agenda & Rules committee sends items which doesn't allow the full Council to be aware or even know about the item prior to being sent to a committee or commission where it may be for 120 days. The current process is not just and should be changed to ensure equity in the decision to refer to a commission or Council Policy Committee.

This process for items can take months to even hear back about their status. Council should refer Council items to commissions and Council Policy Committees.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### CONTACT PERSONS

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#### ATTACHMENTS:

1. Resolution

#### REFERENCES:

1. The Berkeley City Council Rules of Procedure and Order:  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/City%20Council%20Rules%20of%20Procedure%20-%20June%202020%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/City%20Council%20Rules%20of%20Procedure%20-%20June%202020%20-%20FINAL.pdf)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, AMENDING THE COUNCIL RULES OF PROCEDURES SUCH THAT ITEMS SUBMITTED BY THE MAYOR OR COUNCILMEMBERS BE PLACED DIRECTLY ON THE CITY COUNCIL AGENDA TO ALLOW THE WHOLE CITY COUNCIL TO REVIEW AND TAKE ACTION ON THE SUBMITTED ITEM TO ENSURE EQUITY IN THE PROCESS.

WHEREAS, Section C-1 of the Council Rules and Procedures states, "All items are subject to review, referral, and scheduling by the Agenda & Rules Committee pursuant to the rules and limitations contained herein. The Agenda & Rules Committee shall be a standing committee of the City Council." This section should be amended to state: "all submitted items by the Mayor or a Councilmember shall be placed on the requested Council Meeting Agenda, and have the whole City Council review the submitted items, take action, and/r or refer to a commission or Council Policy Committee."; and

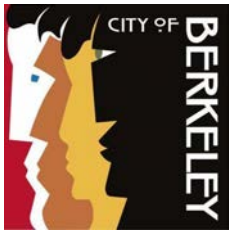
WHEREAS, Section G-1 of the Council Rules and Procedures states, "All agenda items begin with submission to the Agenda & Rules Committee." Instead, it shall be amended to state: "All agenda items shall go straight to the full City Council for review and action." The Agenda & Rules Committee should not determine the placement of an item in the first place; and

WHEREAS, Section G-1 furthers that, "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda." Items submitted by the Mayor or Councilmembers should be placed directly onto the City Council agenda since many items are urgent and cannot be held up in individuals committees. It shall be amended to state: "Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts shall be placed on the requested Council meeting date, be place on the Council meeting agenda, and have the whole City Council review the item and take necessary action."; and

WHEREAS, Most cities across California do not follow the procedure of deferring council items to commissions or committees, rather all policy items are brought before the Council at meetings and are considered for approval in one single action. If needed, the City Councilmembers have the opportunity to remove an item from the consent calendar for purposes of discussion and further amendment. It is imperative that the City of Berkeley also adopt similar procedures in order to maintain the momentum of policymaking. The full Council should have an opportunity to discuss each item and choose to refer to a commission or Council Policy Committee. Currently, the Agenda & Rules committee sends items which doesn't allow the full Council to be aware or even know about the item prior to being sent to a committee or commission where it may be for 120 days. The current process is not just and should be changed to ensure equity in the decision to refer to a commission or Council Policy Committee; and

WHEREAS, This process for items can take months to even hear back about their status. Council should refer Council items to commissions and Council Policy Committee; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California hereby amend Council Rules of Procedures Section C-1 and G-1 such that items submitted by the Mayor or Councilmembers be placed directly on the City Council agenda rather than beginning with submission to commissions or Council Policy Committees to ensure equity in the process.



Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Ben Bartlett, Kate Harrison, Rigel Robinson,  
and Sophie Hahn

Subject: Letter of Support for Proposition 16: Repeal Proposition 209 Affirmative  
Action Amendment (2020)

RECOMMENDATION

That the Mayor of Berkeley and Members of the City Council support Proposition 16--a ballot measure that would remove the ban on affirmative action--by sending 2 letters, 1) the YES ON 16, Opportunity for All Coalition Campaign and 2) State Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, and Buffy Wicks.

BACKGROUND

On June 30, 2020, Councilmember Rigel Robinson introduced a resolution in support of Assembly Constitutional Amendment (ACA) 5, which eventually led to Proposition 16. The Council adopted the resolution. This item seeks to reinforce the City's support for affirmative action by referring the Council to send a letter to California state legislators and to the YES ON 16, Opportunity for All Coalition Campaign in favor of the passage of Proposition 16. If passed, Proposition 16 will repeal Proposition 209 (1996).

Proposition 209, known as the California Civil Rights Initiative, added Section 31 to Article I of the California Constitution, which reads, "*The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.*"<sup>1</sup> Since its passage in 1996, California has become one of only eight states that do not allow race or gender to be among the many factors considered in public employment, education, and contracting. Removing essential tools to fight discrimination against women and people of color, Proposition 209 set up obstacles to success for marginalized and underrepresented groups.

Allowing racial, gender, and ethnic diversity to be considered as one of many factors in public employment, contracting, and education will allow the City to effectively and equitably serve its constituents. As a city that is home to one of the largest public universities in California and committed to equal opportunity, the City of Berkeley should

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<sup>1</sup>[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=)

send a letter of support for Proposition 16 to State Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks.

ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

FISCAL IMPACTS

No fiscal impact.

CONTACT PERSON

Councilmember Ben Bartlett:  
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Katie Ly

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[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)

ATTACHMENTS AND MATERIALS

1. Sample Letter of Support to the YES ON 16, Opportunity for All Coalition Campaign
2. Sample Letter of Support to Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks

**Attachment 1**

October XX, 2020

YES ON 16 - Opportunity for All Coalition Campaign

Re: Proposition 16 Support

Dear leaders of the YES ON 16 - Opportunity for All Coalition Campaign,

The Honorable Mayor and Members of the Berkeley City Council are pleased to support Proposition 16 and demonstrate our solidarity with the YES on 16 - Opportunity for All Coalition campaign.

The current political climate and the COVID-19 pandemic illuminates the ways in which California must unite communities and work together to help those most vulnerable in our state. Now, more than ever, we must support and pass Proposition 16 in order to ensure that the most impacted communities receive equitable support and to take a strong stance against racism, sexism, xenophobia, and the current policies on the federal level that use race and gender to divide our communities.

Let's pass Proposition 16 and fight for equal opportunities for all!

Respectfully,  
the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin  
Mayor, City of Berkeley

Members of the Berkeley City Council

**Attachment 2**

October XX, 2020

The Honorable Shirley Weber  
Member of the California State Assembly

The Honorable Mike Gipson  
Member of the California State Assembly

The Honorable Miguel Santiago  
Member of the California State Assembly

The Honorable Lorena Gonzalez  
Member of the California State Assembly

The Honorable Buffy Wicks  
Member of the California State Assembly

Re: Proposition 16 Support

Dear Assemblymembers Shirley Weber, Mike Gipson, Miguel Santiago, Lorena Gonzalez, and Buffy Wicks,

The Honorable Mayor and Members of the Berkeley City Council are pleased to support Proposition 16. Proposition 16 will repeal Proposition 209 (1996), allowing the State of California to pursue minority equal opportunities with access initiatives in public employment, education, and contracting.

The current political climate and the COVID-19 pandemic illuminates the ways in which Minority-owned businesses have been disproportionately impacted by the COVID-19 pandemic and current political climate. Such impacts require a plan for equitable economic recovery that consists of racially conscious governmental intervention.

Now, more than ever, we must support and pass Proposition 16 in order to ensure that the most impacted communities receive equitable support and to take a strong stance against racism, sexism, and xenophobia, and the current policies on the federal level that use race and gender to divide our communities.

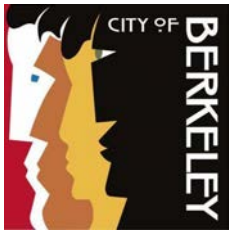


Respectfully,  
the Honorable Mayor and Members of the Berkeley City Council

Jesse Arreguin  
Mayor, City of Berkeley

Members of the Berkeley City Council





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author), Councilmember Rashi Kesarwani (Co-Sponsor), Councilmember Susan Wengraf (Co-Sponsor) and Mayor Jesse Arreguin (Co-Sponsor)

Subject: “Step Up Housing” Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue

RECOMMENDATION

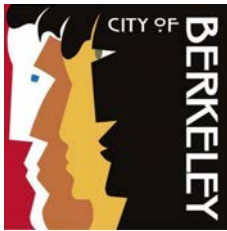
Adopt a resolution allocating approximately \$900,000 per year for 10 years, as well as a one-time allocation of approximately \$32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020—an allocation of \$2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.

Refer to the next meeting of the Budget and Finance Policy Committee to confirm the availability of requested funding for the 1367 University project and to set priorities for other Measure P-funded programs and services as part of the mid-year budget process.

CURRENT SITUATION

Homelessness is increasing in the City of Berkeley and throughout the Bay Area. Berkeley currently has 1,108 homeless residents, of whom 813 were living on the street as of a point-in-time count in January 2019. This represents a 14% increase in two years.

To help address the need for supportive housing, Building Opportunities for Self-Sufficiency (BOSS) has proposed to operate the Step Up Housing initiative, a new permanent supportive housing project for individuals experiencing homelessness. BOSS is a 501c3 nonprofit organization that will serve as the master tenant and provide supportive services to the residents of the project at 1367 University Avenue.



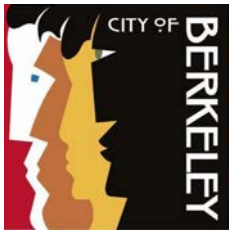
Councilmember Ben Bartlett  
City of Berkeley, District 3

BOSS has partnered with Panoramic Interests to develop the new permanent housing project, which was unanimously approved by the Berkeley Zoning Adjustments Board on July 9, 2020 and can be built on an accelerated 16-week timeline. As a result, the project will result in huge savings both for costs of and time of development. While Panoramic Interests will be responsible for obtaining building permits, financing construction, and building the project, BOSS will be responsible for all operations and property management.

The project will include 39 fully furnished studio apartments, private bathrooms for each studio, a 400-square-foot community room, a community kitchen, two offices for support staff and services, permanent on-site property management, and 24/7 security. The building will be constructed with modular units built around an approximately 615-square-foot private central courtyard.

BOSS will provide services for Step-Up Supportive Housing including connecting residents to mental health resources, substance abuse recovery services, employment, education, and legal services and will accompany them to service providers when appropriate. The program will ensure participants obtain health insurance coverage and connect them to primary care providers. Opportunities for socialization and peer support will be provided through the organization of on-site support groups, learning workshops, social activities, community meals, and service visits by outside providers. BOSS will also manage an on-site food pantry in collaboration with Alameda County Community Food Bank. These services will help residents maintain stable housing, improve mental and physical health, and decrease social isolation. On-site service hours will be provided Monday-Friday, 9 am-5 pm, but the case manager or another designated staff member will be on-call as needed at all times.

The program will be staffed by a number of employees, including a program manager, housing manager, property manager, cook, maintenance worker, and overnight monitor. Roughly two-thirds of the expenses are related to program operations and delivering supportive services for the residents. The balance of the expense is for housing. The total operating budget is \$1,844,515 annually. This resolution would cover \$900,000 of the annual operating costs over a 10-year period and a one-time \$32,975 allocation for start-up costs, including purchasing household items for the units, kitchen supplies, groceries, office furniture, security cameras, etc.



Councilmember Ben Bartlett  
City of Berkeley, District 3

The remaining \$944,515 is being requested from the County of Alameda. The City's commitment is contingent upon the funding of the balance of the project.

## BACKGROUND

California has the highest real world poverty rate of any state, 17.2% over the previous three years and much higher than the national rate.<sup>1</sup> A major contributing factor to the state's high poverty indices is that many California residents spend much of their income on housing due to high construction costs.<sup>2</sup> Throughout the state, many affordable housing development projects are stalled, burdened, and have incurred higher than the median costs for development.

For example, in Alameda, CA, Everett Commons, which is a low-income development that provides housing for only 20 families, costs \$947,000 per unit.<sup>3</sup> The notoriously high price of land and the rising cost of construction materials are contributing factors. On the other hand, the Step Up Housing Initiative uses an efficient and cost-effective modular construction model that provides 39 individuals with not only stable housing, but a safe and supportive environment where they can access critical employment, health, substance abuse, and community resources and services. Berkeley can help address the shortage of homes and effectively alleviate the City's homelessness crisis through this innovative and practical project.

## REVIEW OF EXISTING POLICIES AND PLANS

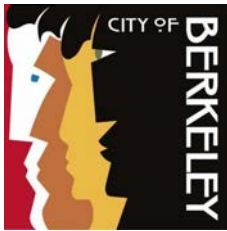
Berkeley voters overwhelmingly passed Measure P in November 2018 with 72% of the vote. The Measure raised the transfer tax on property sales over \$1.5 million from 1.5% to 2%, which is expected to generate approximately \$6-8 million annually. These funds were intended to be allocated towards various homeless services, including permanent housing, supportive services, and navigation centers.

Measure P also created an independent commission, the Homeless Services Panel of Experts, to provide recommendations on funding allocations to the City Council. In December 2019, the Homeless Services Panel of Experts published its first set of recommendations for initial investments from the General Fund to address homelessness in Berkeley. The Panel's recommendations prioritized certain categories of activities and

<sup>1</sup> <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf>

<sup>2</sup> <https://www.sacbee.com/article245815115.html>

<sup>3</sup> <https://www.latimes.com/homeless-housing/story/2020-04-09/california-low-income-housing-expensive-apartment-coronavirus>



Councilmember Ben Bartlett  
City of Berkeley, District 3

set forth a percentage of funding for each category. Permanent housing was listed as the top priority, with 30% of the funds recommended to be allocated towards such projects. The remainder was recommended to be allocated towards shelter and temporary accommodations, immediate street conditions and hygiene, supportive services, flexible housing subsidies, and infrastructure. The City Council approved on June 30, 2020 Measure P allocations for FY 2020-21 that included \$2.5 million for permanent housing subsidy.

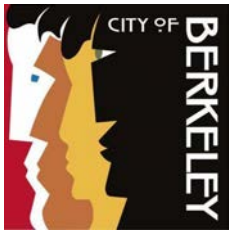
In 2017, the City Council also referred staff to create a 1000 Person Plan, which seeks to end homelessness for 1000 people in Berkeley. In 2019, City staff responded to this referral and concluded that the Council needed to provide up-front investments in targeted homelessness prevention, light-touching housing problem-solving, rapid rehousing, and permanent subsidies. This proposal to lease and operate the Step Up Housing initiative at 1367 University would help move forward the 1000 Person Plan and also accomplish the Homeless Services Panel's top priority of providing stable and permanent supportive housing for individuals experiencing homelessness.

In addition, this project also fulfills the goals of Councilmember Bartlett's original Step Up Housing initiative, which passed unanimously on February 14, 2017. See Attachment 3 for the original item.

#### CONSULTATION/OUTREACH OVERVIEW

Councilmember Bartlett's office collaborated with BOSS and Panoramic Interests to ensure the long-term success of this new permanent supportive housing project, the Step Up Housing initiative. By bringing together BOSS's expertise in the field of supportive services and Panoramic's efficient modular construction model, this project can be operational and begin providing stable housing to 39 individuals within twelve months of receiving this funding commitment, resulting in dramatic savings in costs and delivery time.

BOSS was founded in Berkeley in 1971 to serve severe and persistent mentally ill homeless individuals and their families, and has since expanded to serve over 3,000 families and individuals per year across Alameda County, including persons experiencing homelessness, mental illness, former incarceration/justice system involvement, domestic or community violence, unemployment, and other crises. BOSS has 49 years of experience serving the target population, and 45 years of experience operating emergency, transitional, and permanent housing programs.



Councilmember Ben Bartlett  
City of Berkeley, District 3

Panoramic Interests has been building high density infill development projects in the Bay Area since 1990. Its work in downtown Berkeley and San Francisco includes 15 projects, adding more than 1,000 new units of housing, and 100,000 square feet of commercial space. From 1998-2004, Panoramic built seven new mixed-use apartment buildings in downtown Berkeley. During this time, Panoramic housed more than 80 Section 8 tenants, making it the largest private provider of Section 8 housing in the City.

This collaborative effort between the City, the service provider, and the developer can serve as a regional model for future permanent supportive housing projects in Berkeley and throughout the Bay Area.

#### RATIONALE FOR RECOMMENDATION

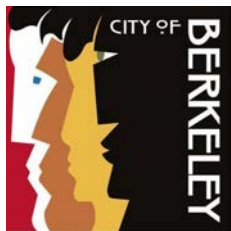
The City's funding commitment will help address the homelessness crisis by allowing for the long-term and stable housing of 39 individuals experiencing homelessness as well as the provision of on-site services to help those individuals retain housing, improve their mental and physical health, connect with employment and education opportunities, and decrease social isolation. This Step Up Housing initiative not only will result in huge cost savings through its streamlined processes, but also it can be operational within twelve months of receiving this funding commitment. In addition, this project will serve as a regional model for other jurisdictions to consider when dealing with the homelessness crisis in their cities.

#### FISCAL IMPACTS

The new permanent supportive housing project, known as the Step Up Housing initiative, at 1367 University is requesting a one-time \$32,975 allocation for start-up costs and \$900,000 annually for 10 years from Measure P transfer tax receipts. The remaining \$944,515, to cover the annual \$1,844,515 operating budget, is being requested from the County of Alameda. The supportive housing model will have dramatic savings of cost and delivery time.

#### ENVIRONMENTAL SUSTAINABILITY

The project itself was determined by the Planning Department to be categorically exempt from the provisions of the California Environmental Quality Act pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines.



Councilmember Ben Bartlett  
City of Berkeley, District 3

### CONTACT PERSON

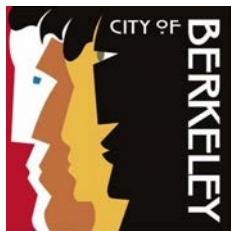
Councilmember Ben Bartlett:  
Katie Ly  
James Chang

510-981-7130  
[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)

### ATTACHMENTS AND MATERIALS

1. Resolution
2. Project Summary Sheet
3. Step Up Housing Council Item from February 14, 2017: “Direction to City Manager: “Step Up Housing” Initiative – Supportive Housing for Homeless and Very Low-Income People”





Councilmember Ben Bartlett  
City of Berkeley, District 3

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

ALLOCATING APPROXIMATELY \$900,000 ANNUALLY FOR 10 YEARS AND A ONE-TIME AMOUNT OF APPROXIMATELY \$32,975 OF MEASURE P FUNDS TO LEASE AND OPERATE THE NEW PERMANENT SUPPORTIVE HOUSING PROJECT FOR THE HOMELESS AT 1367 UNIVERSITY AVE.

WHEREAS, the City Council passed unanimously the original Step Up Housing Initiative introduced by Councilmember Bartlett on February 14, 2017; and

WHEREAS, Measure P was passed by Berkeley voters in November 2018 to raise the transfer tax on roughly the top-third of properties from 1.5% to 2% and allocate those funds towards various homeless services, including permanent housing, supportive services, and navigation centers; and

WHEREAS, Measure P designated the Homeless Services Panel of Experts to advise the Council on expenditures for homeless services; and

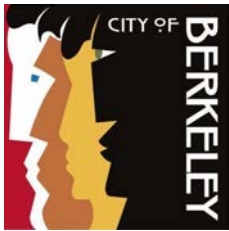
WHEREAS, in December 2019 the Homeless Services Panel of Experts published their recommendations for initial allocations under Measure P, including highlighting permanent housing as the City's top priority and recommending 30% of Measure P funds be allocated to permanent housing; and

WHEREAS, the City Council approved on June 30, 2020 Measure P allocations for FY 2020-21 that included \$2.5 million for permanent housing subsidy; and

WHEREAS, the Berkeley Zoning Adjustments Board approved the permanent supportive housing development project at 1367 University on July 9, 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the following for the project at 1367 University Ave:

- A reservation of approximately \$32,975 in Measure P funds for start-up costs associated with the project.



Councilmember Ben Bartlett  
City of Berkeley, District 3

- A reservation of approximately \$900,000 in ongoing funds annually for 10 years for the leasing and operation of the proposed project, with funding adjusted annually based on the Consumer Price Index for Oakland-Hayward-Berkeley, CA.
- In the event BOSS is unable to perform its function as the service provider, an alternative qualified service provider may operate the project with the review and approval of the City Manager, or her designee.
- Further, the City's commitment is contingent upon the funding of the balance of the project.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements, and any amendments will be kept on file in the Office of the City Clerk.



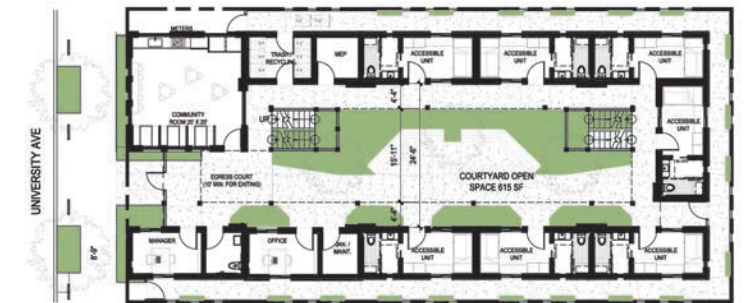
# Step-Up Housing, 1367 University Ave. Berkeley (39 studios, community room, two offices)



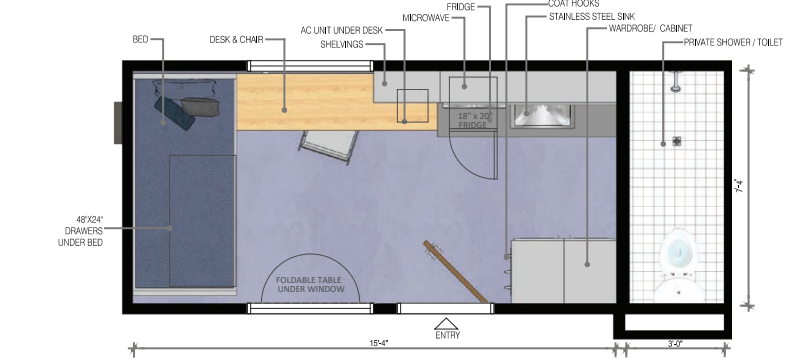
**1367 University Ave. entrance**



**Interior courtyard and community space**



**Ground floor plan, with offices and community room**



**Typical studio**

**PROJECT SUMMARY**

- Name & Location: Step-Up Housing, 1367 University Ave. (at Acton)
- Target Population: Homeless, low-income, single adults
- Number of Units: 39 studios, with community room, and mgmt. offices
- Service Provider: BOSS 24/7 presence on-site
- Services: Case management, health/mental health/employment referrals. On-site peer support/socialization and life-skills activities.

**GOALS/SERVICES**

- Get 39 individuals off the streets and into stable housing
- Provide safe and supportive environment for training & assistance
- Improve participants overall health by connecting them to primary care, mental health resources, substance abuse recovery services and socialization/peer support
- Reduce participant hospitalizations and use of emergency response systems
- Improve participant mental health status and daily functioning
- Support participants in increasing income and managing finances
- Support participants to obtain employment
- Increase meaningful activity and decrease social isolation among participants
- Organize on-site support groups, learning workshops, social activities, community meals and service visits by outside providers
- Manage an on-site food pantry in collaboration with Alameda County Community Food Bank

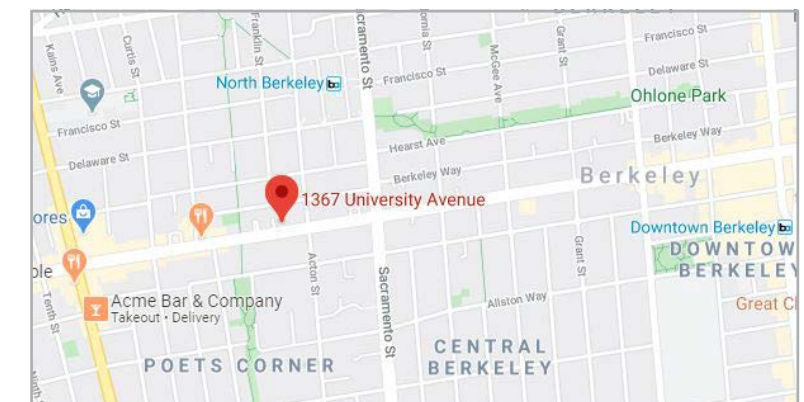
**LOCATION**

The Step-Up Housing project by BOSS is centrally located, close to stores, offices, and transit. It has a Walkscore of 90/100 (“Walker’s Paradise”) and a Bikescore of 98 (“Biker’s Paradise”). Residents will not need a car for daily errands, and will have easy access to BART and AC Transit.

**THE HOUSING**

The Step-Up Housing will consist individual studios, community space, outdoor areas, and management offices for BOSS. The project will include:

- 39 individual studios, fully furnished
- Private bath and showers for each studio
- Engineered soundproofing and HVAC for all spaces
- Direct access in each unit to outdoor space
- Private outdoor courtyard and community space
- Community kitchen, laundry, and social space
- Two private offices for support staff and client services
- Permanent on-site property management and support staff (BOSS)
- Secured entrance and 24/7 security
- Modular units. Construction time: 16 weeks



**Project Location: 1367 University Ave. Berkeley (at Acton)**

**FOR FURTHER INFORMATION**

**Donald Frazier**  
BOSS  
510.649.1930 x 1012  
dfrazier@self-sufficiency.org

**Patrick Kennedy**  
Panoramic Interests  
415.701.7001  
Patrick@panoramic.com



Councilmember Ben Bartlett  
District 3

CONSENT CALENDAR  
~~January 24~~ February 14, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett & Councilmember Linda Maio & Councilmember Lori Droste

Subject: ~~Referral Direction~~ to City Manager: “Step Up Housing” Initiative ~~–Micro Units to House–~~ Supportive Housing for Homeless and Very Low-Income People

RECOMMENDATION

~~Refer Direct to the City Manager~~ Ad-Hoc subcommittee to discuss and facilitate implementing the following actions:

1. Identify parcels of City owned land for siting assisted-living buildings.
2. Amend the permitting and approvals process to facilitate the rapid creation of below market housing.
3. Issue requests for proposals through a competitive bidding process for a development of up to 100 units of housing. ~~Expedite the process of inviting proposals through the competitive bidding process and begin the process as soon as possible in an expedited manner. For-profit and non-profit developers can be included in the bidding process. The proposal should demonstrate partnerships with a housing non-profit and a service provider.~~
- ~~4. Assist the selected developer with obtaining zoning approval and a building permit in an expedited manner.~~
- ~~4. Select a housing non-profit to partner with. Identify potential obstacles in creating prefabricated micro-units in a timely fashion. Recommend courses of action to remove those obstacles.~~
5. The housing non-profit ~~partner, in partnership with Federally Qualified Healthcare Centers,~~ will be responsible for managing and operating the building. ~~The tenants will be required~~ Request the non-profit to work with employ a cooperative model in managing the housing non-profit to maintain and operate the building property.
6. Establish criteria for selecting individuals and determining eligibility. These need-based criteria will take into account seniors, people with disabilities, and former Berkeley natives residents who have become homeless.
7. This project shall be ~~considered a public works project and be~~ subject to the terms of athe community workforce agreement with existing prevailing wage requirements.

8. Priority consideration will be given to: (i) Proposals that most quickly provide the maximum number of units for the least amount of cost, and (ii) proposals that include locally sourced materials and construction.

## FINANCIAL IMPLICATIONS

~~Minimal costs and staff~~ Staff time.

## BACKGROUND

On January 14, Laura Jadwin, a homeless resident of Berkeley, was found dead of exposure. ~~This was one of several deaths~~ Deaths of homeless individuals ~~in recent weeks are tragic and preventable~~. Our City is experiencing a homelessness and housing affordability crisis. City staff estimates that there are currently between 900 and 1200 homeless people living in Berkeley. Due to high housing costs, numerous low-income members of the Berkeley community are at risk of homelessness. Furthermore, the Trump administration's anticipated funding cuts ~~will~~ may cause the City's homeless population to multiply exponentially. This is a health and safety emergency that has cost lives and degraded standards of living for all residents.

~~Councilmember Bartlett sees~~ We see this crisis as an opportunity for innovation. This item ~~referral~~ seeks to jumpstart innovative financing and development models for assisted and low-income housing that emphasize speed, durability, and cost efficiency.

~~Conventionally built buildings cost the City an average of \$429,400<sup>1</sup> per unit. This high price results from expensive land costs, costs associated with a slow and complex permitting system, and high costs of development and execution. This item~~ This referral will reduce costs by constructing the building above City owned land and by empowering the City to speed up its permitting and approvals process. Additionally, this item seeks to mitigate prohibitively high ~~building costs by encouraging prospective~~ Prospective developers ~~are encouraged to design~~ present innovative financing ~~and construction solutions which will result in a large number for the rapid creation of homeless individuals housed quickly for scalable assisted living models at~~ reduced costs.

Step Up housing will foster human resiliency, leverage scarce resources, and rationalize the regulatory process. Given the urgency of the homeless crisis, the City must immediately ~~initiate the bidding process and begin exploring~~ identify and implement solutions.

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<sup>1</sup>City of Berkeley Affordable Housing Nexus Study  
[http://www.cityofberkeley.info/Clerk/City\\_Council/2015/07\\_Jul/City\\_Council\\_\\_07-14-2015\\_\\_Special\\_Meeting\\_Agenda.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/07_Jul/City_Council__07-14-2015__Special_Meeting_Agenda.aspx)

The City Council, just like all local governments, has a duty to ensure the welfare of its people. Berkeley's Step Up Housing Initiative will provide a road map for future supportive housing developments that can be replicated in other affected communities.

ENVIRONMENTAL SUSTAINABILITY

This item will result in a positive environmental impact on the community. Increasing local access to low-income housing reduces automobile dependence and tailpipe emissions.

CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130

Councilmember Linda Maio, 510-981-7110

Councilmember Lori Droste, 510-981-7180



Councilmember Ben Bartlett  
District 3

CONSENT CALENDAR  
February 14, 2017

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett & Councilmember Linda Maio & Councilmember Lori Droste  
Subject: Direction to City Manager: “Step Up Housing” Initiative – Supportive Housing for Homeless and Very Low-Income People

RECOMMENDATION

Direct the Ad-Hoc subcommittee to discuss and facilitate implementing the following actions:

1. Identify parcels of City owned land for siting assisted-living buildings.
2. Amend the permitting and approvals process to facilitate the rapid creation of below market housing.
3. Issue requests for proposals through a competitive bidding process for a development of up to 100 units of housing in an expedited manner. For-profit and non-profit developers can be included in the bidding process. The proposal should demonstrate partnerships with a housing non-profit and a service provider.
4. Identify potential obstacles in creating prefabricated micro-units in a timely fashion. Recommend courses of action to remove those obstacles.
5. The housing non-profit, in partnership with Federally Qualified Healthcare Centers, will be responsible for managing and operating the building. Request the non-profit to employ a cooperative model in managing the property.
6. Establish criteria for selecting individuals and determining eligibility. These need-based criteria will take into account seniors, people with disabilities, and former Berkeley residents who have become homeless.
7. This project shall be subject to the terms of the community workforce agreement with existing prevailing wage requirements.
8. Priority consideration will be given to: (i) Proposals that most quickly provide the maximum number of units for the least amount of cost, and (ii) proposals that include locally sourced materials and construction.

FINANCIAL IMPLICATIONS

Staff time.

## BACKGROUND

On January 14, Laura Jadwin, a homeless resident of Berkeley, was found dead of exposure. Deaths of homeless individuals are tragic and preventable. Our City is experiencing a homelessness and housing affordability crisis. City staff estimates that there are currently between 900 and 1200 homeless people living in Berkeley. Due to high housing costs, numerous low-income members of the Berkeley community are at risk of homelessness. Furthermore, the Trump administration's anticipated funding cuts may cause the City's homeless population to multiply exponentially. This is a health and safety emergency that has cost lives and degraded standards of living for all residents.

We see this crisis as an opportunity for innovation. This item referral seeks to jumpstart innovative financing and development models for assisted and low-income housing that emphasize speed, durability, and cost efficiency.

This referral will reduce costs by constructing the building above City owned land and by empowering the City to speed up its permitting and approvals process. Additionally, this item seeks to mitigate prohibitively high building costs. Prospective developers are encouraged to present innovative financing and construction solutions for the rapid creation of scalable assisted living models at reduced costs.

Step Up housing will foster human resiliency, leverage scarce resources, and rationalize the regulatory process. Given the urgency of the homeless crisis, the City must immediately identify and implement solutions.

The City Council, just like all local governments, has a duty to ensure the welfare of its people. Berkeley's Step Up Housing Initiative will provide a road map for future supportive housing developments that can be replicated in other affected communities.

## ENVIRONMENTAL SUSTAINABILITY

This item will result in a positive environmental impact on the community. Increasing local access to low-income housing reduces automobile dependence and tailpipe emissions.

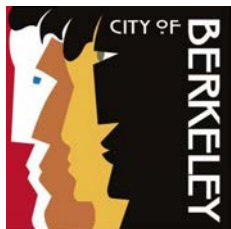
## CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130

Councilmember Linda Maio, 510-981-7110

Councilmember Lori Droste, 510-981-7180





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR  
October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Removal of Traffic Bollards on the Intersection at Fairview and California St.

### RECOMMENDATIONS

Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons:

1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street;
2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and
3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk, debris, and garbage.

### CURRENT SITUATION

Traffic bollards on the intersection at Fairview and California Street have created many issues for residents on the 1600 block of Fairview Street. Since the road was never intended to be a cul-de-sac, it was not designed to allow drivers to conveniently exit when one entrance is blocked off. Instead, drivers are either forced to make a u-turn, which is difficult to do because of the narrow road, or they must drive onto an empty driveway to exit the street. However, exiting the street is made especially difficult as a result of the multitude of cars that line the street. In addition, some residents block off their driveway with trash cans to prevent cars from touching their property.

The bollards have also created barriers for those who need quick access to the street, such as large delivery trucks, emergency responders, street cleaning vehicles, and other vehicles. Many of these trucks must reverse their vehicle for long stretches of the road in order to exit the street. However, as stated previously, this is no easy task.

Making matters worse, the traffic bollards have incentivized illegal dumping. Mattresses, dressers, and other furniture have been found littered in front of the bollards. Because the dumpings do not “block” the road, local authorities do not prioritize its clean up. Not only is this aesthetically displeasing, but it can also be a potential hazard.

In response to these frustrations, people frequently and illegally move the bollards to allow their cars to pass through. It is important to note that these actions have not resulted in any reported accidents or speeding violations. It has become clear that the

bollards no longer serve a use on this street and are merely a hindrance to the community.

### BACKGROUND

The traffic bollards were put in place through council resolution (No. 54,046 and No. 54,046) and as a result, removal of the bollards requires City Council action. In 2019, a constituent issued a neighborhood petition among residents on the 1600 block of Fairview St., demonstrating that up to 53% (depending on conflicting address records) of the households on the block support the removal of the traffic bollards (refer to Attachment 1). Of the people who opened their doors to sign the petition, however, 77% responded in favor of removing the bollards.

Those that signed the petition believe that the need for these bollards is long gone. In response to speeding, permanent traffic circles have been installed both at the intersection of California and Fairview Street and throughout the surrounding neighborhoods. Hence, removing the bollards would not result in a substantial increase in traffic nor would it incentivize speeding because the traffic circles already serve as deterrents. In addition, the area is no longer a hot-bed for crime, which was the reason that the bollards were implemented in the first place. Instead, the bollards have done nothing except attract illegal dumping and cause inconvenience to drivers in the neighborhood.

In November 2019, City staff sent a letter to the Fairview Street residents to inform them of the petition and that this item will be brought to Council in 2020. See Attachment 2. The plan was to bring this item to the Transportation Commission followed by City Council this year. However, the item was pushed off as a result of the COVID-19 pandemic and was never introduced because the Transportation Commission has not continued their regular meetings.

The Council should refer to the City Manager to remove the traffic bollards at the Fairview and California Street intersection. If this item passes, the Department should move forward with this request once the department has addressed its immediate priorities.

### FISCAL IMPACTS

Total costs would only include the cost of relocation. This is because the bollards can be reused since they are still in good condition.

### ENVIRONMENTAL IMPACTS

Not only are illegal dumpings an eyesore, but they also increase the chance that chemicals from waste and certain appliances can pollute the soil and waterways. In addition, many of the appliances that are dumped are highly flammable, and, unless properly disposed of, could act as kindling for a fire.

### CONTACT PERSON

Councilmember Ben Bartlett:

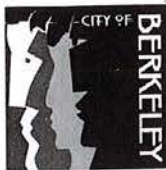
510-981-7130

Katie Ly

[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)

ATTACHMENTS

1. Neighborhood Petition
2. Fairview Street Outreach Letter



RECEIVED  
OCT 10 2019  
BY: JG

Date: SEPT 19, 2019

City of Berkeley

Neighborhood Request for Traffic PASSAGE/INGRESS + EGRESS

We, the residents of 1600 BLOCK OF FAIRVIEW ST., would like the City of Berkeley's Public Works (PW) Transportation Division to initiate a Traffic INGRESS + EGRESS PASSAGE in our INTERSECTION to address the following concern(s):

- Speeding
- Pedestrian Safety
- Cut-Through Traffic
- Commercial Vehicle Restriction
- Bicycle Safety

Parking Issues MOBILITY ON STREET CLEANING AND PARKING ENFORCEMENT DAYS

Other (Please Specify) USE AND MOBILITY OF ACCESS TO RESIDENT VEHICLES TO: ALCATRA SACRAMENTO ASHBY CORRIDORS  
ELIMINATION OF HARBORAGE OF JUNK, DEBRIS + GARBAGE

◆ The specific location encompasses THE INTERSECTION, between FAIRVIEW ST and CALIFORNIA ST.

- Brief explanation of the reasons for the need for traffic PASSAGE, and any supporting observations:
  - ① THIS INTERSECTION, 30 YEARS AGO, WAS A HEAVY DRIVE CORNER. NOT FOR DECADES.
  - ② RESIDENTS OF 1600 BLOCK OF FAIRVIEW ARE UNNECESSARILY OBSTRUCTED AND INCONVENIENCED BY THE OBSTRUCTIVE "BOLLARDS", OBSTRUCTIVE SIGNS AND ENFORCEMENT.
  - ③ THE BOLLARDS ARE PUSHED TO THE SIDE OF THE STREET, OPENING PASSAGE "ILLEGALLY".
  - ④ THE BOLLARDS, CONSEQUENTLY, CREATE A HARBOR FOR JUNK, DEBRIS, + GARBAGE.
  - ⑤ WE ALREADY ILLEGALLY PASS THROUGH REGULARLY. MANY DO NOT ILLEGALLY PASS THROUGH

➤ Please provide the name and contact information of the resident representing the consensus of your neighborhood on this matter:

Name: ANDREW MAROWITZ  
Address: 1605 FAIRVIEW ST #4, BERKELEY, CA. 94703  
Telephone: 510-356-6803 email: \_\_\_\_\_

Please submit the completed form to:

**Jesse Peoples, PE**  
1947 Center Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704

# BACKGROUND/HISTORY 1600 FAIRVIEW INTERSECTION

1. ABOUT 30 YEARS AGO, CALIFORNIA X FAIRVIEW WAS A HOT DRUG CORNER
  - (a) CITY COUNCIL VOTED ON RESOLUTION TO BLOCK ACCESS WITH OBSTRUCTIONS
2. IN THE LAST 15 YEARS OR LESS, PERMANENT TRAFFIC CIRCLES INSTALLED TO REDUCE SPEED OF VEHICLES
  - (a) THE PRE-EXISTING OBSTRUCTIONS REMAINED WITH TRAFFIC CIRCLES
3. DRUG SALES AT THIS LOCATION ELIMINATED DECADES AGO
  - (a) FAIRVIEW IS NOW/CURRENTLY A LOW CRIME AREA NEAR CALIFORNIA/KING
  - (b) DUE TO TRAFFIC CIRCLE(S) SPEEDING VEHICLES ARE FEW/NOT FREQUENT

## PROBLEMS GENERATED BY BOLLARDS/AND RULES

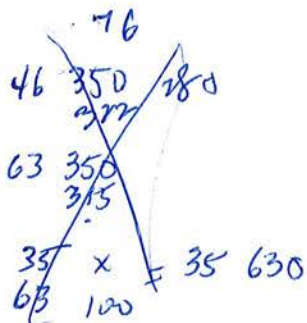
1. RESIDENTS WITH VEHICLES CANNOT READILY ACCESS CALIFORNIA, ALCATRAZ, SACRAMENTO, ASHBY UNLESS VIOLATING RULES
  - (a) BOLLARDS ARE PUSHED TO THE SIDE WHENEVER AFTER REPOSITIONING
  - (b) 1600 BLOCK OF FAIRVIEW HAS INSUFFICIENT PARKING SPACES FOR AMOUNT OF RESIDENTS. SO CALIFORNIA AND 1500 BLOCK ARE NEEDED
  - (c) ACCESS TO THE TURNAROUND OF THE TRAFFIC CIRCLE IS IMPORTANT
  - (d) STREET CLEANING DAYS (FIRST MON/TUES/WEDS/THURS) OF MONTH ACCESS IS VITALLY IMPORTANT
  - (e) FED EX/UPS TRUCKS (LARGE) AND EMERGENCY VEHICLES ACCESS EGRESS/INGRESS IS CHALLENGING
  - (f) TURNING AROUND ON A DEAD END STREET IS CHALLENGING/Y-TURN INTO OUT OF DRIVEWAYS (WITHOUT ACCESSING TURNAROUND/TRAFFIC CIRCLE
  - (g) THE BOLLARDS PUSHED TO THE SIDE HAS EVOLVED INTO A HARBOUR OF RE-USE OF CAST-OFF POSSESSIONS, AND DE-VOLVED INTO DEBRIS AND GARBAGE DUMP - LOOKS TERRIBLE/PUBLIC WORKS PICKS UP FREQUENTLY GET RID OF BOLLARDS WILL ELIMINATE A DUMP SITE AS CARS WILL BE BLOCKED BY DEBRIS

NOT HOME

NOT HOME

1632  
 1618 #7

1649  
 1637 #1, #3  
 1627 #B  
 1625 #A, #B, #C  
 1623 #2, #3, #7  
 1619 #4  
 1603 ?  
 1607 #C, #D, #E



35 FOR / 11 AGAINST = 76% OF CONTACTS FAVOR  
 35 OF 63 = 55.55% OF ADDRESSES

42 ADDRESSES

24 + 42 = 66 ADDRESSES

24 ADDRESSES

- 1640 (SFR) (YES)
- 1638 (SFR) (YES)
- 1636 (SFR) (NO / NO CONTACT)
- 1634 (SFR) (THINK ABOUT IT)
- 1630/32 (TWO HOUSES) (NOT HOME + NOT COME TO DOOR)
- 1626/28 (5 UNITS) (2 YES, 1 NO)
- 1622 (SFR) (NO)
- 1618 (7 UNITS) (3 YES, 1 NO)
- 1614/16 (DUPLEX) (NO / NO CONTACT)
- 1610 (SFR) (YES)
- 1606 (SFR) (NO)
- 1600 (SFR) (YES)

- ~~35~~ SIGNATURES
- 9 AGAINST
- 2 DOESN'T SIGN ANYTHING
- 17 NOT HOME / NOT ANSWER
- 3 VACANCIES
- 66 ADDRESSES

- (SFR) 1649
- (YES) (SFR) 1645
- (YES) (SFR) 1641
- (3 YES) (5 UNITS) 1639
- (NO) (SFR) 1637
- (NO) (SFR) 1635
- RENOVATE (SFR) 1631
- (2 YES) (3 UNITS) 1627
- ~~(2 YES)~~ (3 UNITS) 1625
- (5 YES) (8 UNITS) 1623
- (3 YES) (4 UNITS) 1619
- (2 YES) (2 VACANCIES) (4 UNITS) 1615
- (6 YES) (9 UNITS) 1607/11
- (NO) (DUPLEX) 1603/05
- (YES) (SFR) 1600





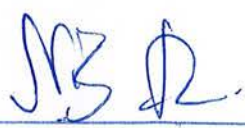

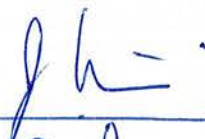




EVEN NUMBERED ADDRESSES

ODD NUMBERED ADDRESSES



|  |          |                 |                 |
|--|----------|-----------------|-----------------|
|  | SFR      | 1649            |                 |
|  | 5        | 1645 FA         |                 |
|  | SFR      | 1641            |                 |
|  |          | <del>1649</del> |                 |
|  |          | <del>1645</del> |                 |
|  | 5        | 1639            |                 |
|  | SFR      | 1637            |                 |
|  | SFR      | 1635            |                 |
|  | - ROAD - | 1631            |                 |
|  | 9        | 1627            |                 |
|  | 3        | 1625            |                 |
|  | 8        | 1623            |                 |
|  | 4        | 1619            |                 |
|  | 4        | 1615            |                 |
|  | 3+6      | 1607/11         |                 |
|  | 2        | 1603-5          |                 |
|  | 1        | 1601            |                 |
|  |          |                 | <del>1640</del> |
|  | SFR      |                 | 1640            |
|  | SFR      |                 | 1638            |
|  | SFR      |                 | 1631            |
|  | SFR      |                 | 1634            |
|  | 1630-7   |                 | 1631            |
|  | 2 SFR    |                 | 1628            |
|  | 5        |                 | 1626            |
|  | SFR      |                 | 1622            |
|  | 7        |                 | 1618            |
|  | 2        |                 | 1614/1          |
|  | 1        |                 | 1610            |
|  | 1        |                 | 1606            |
|  | 1        |                 | 223 1600        |

45  
24  
69  
67

| SIGNATURE                                                                          | ADDRESS                  | PRINT NAME        |
|------------------------------------------------------------------------------------|--------------------------|-------------------|
|    | 1615 FAIRVIEW ST #4      | ANDREW MAROWITZ   |
|    | 1615 Fairview St #1      | John C. Lake      |
|    | 1601 Fairview St         | Elizabeth Diamond |
|    | 1606 Fairview            | VITAL KONONOV     |
|   | 1607 Fairview APT. B     | NISSIM BOOZAGLO   |
|  | 1607 Fairview APT F      | Beth Phillips     |
|  | 1607 Fairview APT A      | Jesse Williamson  |
|  | 1619 Fairview St Apt 3   | Claudia Marguer   |
|  | 1623 Fairview St # B     | San Fiamé Bradley |
|  | 1623 Fairview St #6      | Erika Espinoza    |
|  | 1618 Fairview St. Apt. 5 | Michael White     |



1623 #2 Doesn't Stop Anything <sup>Page 9 of 16</sup>

1622 WANTS IT TO STAY AS-IS

1618 #2 MOTHER AND YOUNG(2) KIDS WANTS LOW TRAFFIC

1605 NOT WANT TO INVOLVE



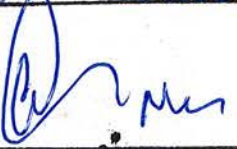
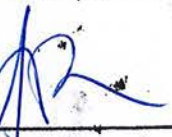
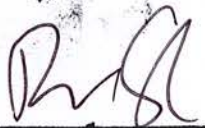






1631 VACANT/RENOVATION

1635 ~~NO ACCESS TO BELL/ADULT ADULTS~~ AGAINST

1697 AGAINST

1639 #3 NEW/LIKES DEAD END STREETS

Page 19 of 26  
 PETITION SIGNATURE LIST FAIRVIEW ST. 1600 BLOCK

| SIGNATURE                                                                             | ADDRESS                   | PRINT NAME      |
|---------------------------------------------------------------------------------------|---------------------------|-----------------|
| 1     | 1615 FAIRVIEW ST #4       | ANDREW MAROWITZ |
| 2     | 1639 FAIRVIEW ST. #5 APT. | JERILENE BROWN  |
| 3     | 1645 FAIRVIEW ST          | DANICA NULL     |
| 4     | 1640 FAIRVIEW ST          | Anand Brown     |
| 5    | 1638 FAIRVIEW ST          | Ron Shigeta     |
| 6  | 1610 Fairview St.         | Opal Davenport  |
| 7  | 1618 FAIRVIEW #6          | NINA STAVINSKA  |
| 8   | 1616 FAIRVIEW #3          | Nicole White    |
| 9  | 1614 FAIRVIEW #4          | Gail Levin      |
| 10  | 1626 FAIRVIEW ST #3       | SARAH WITT      |
| 11  | 1624 FAIRVIEW #1          | BRAD EFFORD     |
| 12                                                                                    |                           |                 |

~~1644 NO HOME~~

1639 #3 NO HOME

1649 NO HOME

1636 NOPE

1628 COME BACK - THINK ABOUT IT

1614 NOPE

1606 NOPE

1658 #3 NOT INTERESTED





1625 A/B/C NOT HOME

1626 A COUPLE APTS NOT HOME










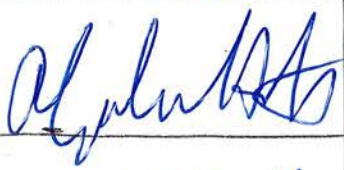


1628 A COUPLE NOT HOME

1628 #3 NOT INTERESTED

PETITION SIGNATURE Page 14 of 16 FAIRVIEW ST. 1600 BLOCK

| SIGNATURE                                                                           | ADDRESS             | PRINT NAME      |
|-------------------------------------------------------------------------------------|---------------------|-----------------|
| 1   | 1615 FAIRVIEW ST #4 | ANDREW MAROWITZ |
| 2                                                                                   | 1639 FAIRVIEW ST #4 | MARION MORRIS   |
| 3   | 1641 FAIRVIEW       | TIM WHITE       |
| 4   |                     |                 |
| 5  | 1618 FAIRVIEW ST #1 | KYLE BREWER     |
| 6                                                                                   |                     |                 |
| 7                                                                                   |                     |                 |
| 8                                                                                   |                     |                 |
| 9                                                                                   |                     |                 |
| 10                                                                                  |                     |                 |
| 11                                                                                  |                     |                 |
| 12                                                                                  |                     |                 |

PETITION SIGNATURE LIST FAIRVIEW ST. 1600 BLOCK

| SIGNATURE                                                                              | ADDRESS                      | PRINT NAME          |
|----------------------------------------------------------------------------------------|------------------------------|---------------------|
| 1     | 1615 FAIRVIEW ST #4          | ANDREW MAROWITZ     |
| 2      | 1611 Fairview St<br>unit C   | Andrew Rosales      |
| 3     | 1611 Fairview St<br>unit A   | Kevin<br>Kraeger    |
| 4     | 1611 Fairview St<br>Apt B    | Jordan Lewis        |
| 5    | 1619 Fairview St<br>#1       | MATT BALABAN        |
| 6   | 1619<br>Fairview 2           | Elizabeth M.        |
| 7    | 1623 Apt 1<br>Fairview St    | RUDY RAMIREZ        |
| 8    | 1623 APT #4<br>Fairview St   | Carmella Carreon    |
| 9    | 1623 APT. #8<br>Fairview St. | Cole Ash Houston    |
| 10  | 1627A Fairview St            | Anyssa Vincent-Hill |
| 11  | 1627 Fairview Apt C          | Danielle Bradford   |
| 12  | Apt 2<br>1639 Fairview St    | CHRISTINE ROSE      |

16/9 # 2 NOT HOME





Department of Public Works  
Transportation Division

November 25, 2019

Dear Fairview Street Resident,

You are receiving this letter because residents of the 1600 block of Fairview Street have initiated the process to request removal of the traffic diverters on Fairview Street at California Street by circulating a petition within the neighborhood. The petition shows that approximately 53% of the neighborhood supports the removal of these devices. Upon removal of the traffic diverters, the 1600 block of Fairview Street will become a two-way through street with all-way stop control at the intersection of Fairview Street and California Street.

Background:

On January 7, 1988 the Berkeley City Council passed resolution no. 54,046 authorizing installation of temporary traffic diverters on Fairview Street at California Street in an effort to abate crime in the area. On November 4, 1988 council passed resolution no. 54,528 which designated the traffic diverters as permanent fixtures.

Historically traffic diverters have been installed in the City to reduce through traffic, vehicle speeds, and other dangerous driving behaviors. However they can also negatively impact neighborhood circulation, limit access to residents, and encourage illegal dumping.

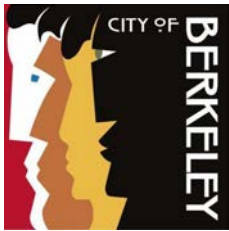
Next Steps:

Staff will prepare a report for the City Council conveying the results of the petition in favor of the removal of the barriers. The report is expected to be voted on by City Council at a regularly scheduled council meeting during the first half of next year. Please contact me by **Friday, January 3, 2020** at [jpeoples@cityofberkeley.info](mailto:jpeoples@cityofberkeley.info) or 510-981-6416 if you have any comments or questions in this regard.

Thank you,

Jesse Peoples, PE  
Assistant Traffic Engineer  
City of Berkeley, Public Works – Transportation Division  
1947 Center Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704





Councilmember Ben Bartlett  
City of Berkeley, District 3

CONSENT CALENDAR

October 13th, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Ben Bartlett and Sophie Hahn

Subject: Enforce Bi-Weekly (Once Every Two Weeks) Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley

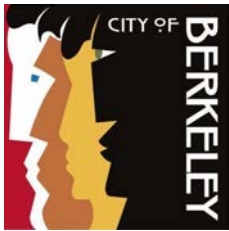
RECOMMENDATION

Refer to the City Manager to promote equitable street cleaning practices and require biweekly (once every two weeks), cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the City Manager should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials.

BACKGROUND

Residential cleaning is a City service that beautifies our community by removing litter and debris from our streets. In doing so, it protects our environment by reducing pollutants that can clog storm drain systems and reach waterways. Clean sidewalks with little to no litter would also ensure access and safety for pedestrians and people with disabilities. Such residential cleaning would promote an aesthetically pleasing neighborhood for residential and commercial spheres.

The City of Berkeley currently mandates residential cleaning once a month and follows a sweeping schedule according to the street name. Residents are encouraged to rake their leaves for composting and avoid sweeping materials into streets or curbsides where debris could impede people's ability to safely travel along the sidewalks. While street cleaning is not required for some exceptions, such as holidays, streets are usually swept on a regular basis based on the schedule. However, our current sweeping schedule has not been sufficient in addressing issues of littering, illegally dumped materials, and encampments in certain areas throughout Berkeley, especially in the South Berkeley neighborhood. As a result, the City should promote equitable street cleaning practices by requiring biweekly (once every two weeks) residential cleanings of



Councilmember Ben Bartlett  
City of Berkeley, District 3

not only the camps themselves but also adjacent neighborhoods to these encampment sites.

### CURRENT SITUATION

According to the 2019 report conducted by the nonprofit EveryOneHome, the City of Berkeley has counted 1,108 homeless people, which is an 11 percent increase since 2017.<sup>1</sup> Due to the lack of affordable housing, encampments have increased on the Caltrans property under the Interstate 880 overpass at University Ave in Berkeley as well as in certain areas in South Berkeley<sup>2</sup>.

According to South Berkeley residents, their neighborhood has been littered with trash, which has become a safety and sanitary concern. Reports of discarded clothing and illegally dumped materials, such as couches and televisions, are common in South Berkeley, especially along the block of Martin Luther King Jr. Way in the corner between Alcatraz Avenue and 62nd Street. Other encampments, trash, and debris have also been located in the BART-owned area, and this resultant litter violates the 1971 agreement between the City of Berkeley and BART in which the City holds responsibility in maintaining and cleaning the sidewalks along the BART tracks in South Berkeley.

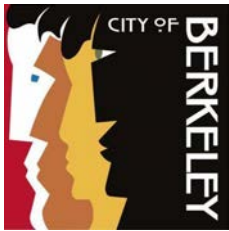
The littering issue has expanded to the “Here There” site that runs on the east side of Adeline Street, starting at Alcatraz Avenue and ending at 62nd Street below the BART overpass. While the “Here There” artwork has been intended to welcome visitors to the Berkeley community and commercial districts, encampments at this site populate the sidewalks. These sites have formed as a result of the BART fence, which prevents these encampments from moving onto the lawn around the sculpture and impedes the access and safety of the sidewalks due to the absence of an established clearance.

To promote health, safety, and cleanliness in Berkeley, the City should provide more frequent residential cleaning services for neighborhoods with a higher population of encampments, such as South Berkeley. In addition to the neighborhoods, the proposed biweekly cleaning services should help clean the camps as well. These neighborhoods should also include non-City owned property, such as Caltrans. However, in these

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<sup>1</sup> <https://www.sfchronicle.com/bayarea/article/Sanctioned-homeless-encampments-Oakland-and-15058546.php>

<sup>2</sup> <https://www.sfchronicle.com/bayarea/article/Sanctioned-homeless-encampments-Oakland-and-15058546.php>



Councilmember Ben Bartlett  
City of Berkeley, District 3

cases, the City should have the authority to bill the appropriate agency for the cost of staff and materials.

#### RATIONALE FOR RECOMMENDATION

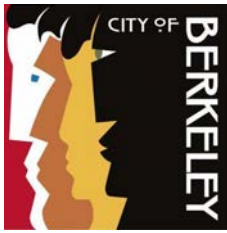
Debris has spread over the intersections, sidewalks, and yards throughout Berkeley, especially in District 3. Such debris contaminates the residential and commercial areas and poses a safety risk to pedestrians and motorists. In addition, dumping illegal trash along the sidewalks only attracts more littering. In effect, the trash exacerbates the safety, sanitary, and environmental issues of the community. To protect the safety and health of Berkeley residents, residential cleaning of the camps and the adjacent neighborhoods of the encampments in the city should be conducted at least once every two weeks.

The Public Works Department should determine the radius around the encampments in Berkeley so that City Staff can focus their efforts on areas that receive a considerable and frequent amount of litter due to the growing issue of encampments. The current schedule of one street cleaning per month is not satisfactory in eliminating waste and litter among the streets or in addressing the growing issue of encampments in Berkeley. Equitable residential cleaning services would ensure that Berkeley residents, especially those in South Berkeley, have safe and sanitary areas for residential and commercial purposes.

#### ACTIONS/ALTERNATIVES CONSIDERED

The City could enforce fines on those who dispose of trash along the sidewalks or on residents whose property contains illegally discarded trash. However, fining residents in possession of illegally discarded trash is an inequitable practice because they may not have been the one who disposed of the trash, nor do they have the resources to properly dispose of the detriment. In addition, this could have the unwanted effect of criminalizing poverty and would be inefficient because it would require police, or another authority, to monitor and patrol the neighborhoods. This would increase police focus on non-criminal matters when their services are better used elsewhere.

An alternative is to set up a system where community organizations and members of the public can volunteer to dispose of the litter. Another option is the City could mandate more residential cleaning across all of Berkeley. However, this practice would ignore the fact that areas with more encampments require more attention and residential cleaning due to the ongoing aforementioned issues.



Councilmember Ben Bartlett  
City of Berkeley, District 3

### FISCAL IMPACTS OF RECOMMENDATION

Staff time. More resources would also be necessary to fund more frequent street cleaning services regarding the City staff who would sweep the Berkeley streets and clean the camps. For encampments on non-City owned property, the City would save on financial resources by billing the appropriate agency for the cost of staff and materials. With greater accessibility, safety, and sanitation, cleaner streets could attract more people in the commercial areas, supporting local businesses and boosting the economy.

### ENVIRONMENTAL SUSTAINABILITY

Bi-weekly (once every two weeks) residential cleanings would remove the litter populating the camps and streets, which would reduce the risk of trash clogging storm drain systems or polluting the waterways. Litter can also carry unsanitary germs and thus, increase the ability to contract diseases. These issues must be prevented and mitigated, especially during a time when people are vulnerable to becoming infected with coronavirus.

### CONTACT PERSON

Councilmember Ben Bartlett  
Katie Ly

510-981-7130  
[kly@cityofberkeley.info](mailto:kly@cityofberkeley.info)



Office of the City Manager

**ACTION CALENDAR**

October 13, 2020

*(Continued from September 22, 2020)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: 2019 Crime Report and Five Year Use of Force Report

**PART 1: CRIME REPORT****INTRODUCTION**

At the request of City Council, the City Manager provides regular reports on crime in Berkeley and strategies undertaken by the Berkeley Police Department to safeguard our community. This report includes 2019 Part One crime information, and 2020 year-to-date (YTD) Part One crime information, as compared to the same time period in 2019.

This report also includes the first annual Use of Force Report, covering 2015-2019.

**CURRENT SITUATION AND ITS EFFECTS**

In 2019, total Part One crime in Berkeley increased by 15.6% overall. Part One Violent Crime increased by 3.2% (19 crimes) and Part One Property Crimes increased by 17% (921 crimes).

In 2019, (and for the second year in a row) there were no Homicides. However, increases in Part One Crimes were seen in Rape, Robbery, Aggravated Assault, and Larceny (Grand Theft, Petty Theft and Auto Burglary). Decreases were seen in Burglary, Auto Theft, and Arson.

In 2020 YTD, total Part One crime in Berkeley is down 1% overall. Part One Violent Crime decreased by 6% (23 crimes) and Part One Property Crimes is nearly identical, with 3,905 in 2019 YTD, and 3,888 in 2020 YTD.

### Homicides

In 2019, there were no homicides in Berkeley.

In 2020 YTD, there have been three homicides. All three homicide investigations resulted in the arrest and charging of the suspects.

### Robberies

In 2019, Robberies increased by 2.5% with 364 incidents as compared to 355 in 2018. 2019 data show an increase of 7.9% in pedestrian robberies and a decrease of 10.2% in commercial robberies. While the overall robbery numbers only increased slightly in 2019, laptop computer thefts/robberies continued to increase at a higher rate. Laptop thefts/robberies from Cafes and Restaurants increased by 39.3% for a total of 85 incidents versus 61 in 2018.

In 2020 YTD, Robberies are down 16% as compared to 2019 YTD. Pedestrian robberies were down sharply during the initial shelter order, and have started to rise over the summer. Estes robberies (where force is used during a shoplifting crime) have grown during the pandemic, and contributed to the increase in Robberies.

### Aggravated Assaults

Aggravated Assaults increased 2.9% in 2019, with 175 reports, compared to 170 in 2018. There were 28 confirmed shooting incidents in 2019 versus 20 in 2018. Confirmed shooting incidents include loud report calls where shell casings or other evidence of gunfire is found. Arrests were made in at least eight of these incidents.

In 2020 YTD, Aggravated Assaults are up 17%, with 20 more reports thus far. There were 21 confirmed shooting incidents through the first eight months of 2020. Arrests have been made in eight shooting cases thus far.

### Rape

In 2019, reported rapes increased 7.7%, with 70 reports as compared to 65 in 2018. Six of these cases were classified as stranger attacks.

In 2020 YTD as compared to 2019 YTD, rapes are down 21%, with 33 reports, as compared to 42 last year. None of these cases are classified as stranger attacks

### Burglary, Larceny and Auto Theft

In 2019, Burglaries decreased by 5.2%, with 788 reports as compared to 831 reports in 2018. Residential burglaries decreased by 19.6% while commercial burglaries increased by 23.8%. Larcenies increased by 25.5% to 5,029 cases as compared to 4,007 in 2018. The larceny figures include Auto Burglary which increased 42.2% from 1,739 cases in 2018 to 2,473 cases in 2019. Auto Thefts decreased 9.3% from 548 cases in 2018 to 497 this year.

In 2020 YTD, burglaries are nearly even from the same period in 2019 YTD, with larcenies overall down 9%. Catalytic converter thefts, with approx. 362 this year have accounted for 45% of grand thefts.

In 2020 YTD, Auto Thefts have risen sharply, up 66%, with 211 more auto thefts this year.

### Arson

In 2019, reported arsons decreased from 33 reported incidents in 2018 to 26 reported incidents in 2019, a 21% reduction. Most of the arson incidents were minor incidents.

In 2020 YTD, arsons are up by 23 incidents, with 34 in 2020 YTD, as compared to 11 in 2019 YTD.

### Data

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

#### Violent Crimes

Murder  
Rape  
Robbery  
Aggravated Assault

#### Property Crimes

Burglary  
Larceny (petty and grand theft, auto burglary)  
Auto Theft  
Arson\*

*\*Arson is a UCR crime tracked separately from violent and property crime. It is included in the accompanying graphs.*

The UCR data provides the Berkeley Police Department the ability to analyze national and local crime trends, determine the effectiveness of response to crime, and conduct future planning and potential resource allocation. The FBI UCR handbook discourages using UCR statistics to compare crime rates of one jurisdiction to another because of the complex variables affecting crime and crime reporting practices.

### **BPD Strategies and Accomplishments**

For 2019, the Berkeley Police Department's goal was to reduce the level of Part One Crime experienced in 2018 and previous years. The Department continued to implement strategies focused on reducing crime and community engagement. In 2020, the Department's work and resources have been impacted by the COVID-19 Pandemic. Some of the strategies and accomplishments are listed below:

- Downtown Task Force
- Continued focus on gun violence and gun crimes
- Continued work on Sexual Assault cold cases
- COVID Impacts on Engagement "Coffee with a Cop", Pride Parade

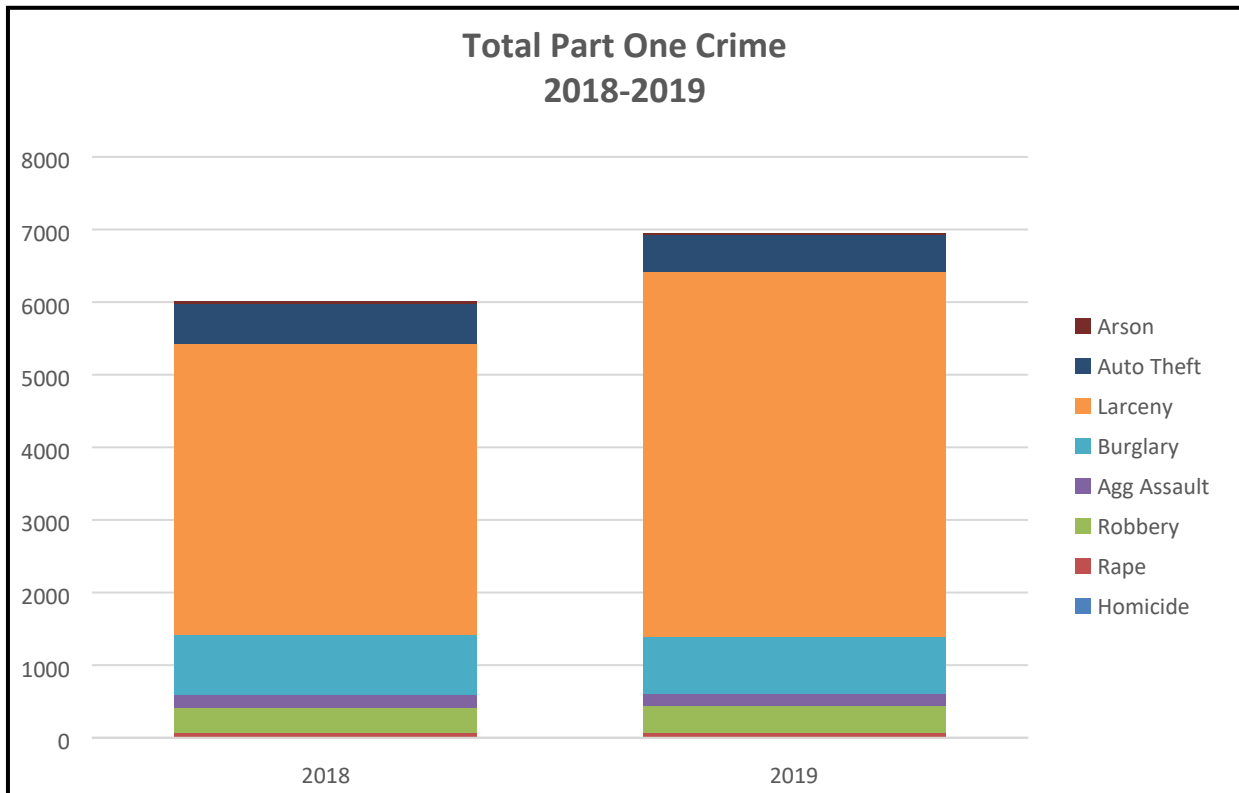
- Responded to changing trends in crime during COVID
- Began Bike Patrol training and equipment acquisition
- Selection and implementation planning for recording stop data
- Bicycle theft cases (Bicycle thefts have decreased in each of the past 5 years. 2015-774, 2016-607, 2017-524, 2018-420, 2019-401)
- Staffing Focus
- Continued collaboration with the Berkeley Unified School District supporting the fifth year of Law and Social Justice classes for Berkeley High School

Included below are the annual totals of UCR data for Part One Violent and Property Crimes for 2018 and 2019 in Berkeley, as well as five-year trends in Part One Violent Crimes and Part One Property Crimes. Part One Crime data for 2020 year-to-date is also included.

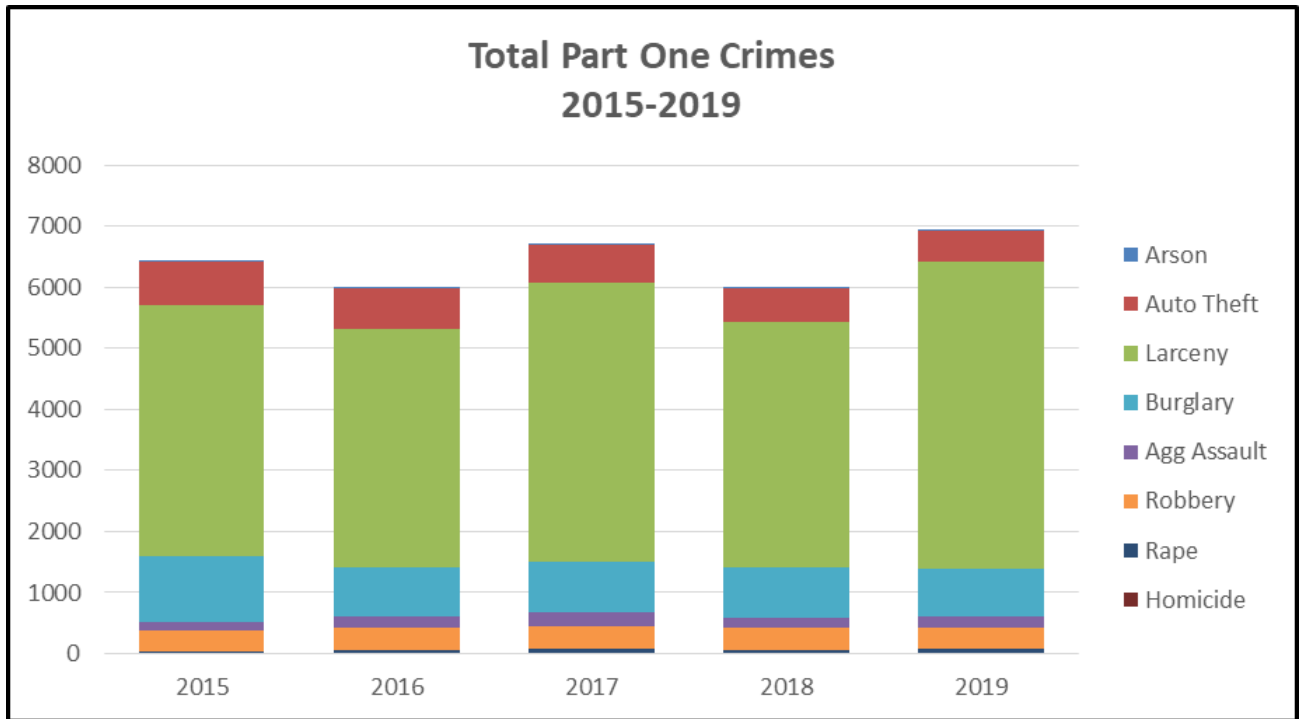
Graphs below include:

- UCR Part One Violent and Property Crime, two year trend
- UCR Part One Violent and Property Crime, five year trend
- UCR Part One Violent Crime, five year trend
- UCR Part One Property Crime, five year trend
- UCR Part One Violent and Property Crime, Jan-Aug 2019-2020
- UCR Part One Violent, Jan-Aug 2019-2020
- UCR Part One Property Crime, Jan-Aug 2019-2020

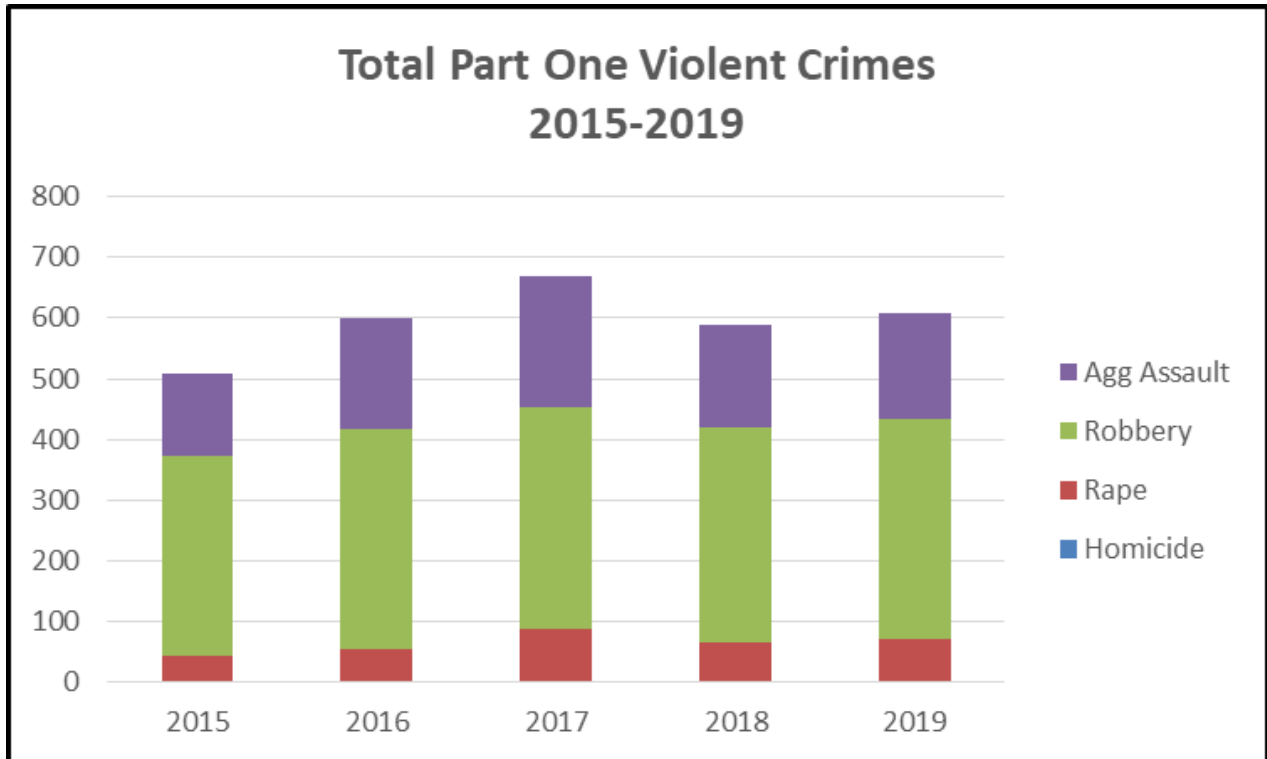




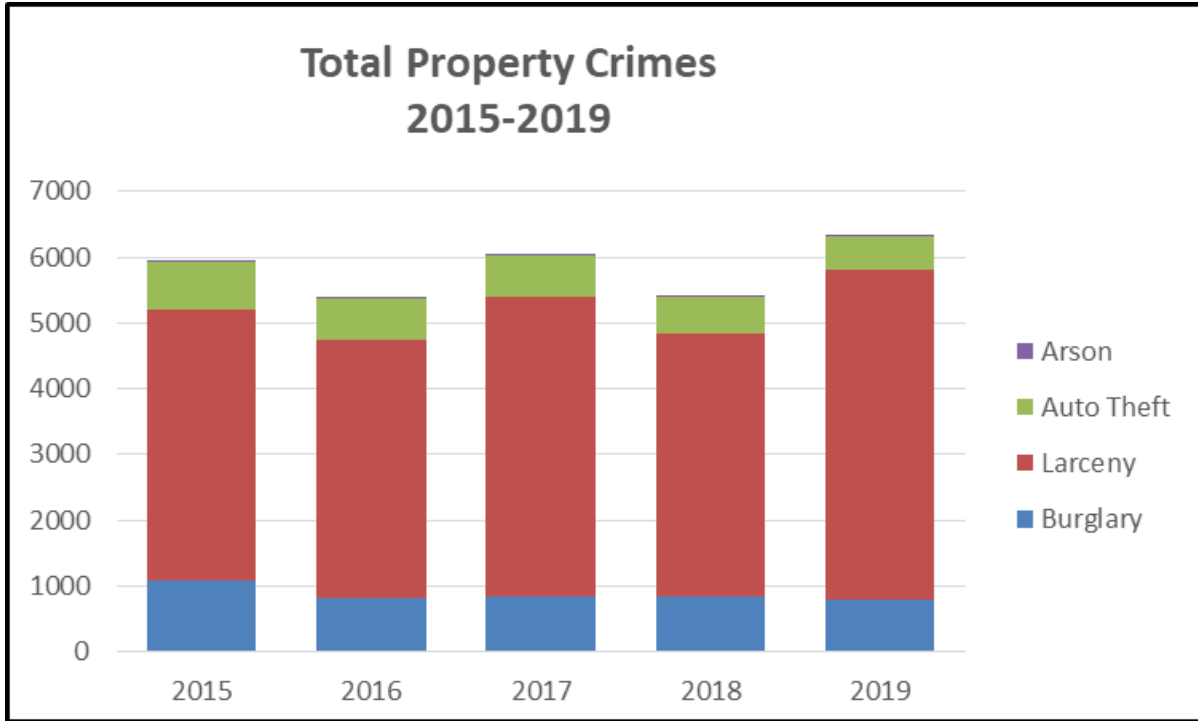
|      | Homicide | Rape | Robbery | Agg Assault | Burglary | Larceny | Auto Theft | Arson |
|------|----------|------|---------|-------------|----------|---------|------------|-------|
| 2018 | 0        | 65   | 355     | 170         | 831      | 4007    | 548        | 33    |
| 2019 | 0        | 70   | 364     | 175         | 788      | 5029    | 497        | 26    |



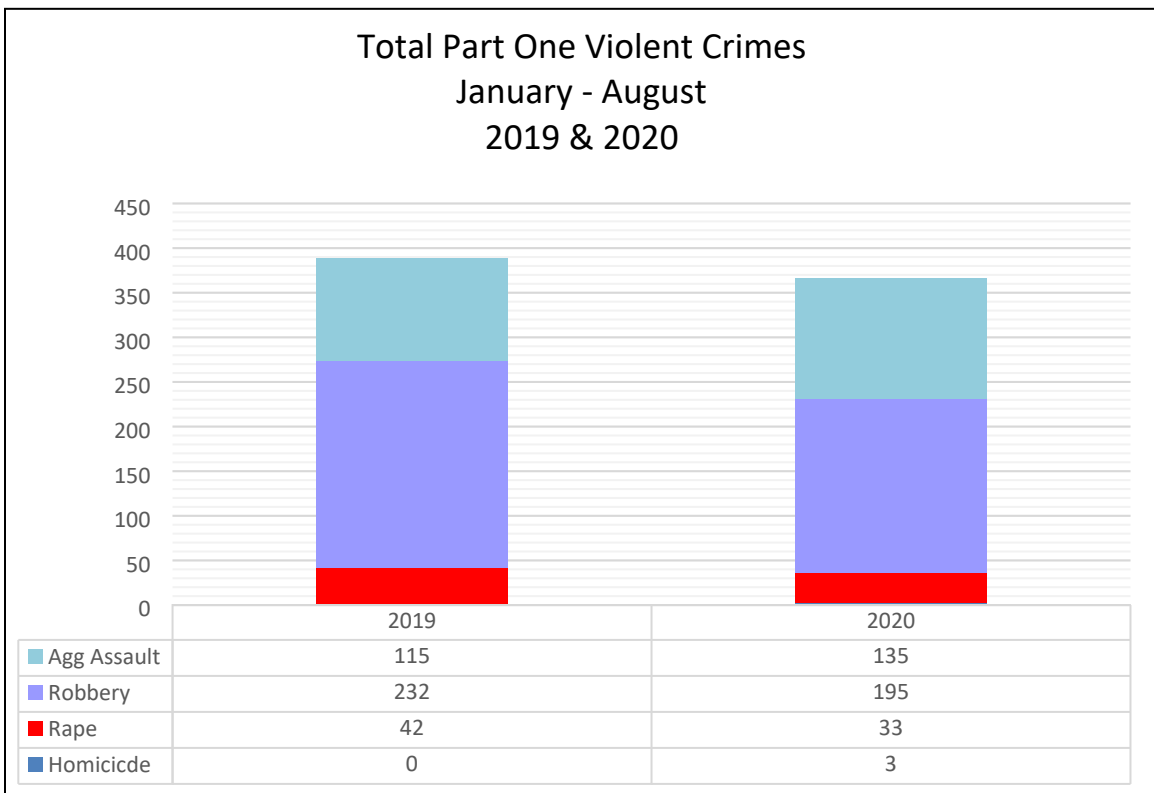
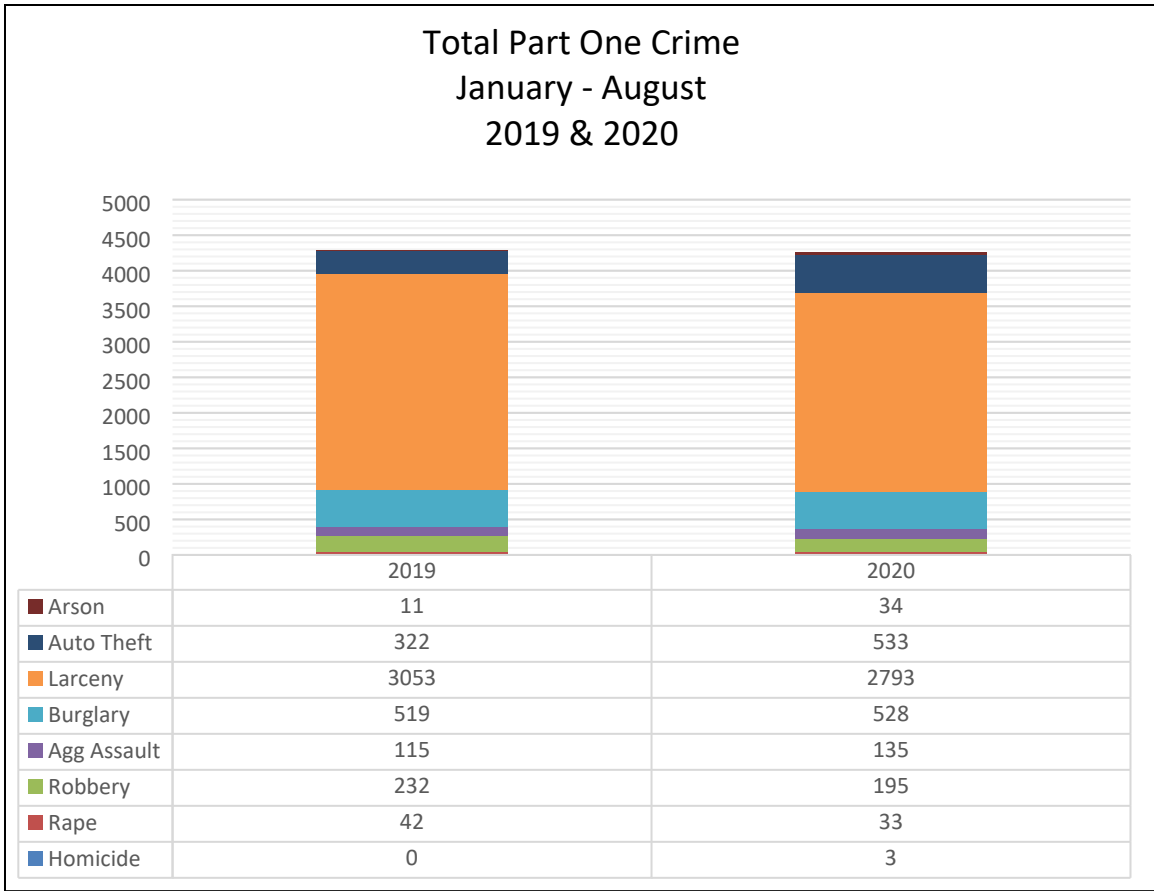
|      | Homicide | Rape | Robbery | Agg Assault | Burglary | Larceny | Auto Theft | Arson |
|------|----------|------|---------|-------------|----------|---------|------------|-------|
| 2015 | 1        | 41   | 331     | 135         | 1089     | 4118    | 713        | 20    |
| 2016 | 2        | 53   | 362     | 182         | 803      | 3927    | 647        | 20    |
| 2017 | 1        | 87   | 364     | 218         | 841      | 4556    | 619        | 33    |
| 2018 | 0        | 65   | 355     | 170         | 831      | 4007    | 548        | 33    |
| 2019 | 0        | 70   | 364     | 175         | 788      | 5029    | 497        | 26    |



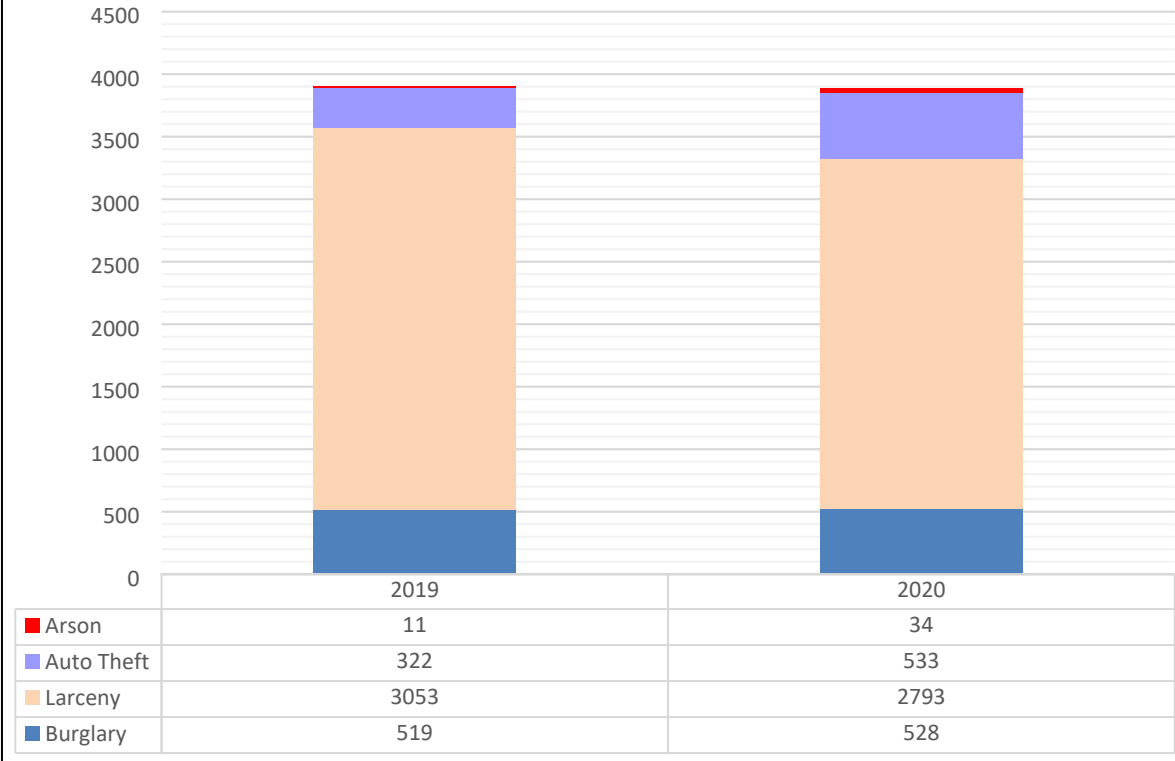
|      | Homicide | Rape | Robbery | Agg Assault |
|------|----------|------|---------|-------------|
| 2015 | 1        | 41   | 331     | 135         |
| 2016 | 2        | 53   | 362     | 182         |
| 2017 | 1        | 87   | 364     | 218         |
| 2018 | 0        | 65   | 355     | 170         |
| 2019 | 0        | 70   | 364     | 175         |



|      | Burglary | Larceny | Auto Theft | Arson |
|------|----------|---------|------------|-------|
| 2015 | 1089     | 4118    | 713        | 20    |
| 2016 | 803      | 3927    | 647        | 20    |
| 2017 | 841      | 4556    | 619        | 33    |
| 2018 | 831      | 4007    | 548        | 33    |
| 2019 | 788      | 5029    | 497        | 26    |



### Total Part One Property Crimes January - August 2019 & 2020



## **PART 2: USE OF FORCE ANNUAL REPORT**

This report provides information for the past five years on all uses of force which involve an officer's use of any weapon, or where a suspect has a visible injury, or complains of pain as a result of force used by officers.

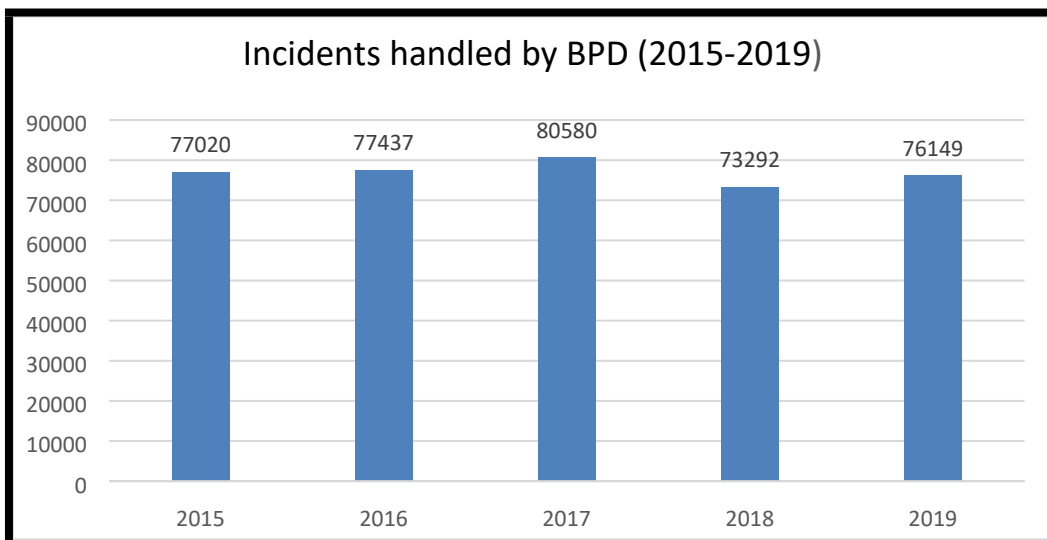
The Berkeley Police Department serves the community with a minimal reliance on force. Amidst Berkeley's challenging environment of crime and community safety issues, Berkeley Police officers responded to an average of 76,896 calls for service over the five year period of 2015-2019. During the same period, officers made an average of 3,017 arrests, and issued thousands of citations.

Officers accomplished their work with an average of 31.8 uses of force incidents per year from 2015 through 2019, that is, in .04% (four hundredths of one percent) of all incidents, and in 1% of all arrests.

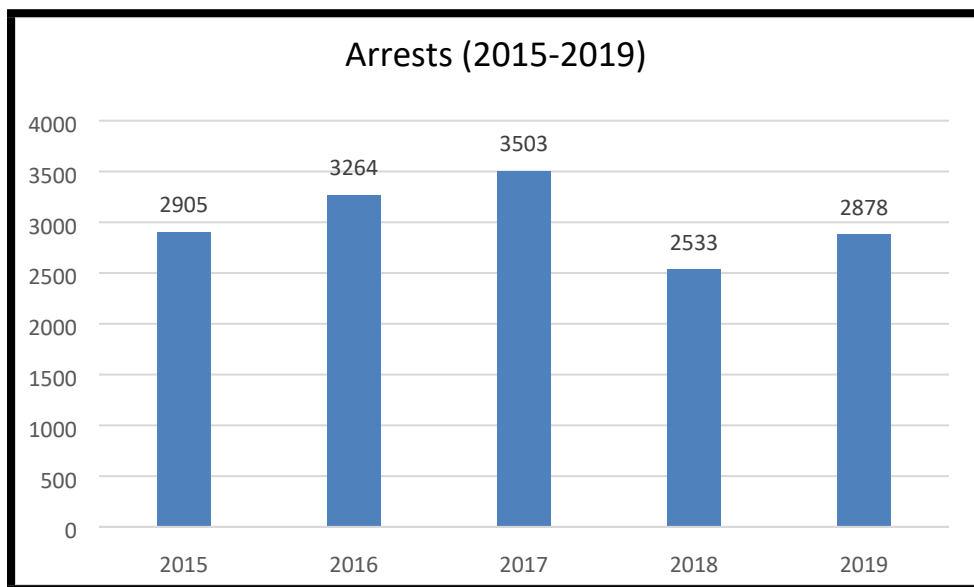
Officers accomplish their work with a minimal reliance on force, through approaches including but not limited to using de-escalation techniques, an awareness of mental health crisis issues and appropriate responses, and treating people with dignity and respect.

California Penal Code section 835a authorizes sworn peace officers to use force to effect arrest, overcome unlawful resistance, and prevent escape. Under certain specific and narrow circumstances, deadly force may be used. The vast majority of uses of force represented in this report are situations where suspects fled, resisted and fought being taken into custody. In some instances, force was used in response to attacks on officers.

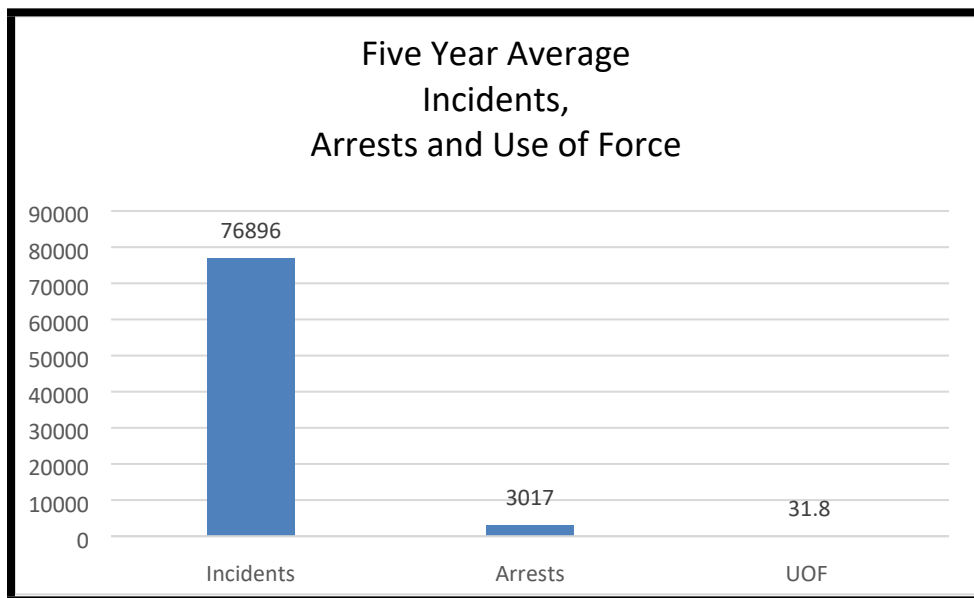
By way of context, from 2015 through 2019, Berkeley Police Officers respond to an average of 76,896 calls for service a year. Officers may contact multiple people in the course of responding to incidents.



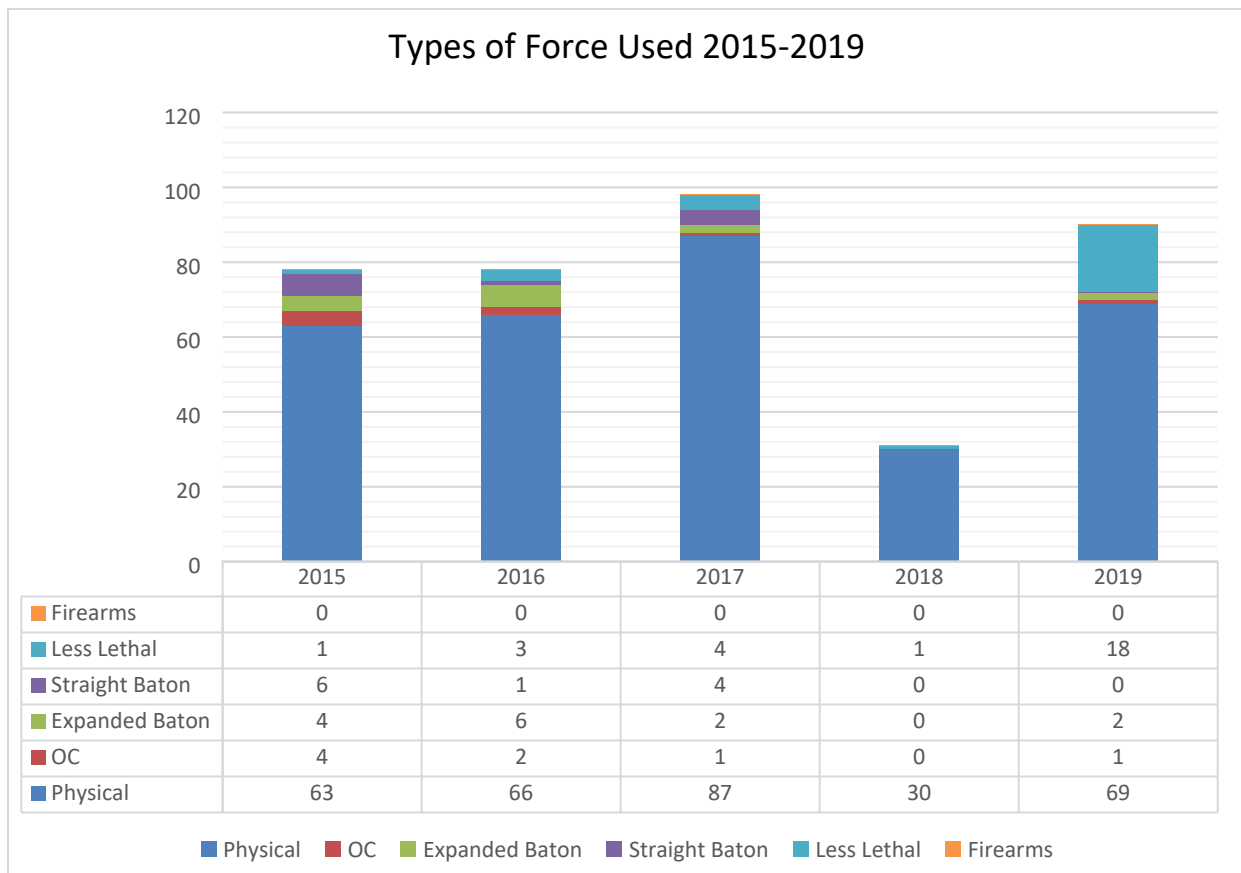
From 2015-2019, Berkeley Police officers made an average of 3,016 custodial arrests annually, and issued thousands of citations.



From 2015-2019, Berkeley Police officers used force on average in 31.8 incidents per year, or an average of one use of force incident in every 95 arrests.







The Berkeley Police Department tracks the use of force in accordance with General Order U-02 Use of Force. This policy requires that officers complete formal Use of Force reports whenever force results in complaint of injury, visible injury, or any weapon is used. In a given incident, more than one technique or type of force may be used to bring a resistant or combative individual into custody, and more than one officer may use force during the incident. There were an average of 75 applications of force per year across 31.8 incidents.

Each Use of Force report is reviewed by the involved officer's chain of command, from Sergeant to Lieutenant, to Captain, to the Chief of Police. Review includes review of body worn camera footage, the related crime report, and the Use of Force report.

Officers most often used physical force (e.g. control holds or physical techniques) to overcome resistance and combative behavior to effect arrests. Officers' uses of force involving weapons (e.g. straight baton or expandable baton, pepper spray and less lethal projectiles) are less common. Use of less lethal systems are limited to specially trained officers. There were no uses of firearms in the five years covered by this report.

In situations where officers are able to create opportunities for de-escalation, time, distance and cover help to minimize uses of force. When subjects are armed and combative, less lethal launchers allow officers to intervene and prevent violence at a distance. Employing less lethal launchers allow officers to use distance to reduce

threats arising out of close proximity contact, and help to reduce or prevent lethal force encounters, and community members' and officer injuries. Increased distances also may make batons and pepper spray out of range or ineffective.

The Berkeley Police Department was the first police department in California to receive POST certification for an all-day De-escalation course, including class lecture and scenario based training. De-escalation has become prominent in our use of force culture and practice. Officers use de-escalation tactics constantly in their work, through our training and practice.

### Demographic Information

Use of Force demographic information will reflect to an extent overall arrestee demographic information.

| ETHNICITY/GENDER | 2015      | %     | 2016      | %     | 2017      | %     | 2018      | %     | 2019      | %     |
|------------------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|
| Asian Male       | 1         | 2.9%  | 1         | 3.2%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  |
| Black Male       | 10        | 28.6% | 15        | 48.4% | 15        | 37.5% | 7         | 50.0% | 16        | 41.0% |
| Hispanic Male    | 2         | 5.7%  | 0         | 0.0%  | 2         | 5.0%  | 1         | 7.1%  | 8         | 20.5% |
| White Male       | 11        | 31.4% | 8         | 25.8% | 12        | 30.0% | 5         | 35.7% | 11        | 28.2% |
| Other Male       | 3         | 8.6%  | 2         | 6.5%  | 0         | 0.0%  | 0         | 0.0%  | 1         | 2.6%  |
| Unknown Male     | 0         | 0.0%  | 1         | 3.2%  | 4         | 10.0% | 0         | 0.0%  | 0         | 0.0%  |
| Asian Female     | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  |
| Black Female     | 3         | 8.6%  | 0         | 0.0%  | 2         | 5.0%  | 1         | 7.1%  | 2         | 5.1%  |
| Hispanic Female  | 2         | 5.7%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  |
| White Female     | 2         | 5.7%  | 2         | 6.5%  | 5         | 12.5% | 0         | 0.0%  | 1         | 2.6%  |
| Other Female     | 1         | 2.9%  | 1         | 3.2%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  |
| Unknown Female   | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  |
| Other            | 0         | 0.0%  | 1         | 3.2%  | 0         | 0.0%  | 0         | 0.0%  | 0         | 0.0%  |
| <b>Total</b>     | <b>35</b> |       | <b>31</b> |       | <b>40</b> |       | <b>14</b> |       | <b>39</b> |       |

| Age of Citizen | 2015      | %    | 2016      | %     | 2017      | %     | 2018      | %     | 2019      | %     |
|----------------|-----------|------|-----------|-------|-----------|-------|-----------|-------|-----------|-------|
| Under 20       | 6         | 17.1 | 3         | 9.7%  | 0         | 0.0%  | 1         | 7.1%  | 4         | 10.3% |
| 20-29          | 8         | 22.8 | 7         | 22.6% | 14        | 35.0% | 4         | 28.6% | 11        | 28.2% |
| 30-39          | 9         | 25.7 | 4         | 12.9% | 13        | 32.5% | 4         | 28.6% | 13        | 33.3% |
| 40-49          | 9         | 25.7 | 8         | 25.8% | 3         | 7.5%  | 2         | 14.3% | 7         | 17.9% |
| 50+            | 3         | 8.6  | 7         | 22.6% | 5         | 12.5% | 3         | 21.4% | 4         | 10.3% |
| Unknown        | 0         | 0    | 2         | 6.5%  | 5         | 12.5% | 0         | 0.0%  | 0         | 0.0%  |
| <b>Total</b>   | <b>35</b> |      | <b>31</b> |       | <b>40</b> |       | <b>14</b> |       | <b>39</b> |       |

**Conclusion:** The above data provide information on uses of force reported under current policy. The Berkeley Police Department is currently working to implement a new

Use of Force policy which will report lesser uses of force not currently captured in the data. These lesser uses of force, which will be those in which there is no visible injury, no complaint of pain, and no weapons used, will result in more uses of force reported in the next annual report. Future reports will distinguish between the legacy force report data, and the “new” force data, so that comparisons over a multi-year period can be clearly made.

#### ENVIRONMENTAL SUSTAINABILITY

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





Office of the City Manager

PUBLIC HEARING

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing, & Community Services

Subject: California Municipal Finance Authority Bond Financing for 1717 University Avenue

RECOMMENDATION

Conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Internal Revenue Code of 1986, as amended, and upon conclusion, adopt a Resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of the 1717 University Avenue rental housing development.

SUMMARY

The developer of the rental housing project at 1717 University Avenue is requesting the City hold a public hearing and adopt a resolution in support of their multifamily housing revenue bond financing request from California Municipal Finance Authority (CMFA). The Council previously held a public hearing and approved the project to receive tax-exempt bonds from the California Public Finance Authority (CalPFA) but the CalPFA was unable to meet the request due to their bond volume cap. The project owner, 1717 University Associates, LLC ("Owner"), subsequently requested CMFA issue the bonds. The project has otherwise remained unchanged.

Approving this action will allow the Owner to access tax-exempt bonds in exchange for dedicating 20% of their units as affordable housing. This project will provide three Below Market Rate (BMR) units affordable to 50% Area Median Income (AMI) households and contribute a pro-rated Affordable Housing Mitigation Fee (AHMF) payment to support affordable housing. The City will not hold any obligations related to repayment of the bonds.

FISCAL IMPACTS OF RECOMMENDATION

The bonds to be issued by the CMFA for 1717 University Avenue will be the sole responsibility of the Owner, and the City will have no financial, legal, moral obligation, liability or responsibility for the development or the repayment of the bonds for the financing of the development. All financing documents with respect to the issuance of the bonds will contain clear disclaimers that the bonds are not obligations of the City or the State of California but are to be paid for solely from funds provided by the Owner.

The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation (the “Foundation”), acts as the Board of Directors for the CMFA. Through its conduit issuance activities, the CMFA shares a portion of the issuance fees it receives with its member communities and donates a portion of these issuance fees to the Foundation for the support of local charities. It is expected that that a portion of the issuance fee attributable to the City will be granted by the CMFA to the City’s General Fund. Such grant may be used for any lawful purpose of the City.

### CURRENT SITUATION AND ITS EFFECTS

On July 14, 2020, City Council held a public hearing and adopted a resolution approving the issuance of the bonds by the California Public Finance Authority (CalPFA) for the benefit of the 1717 University Avenue rental housing development. CMFA reached out to staff in August 2020 about holding another TEFRA hearing since CalPFA did not have a sufficient bond volume cap to issue on bonds for this project. For this reason, the Owner had approached CMFA about issuing tax-exempt bonds for this project instead of CalPFA.

The resolution attached to this report will enable the Owner to access up to \$17,000,000 in tax exempt bond financing from CMFA for financing the acquisition and construction of a multifamily rental housing project located at 1717 University Avenue.

In order for the bonds to qualify as tax-exempt bonds, the City of Berkeley must conduct another public hearing (the “TEFRA Hearing”) to provide community members an opportunity to speak in favor of or against the use of tax-exempt bonds for the development’s financing. Following the close of the TEFRA Hearing, an “applicable elected representative” of the government hosting 1717 University Avenue must provide its approval of the issuance of the bonds for its financing. This adoption is solely for the purposes of satisfying the requirements of TEFRA, the Internal Revenue Code, and the California Government Code Section 6500.

The Owners opted to satisfy the Affordable Housing Mitigation Fee (AHMF) requirements with a combination of 3 Below Market Rate (BMR) units and a fee payment pro-rated proportionately to \$170,000. The BMR units will be available to households with incomes at or below 50% of Area Median Income (AMI). These units qualify the development to receive tax-exempt bonds

1717 University Avenue’s BMR units and AHMF payment are a Strategic Plan Priority Project, advancing the City’s goal to create affordable housing and housing support service for our most vulnerable community members.

## BACKGROUND

### *1717 University Avenue*

1717 University Associates, LLC was formed to build the project at 1717 University Avenue, and it is being managed by the developer, H3M Partners. The developer specializes in infill, multi-family housing and has experience working in the East Bay region.

1717 University Avenue is a proposed five-story, mixed-use housing development. The development will be approximately 22,000 square feet located on 8,478 square feet of land (or .19 acres). The development will provide 15 total units.

There will be three BMR units with a total of 11 bedrooms. They will be affordable to very low-income households for the life of the project and will be secured by a regulatory agreement, per the City's BMR standards. The project will also provide a pro-rated AHMF of approximately \$170,000 that will go into the Housing Trust Fund program.

The BMR Units include two five-bedroom units, which may be spacious enough to accommodate multi-generational families, and one studio unit. The remaining market-rate units will be rented as co-living units. The development will include shared space and amenities for the co-living units. The developers anticipate that the market-rate rents will be affordable to households earning approximately equivalent to 85% of AMI.

### *California Municipal Finance Authority*

The CMFA was created on January 1, 2004 pursuant to a joint exercise of powers agreement to promote economic, cultural and community development, through the financing of economic development and charitable activities throughout California. To date, over 320 municipalities, including the City of Berkeley, have become members of CMFA.

The CMFA was formed to assist local governments, non-profit organizations and businesses with the issuance of taxable and tax-exempt bonds aimed at improving the standard of living in California. The CMFA's representatives and its Board of Directors have considerable experience in bond financings.

## ENVIRONMENTAL SUSTAINABILITY

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

## RATIONALE FOR RECOMMENDATION

The proposed project is eligible for tax-exempt bonds and Council previously approved bond financing at the TEFRA hearing held on July 14, 2020. This development is

subject to this additional TEFRA hearing in order to switch the approved bond issuer from CalPFA to CMFA. All other aspects of the proposed development remain the same.

The Council's approval of CMFA's bond issuance will help the project access tax-exempt financing. This financing will support the development of three permanently restricted housing units for very low-income households and a mitigation fee payment. This development will increase the City's BMR portfolio and support the Housing Trust Fund program.

#### ALTERNATIVE ACTIONS CONSIDERED

The City could decline to approve CMFA's bond issuance. This would result in the owner not being able to obtain the proposed bond financing. The owner's alternative options might include asking Alameda County to fill this role or forgoing tax-exempt financing. The resulting delays and/or additional expenses might affect the development's feasibility.

#### CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, HHCS,  
(510) 981-5406

#### Attachments:

- 1: Resolution
- 2: Public Hearing Notice



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

CALIFORNIA MUNICIPAL FINANCE AUTHORITY MULTIFAMILY HOUSING  
REVENUE BONDS FOR 1717 UNIVERSITY AVENUE DEVELOPMENT

WHEREAS, 1717 University Associates, LLC (the “Borrower”) a partnership of which H3M Partners, LLC (the “Developer”) or a related person to the Developer is the general partner, has requested that the California Municipal Finance Authority (the “Authority”) adopt a plan of financing providing for the issuance of exempt facility bonds for a qualified residential rental project pursuant to Section 142(a)(7) of the Internal Revenue Code of 1986 (the “Code”) in one or more series issued from time to time, including bonds issued to refund such exempt facility bonds in one or more series from time to time, and at no time to exceed \$17,000,000 in aggregate principal amount (the “Bonds”), to finance or refinance the acquisition, rehabilitation, improvement and equipping of a multifamily rental housing project located at 1717 University Avenue, Berkeley, California (the “Project”); and

WHEREAS, pursuant to Section 147(f) of the Code, the issuance of the Bonds by the Authority must be approved by the City of Berkeley (the “City”) because the Project is located within the territorial limits of the City; and

WHEREAS, the City Council of the City (the “City Council”) is the elected legislative body of the City and is one of the “applicable elected representatives” required to approve the issuance of the Bonds under Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the issuance of the Bonds by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code and the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the “Agreement”), among certain local agencies, including the City; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the Authority;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that:

Section 1. The foregoing resolutions are true and correct.

Section 2. The City Council hereby approves the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Bonds by the Authority, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f) and (b) Section 4 of the Agreement.

October 13, 2020

Section 3. The issuance of the Bonds shall be subject to the approval of the Authority of all financing documents relating thereto to which the Authority is a party. The City shall have no responsibility or liability whatsoever with respect to the Bonds.

Section 4. The adoption of this Resolution shall not obligate the City or any department thereof to (i) provide any financing to acquire or construct the Project or any refinancing of the Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, construction, rehabilitation, installation or operation of the Project; (iii) make any contribution or advance any funds whatsoever to the Authority; or (iv) take any further action with respect to the Authority or its membership therein.

Section 5. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing transaction approved hereby.

Section 6. This Resolution shall take effect from and after its passage and approval.

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### CALIFORNIA MUNICIPAL FINANCE AUTHORITY MULTIFAMILY HOUSING REVENUE BONDS FOR 1717 UNIVERSITY AVENUE

The Department of Health, Housing and Community Services is proposing a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986 (the "Code") will be held with respect to a proposed plan of financing providing for the issuance by the California Municipal Finance Authority of exempt facility bonds for a qualified residential rental project pursuant to Section 142(a)(7) of the Code in one or more series issued from time to time, including bonds issued to refund such exempt facility bonds in one or more series from time to time, and at no time to exceed \$17,000,000 in outstanding aggregate principal amount, to finance or refinance the acquisition and construction of a multifamily rental housing project located at 1717 University Avenue, Berkeley, California. The facilities are to be owned by 1717 University Associates, LLC (the "Owner") or a partnership of which H3M Partners, LLC (the "Developer") or a related person to the Developer is the general partner (the "Project").

The hearing will be held on, OCTOBER 13, 2020 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor's Executive Order N-29-20.

Any member of the public may participate by using the following Zoom link and ID:

URL: <https://us02web.zoom.us/j/88371105282>

Webinar ID: 883 7110 5282

Or by calling toll-free to one of the following numbers:

US Telephone: +1 (669) 900-9128 or (877) 853-5257 (Toll Free) or (888) 475-4499 (Toll Free) or (833) 548-0276 (Toll Free) or (833) 548-0282 (Toll Free)

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **October 1, 2020**.

For further information, please contact Amy Davidson at (510) 981-5406.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

October 13, 2020

**part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** October 6, 2020

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 1, 2020.

Mark Numainville, City Clerk



Office of the City Manager

PUBLIC HEARING

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Interim Director, Planning & Development Department

Subject: ZAB Appeal: 1346 Ordway Street, Administrative Use Permit #ZP2018-0174

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Administrative Use Permit #ZP2018-0174 to: legalize an existing 128 sq. ft. accessory building in the southwest corner of the subject lot; legalize an existing 5 ft. x 21 ft., 9-ft. tall trellis located within the south setback; legalize an existing 11-ft. tall hedge in the north and south setbacks; establish a front yard off-street parking space to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, under BMC's Reasonable Accommodation Section; and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On September 7, 2018, Keki Burjorjee and Jennie Durant submitted an application for an Administrative Use Permit (#ZP2018-0174) to: 1) add a 3-ft. tall lattice over an existing 6-ft. tall boundary fence; and 2) legalize a 14 ft. tall hedge within north and south side setbacks. After the initial review, staff determined that additional AUPs were required to: 3) legalize the existing 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 4) legalize the existing 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south property line; and 5) establish a front yard off-street parking space.

On December 3, 2019, after ten rounds of comments from staff, the application was deemed complete.

On February 25, 2020, a Notice of Administrative Decision approving the Administrative Use Permit (AUP) application was issued by the Zoning Officer, which established a 20-day appeal period.

On March 17, 2020, Larry Hickman, the neighbor at 1333 Hopkins Street, filed an appeal of the Zoning Officer's decision to legalize the accessory building, trellis and

hedge and to approve a front yard parking space to the Zoning Adjustments Board (ZAB).

On May 27, 2020, staff posted the public hearing notice near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area.

On June 11, 2020, the ZAB conducted a public hearing for the appeal of the Zoning Officer's decision. After considering the staff report and administrative record, and hearing comments from the applicant and appellant, the ZAB added Condition of Approval # 12 limiting the maximum height of the hedge located to the north of the appellant's lot to a maximum of 11 ft. The ZAB then upheld the Zoning Officer's decision to approve the AUP with the condition (Motion: Clarke/Second: Kahn) and unanimous vote of 7-0-0-2 (Yes: Clarke, Kahn, Kim, O'Keefe, Sheahan, Selawskly, Tregub; No: None; Abstain: None; Absent: Olson, Pinkston).

On June 16, 2020, staff issued the notice of the ZAB decision, which established a 14-day appeal period.

On June 30, 2020, two appeals were filed, one by the neighbor at 1333 Hopkins Street (Larry Hickman) and one by the applicants (Keki Burjorjee and Jennie Durant).

On September 29, 2020, staff posted the public hearing notices near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area. This public hearing is required to resolve the appeal.

BACKGROUND

On May 10, 2018, a Notice of Violation was issued by the City's Code Enforcement staff for the property at 1346 Ordway Street. This Notice of Violation was the result of a complaint that was made by the neighbor at 1333 Hopkins Street about an unpermitted hedge and fence over 6 ft. in height.

On September 7, 2018, an Administrative Use Permit (AUP) application was submitted by the 1346 Ordway Street owners, Keki Borjorjee and Jennie Durant, to legalize a fence and hedge over 6 ft. in height.

After initial review of the application, staff determined that in addition to permits required for a fence and hedge over 6 ft. in height, additional AUPs were required to legalize: the existing accessory building; the existing trellis; and a front yard off-street parking space. Staff initially determined that due to the narrow width and length of the existing non-conforming driveway, the subject property's legal off-street parking space could be abandoned. This "*no legal off-street parking*" status included a condition of approval to remove all parking-related surfaces and the curb cut. Alternatively, the applicants decided to apply for an AUP for a front yard off-street parking space and a Variance to waive the required 2 ft. landscaped strip. Eventually, due to the applicant's medical

condition, they requested a front yard off-street parking space under Reasonable Accommodations (BMC Section 23B.52.010).

Communications in objection to the project were received from the appellant between September 19, 2018 and June 1, 2020 and communications in support of the project were received from the neighborhood and the applicants' real estate agents between November 30, 2018 and May 23, 2020. All are included here as Attachment 4.

On February 25, 2020, the Zoning Officer approved AUP #2018-0174 at the subject property to legalize the existing accessory building, trellis, hedge and to establish a front yard parking space under Reasonable Accommodations for fair access to housing. The request to add a 3 ft. lattice over the existing 6 ft. tall boundary fence was denied, because the survey showed that the existing fence is located outside the applicant's lot boundaries, on the neighbor/appellant's lot.

On March 17, 2020, the appellant, who lives to the south of the subject lot, filed an appeal of the Zoning Officer's decision to the ZAB. As described in the June 11, 2020 ZAB Staff Report, the appeal listed four main appeal points regarding the front yard parking space, accessory building, trellis and hedge. Appeal point 1 (objection to the approval of the front yard parking space under BMC's Reasonable Accommodation Section) discussed concerns regarding safety, detriment to economic value of the appellant's property and insufficient proof of disability. This appeal point also inquired about "on-street parking" as an alternative to the front yard off-street parking space and the "no-legal-parking status" options that were initially presented to the applicants by staff in regards to the front yard parking space. Appeal point 2 (objection to the approval of the accessory building) discussed issues around detrimental shadow impacts, noise, lack of site visit by staff, and the detrimental impacts on the prospective economic value of the appellant's property due to an unpermitted accessory building on the neighboring lot. Appeal point 3 (objection to the approval of the trellis), discussed issues around the construction of trellis adjacent to the appellant's garage and expressed concern regarding future access to the appellant's garage for maintenance. Appeal point 4 discussed issues regarding the hedge, its height and fence maintenance issues in the future.

At the June 11, 2020 ZAB hearing Staff Report for the appeal, staff responded to all of the appeal points (see Attachment 4) and recommended that the ZAB dismiss these appeal points because: the Zoning Officer was able to make non-detriment findings for the accessory building, trellis, hedge and front yard parking space; and the appellant had not provided evidence to suggest that the Zoning Officer was incorrect in making those non-detriment findings.

At that hearing, ZAB members discussed the issues around the addition of the proposed 3 ft. tall lattice to the existing fence that was denied; the 6 ft. tall fence newly installed by the appellant; and the appeal points related to the approved AUPs including: 1) hedge 2) trellis 3) accessory building and 4) front yard off-street parking space.

For reference, the ZAB discussion was recorded¹ and the captioner's record is provided as Attachment 5 to this report.² The following is a summary of the ZAB's discussion on the fence and all the four appeal points:

- **Fence:** The ZAB asked a few clarifying questions regarding both the existing and the newly-installed fence. Staff clarified that the AUP application included a request to add a 3-ft. lattice above the existing 6 ft. tall boundary fence (resulting in a 9 ft. tall fence) and that this request had been denied by staff because the existing fence is located outside the applicants' lot boundaries. Additionally, staff's presentation included imagery and information about a second 6-ft. tall fence that had been recently installed by the appellant. Staff explained that this new fence, which is a horizontal extension of the existing 6-ft. tall boundary fence, separates the proposed front yard parking space on the applicant's lot from the appellant's lot in the front setback. The appellant argued that the new fence will make it difficult for a car in the applicant's driveway to see pedestrians while backing up and therefore makes the front yard parking space an unsafe condition. The ZAB determined that safety is not an issue for the front yard parking space despite the newly installed fence.
- **Hedge:** Regarding the hedge, a ZAB member asked the appellant to clarify the reasons for his objection to the hedge and noted that considering that the hedge is located to the north of the appellant's lot, it will not have shadow impacts on the appellant's lot. The appellant stated that the 14-ft. tall hedge is like a wall, creating a feeling of enclosure around his property. He also added that because the hedge is leaning over on the fence, it will be damaging his fence. The ZAB asked the applicant to explain why the hedge needs to be 14 ft. tall. The applicant answered that the hedge height is currently only 10 ft., but the 14 ft. maximum height leaves room for additional growth which also allows for some extra time to find a pruner during times such as the pandemic. In addition, the hedge provides privacy and screening of the neighbor's property, which they believe to be unattractive. During the ZAB hearing, the applicant expressed that she was willing to keep the hedge height closer to 10 ft. However, the applicants later decided to appeal the ZAB's determination to reduce the maximum height to 11 ft.

Two neighbors spoke in support of the project and testified about the under-maintained state of the appellant's property. They noted that, in contrast, the applicant has been improving their property and has not disturbed the peace of the neighborhood, rather they believe that these improvements have been beneficial to the neighborhood.

One ZAB member asked the ZAB secretary to explain how common it is to receive an application for a 14-ft. tall hedge or fence. The ZAB secretary responded by noting that he is aware of instances in the hills overlay, where there are grade differences or privacy concerns. The ZAB Secretary added that hedge tend to be

¹ June 11, 2020 ZAB recording, http://berkeley.granicus.com/MediaPlayer.php?publish_id=f43f2282-b02a-11ea-888f-0050569183fa

² Discussion in this report are paraphrased from the Captioner's Record, Attachment 5.

more acceptable since they are considered more of a green screen, whereas 12 to 14-ft. tall fences and walls would be less likely to be approved. Another ZAB member commented that since the applicant agreed that 10 ft. is adequate for screening purposes, he would support a 10 ft. to 12 ft. tall hedge with attempts to keep it to 10 ft. The ZAB Chair clarified that this condition can be included in the motion, however, a maximum height is required. Consequently, the ZAB member decided to choose 12 ft. as the maximum height. Ultimately, the ZAB determined that a 14 ft. height is too high for even a “green” fence and amended the Condition of Approval to limit the height to 11 ft. to allow for some growth above the existing conditions.

- **Trellis:** The ZAB asked clarifying questions from the staff regarding the trellis. The appellant expressed that he is objecting to the trellis built up against his garage because of a possible inability to access the side of the garage for maintenance. He added that plants have grown in that area all the way up to the garage roof that prevents access. One of the ZAB members noted that the pictures do not show any planting growing over the trellis, adjacent to the appellant’s garage. The applicant stated that the trellis’s posts are 22 inches away from the garage. It is only the trellis roof that is 3 inches away from the appellant garage’s roof. Eventually, the ZAB determined that the appellant’s garage is accessible for maintenance even with the trellis built adjacent to it.
- **Accessory building:** The ZAB asked the appellant if the accessory building is impacting the use of his property negatively. The appellant responded that the accessory building’s non-conformity impacts his property in a negative way because “it makes his property non-conforming.” The applicant noted that the accessory building is located at the south-west corner of the lot abutting the other neighbor’s lot at 1327 Hopkins Street and *not* the appellant’s lot at 1333 Hopkins Street. Furthermore, it cannot possibly cast shadows towards the south where the neighboring lots are located.
- **Front yard parking space:** The appellant expressed concern for visibility from the parking space especially with the newly-installed fence (by the appellant). He mentioned that the only evidence of a disability on the part of the applicant at 1346 Ordway is a temporary disability factor (not a permanent one).

In response to the appellant’s claim for lack of evidence for disability, the applicant responded that the appellant is not aware of the full nature of the disability and would like to preserve their privacy by not disclosing that information to the public; however, as part of the AUP application, they have provided sufficient proof of disability for staff. She added that her medical condition is degenerative and “*having to walk from a parking space whether from the curb or down the street carrying heavy bags of groceries and their 4-year-old daughter would be untenable.*” In response to the safety concerns brought up by the appellant, the applicant stated that they have not had any problems spotting pedestrians as they slowly pull out of

their driveway, and several other properties in the neighborhood have the same front yard parking condition as well.

One ZAB member commented that in cases where the driveway is too narrow, it makes sense to have the off-street parking space in the front yard and that the safety is not an issue since everyone backs out of their driveways. In response to appellant's comments about lack of proof for disability, another ZAB member noted that he is confident that there is basis for staff's decision in allowing for a front yard parking space under Reasonable Accommodations.

ZAB Action

A motion was made to approve the application with the hedge's maximum height set at 12 ft. A friendly amendment was suggested to limit the height to 10 ft. A compromise was reached to approve a maximum hedge height of 11 ft.

With the addition of this Condition of Approval, the ZAB was satisfied that the appellant's concerns were addressed.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant and applicants' letters, and staff's responses, are as follows. **For the sake of brevity, the appeal issues are not re-stated in their entirety.** Please refer to the attached appeal letter (Attachment #2: Appellant's Appeal Letter and Attachment #3: Applicant's Appeal Letter) for the full text.

Neighbor Appellant's Appeal Issues and Staff Response:

Issue 1: *Appellant alleges that there was no discussion on the legal authority, the evidence in the record; and appellant was denied any opportunity to respond to and/or rebut evidence. It was an unfair and biased process for the following reasons:*

- A. *There was no discussion as to why the Zoning Officer withheld the fact that tree and hedges are a fence;*
- B. *No attempt was made to confirm the true property line;*
- C. *No explanation as to why applicants were not required to follow Code Enforcement until the AUP application had been approved;*
- D. *No explanation as to why Zoning did not conduct a site visit; and*
- E. *The questions raised by the board members begs the question whether appellant's appeal point were fully read and considered.*

Staff Response to Item A: Staff stated that the Ordinance considers a hedge as a fence during the discussion at the ZAB hearing. The captioner's record including that information is provided as Attachment 5.

Staff Response to Item B: A survey was submitted as part of the AUP application and the City's GIS map do not show the south-west part of the applicant's lot abutting the appellant's lot.

Staff Response to Item C: If the applicant exhibits good faith in submitting for the required permits, the conditions can stay "as is" until after the AUP is finalized unless it is a health and safety issue. The applicants applied for the required AUPs; they are entitled to a fair chance to legalize unpermitted buildings and structures under a permit they are entitled to ask for.

Staff Response to Item D: As previously addressed in the June 11, 2020 ZAB Staff Report (Appeal Issue 2.C, Page 15), adequate documentations were provided in plans, elevations and photographs to determine the conditions on the property and the neighborhood.

Staff Response to Item E: The staff report including applicant's appeal points and staff responses were reviewed by the ZAB.

Issue 2: *Appellant alleges that the results reached by the ZAB constitutes denial of due process and is inconsistent with Berkeley Municipal Code for the following reasons:*

Appellant was denied an opportunity to be heard and to respond to the evidence and/or inconsistent statements presented against him. He was allowed to speak for five minutes and his phone line was muted when the five minutes expired.

Staff Response: The ZAB Public Hearing procedure allows the appellant and the appellant to speak for five minutes, after which members of the public may make comments. Following that, the ZAB closes the public hearing and commences board member comments.

Issue 3: *Appellant alleges that the hearing was an unfair and biased process for the following reasons:*

- A. The City's Zoning Officer was prejudiced toward the appellant and gave favor to the applicant. The Zoning Officer had multiple Ex Parte communications with the applicant;*
- B. The ZAB's ultimate decision was an extension of the Zoning Officer's [unfair and biased] recommendation to approve the AUP;*
- C. The Zoning Officer failed to fully inform the board that the non-conforming conditions being applied for were illegally constructed and*

*non-conforming conditions are affecting the appellant's property rights;
and*

D. The Zoning Officer failed to fully inform the Board of the City's Code Enforcement Unit's Notice of Violation and Administrative Warning issued to applicants.

Staff Response to Item A: Staff communicated with the applicants and the appellant via emails and phone calls as a regular way of communication, which is common practice with all AUP applications. Staff communications of this kind do not qualify as *ex parte*; only the ZAB members are limited in how they communicate with applicants and appellants.

Staff Response to Item B: The Zoning Officer's recommendation is based on the ability to make non-detriment finding per the Zoning Ordinance. The ZAB also conducted a neutral hearing and deliberated based on all of the evidence including the Staff Report, Appeal Letter, testimony and the findings.

Staff Response to Item C: The staff report and presentation clearly stated that the AUPs were required to legalize existing buildings and structures. The Zoning Ordinance allows for applicants to legalize unpermitted structures and buildings by going through the zoning application process, and it is the standard practice of the Planning Department to allow applicants to do so when the unpermitted use can be legalized. When a zoning application is submitted to legalize existing buildings and structures, staff reviews the application as if the unpermitted structures and buildings did not exist today. Staff evaluates the proposal to determine if the non-detriment findings can be made.

Staff Response to Item D: Staff noted that a Notice of Violation was issued in May 2018. (Refer to captioner's record page 29)

Issue 4: *Appellant alleges that there appears to be no internal separation between the Zoning Officer's advocacy and recommendation and the ZAB's decision. The ZAB's decision arises from the Zoning Officer's lack of neutrality.*

Staff Response: See Staff Response to Issues 3.A and 3.B.

Issue 5: *Appellant alleges that the City would be rewarding applicants for years of illegal conduct. On the other hand, the appellant, a law abiding citizen is ignored and left without remedy. The Zoning Officer failed to present any rational explanation for this unjust result.*

Staff Response: See Staff Response to Issue 3.C.

Furthermore, City Council Resolution No. 67,985-N.S. requires applicants to pay an additional fee for applications that are submitted as a result of a Notice of Violation (see June 11, 2020 ZAB Hearing Staff Report Page 14, item 1-I, within Attachment 4). The applicant has paid this fee.

Staff believes the ZAB decision was adequately supported. In considering the reasonableness of the project and the impact, the ZAB also considers how the project meets the Zoning Ordinance standards.

Applicant's Appeal Issues and Staff Response:

The Applicant has appealed ZAB's decision to limit the hedge height to 11 ft. because they believe that a 14 ft. hedge is necessary for safety, privacy, visual barrier, maintenance and cost. Furthermore, the applicants believe that a 14 ft. tall hedge is not a detriment to the neighbor's view.

The ZAB considered all of the information received from staff, the applicants, the appellant and the neighbors and determined that, while an 11 ft. tall hedge won't have detrimental sunlight, air and view impacts on the appellant's lot, it will be adequate to provide privacy for the applicants.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project. Therefore, staff recommends that the City Council uphold the ZAB decision to approve the accessory building, the trellis, the front yard parking space and the hedge with conditions of approval related to the hedge height.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess) then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Jordan Klein, Interim Director, Planning & Development Department, (510) 981-7534
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Nilu Karimzadegan, Project Planner, (510) 981-7419

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans dated December 3, 2019
2. Appellant's Appeal Letter dated June 30, 2020
3. Applicant's Appeal Letter dated June 30, 2020
4. ZAB Packet dated June 11, 2020
5. Captioner's Record, ZAB Hearing June 11, 2020

6. Index to Administrative Record
7. Administrative Record
8. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF ADMINISTRATIVE USE PERMIT #ZP2018-0174 TO LEGALIZE AN 11-FOOT TALL HEDGE WITHIN NORTH AND SOUTH SIDE SETBACKS; LEGALIZE A 128 SQUARE-FOOT, 12 FOOT 2 INCHES TALL HABITABLE ACCESSORY BUILDING WITHIN THE REQUIRED SIDE AND REAR SETBACKS; LEGALIZE AN APPROXIMATELY 9-FOOT TALL, 5 FOOT X 21 FOOT TRELLIS LOCATED 3 INCHES FROM THE SOUTH SIDE PROPERTY LINE; AND TO ESTABLISH AN OFF-STREET PARKING SPACE WITHIN THE FRONT SETBACK; AND DISMISSING THE APPEALS

WHEREAS, on April 23, 2018, Lawrence Hickman filed a complaint to the Code Enforcement Unit for an unpermitted 10 ft. to 15 ft. tall hedge planted within the side setbacks at 1346 Ordway Street; and

WHEREAS, on April 30, 2018, Lawrence Hickman called the Code Enforcement Unit to report that an unpermitted "arbor" has also been built against his garage on the property line at the property at 1346 Ordway Street; and

WHEREAS, on May 10, 2018, the Code Enforcement Unit inspected the site at 1346 Ordway Street and issued a Notice of Violation addressed to the property owners Keki Borjorjee and Jennie Durant for an unpermitted fence and hedge over 6 ft. in height within the setbacks; and

WHEREAS, on September 7, 2018, the owners Keki Borjorjee and Jennie Durant filed an AUP application to legalize a trellis within the setback and a fence and hedge over 6 ft. in height along the property line; and

WHEREAS, on December 3, 2019, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines ("Existing Facilities"); and

WHEREAS, on February 25, 2020, staff posted the Notice of Administrative Decision near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on March 17, 2020, Lawrence Hickman, the neighbor at 1333 Hopkins Street, filed an appeal of the Zoning Officer's decision to the Zoning Adjustments Board (ZAB); and

WHEREAS, on May 28, 2020, staff posted the ZAB Notice of Public Hearing near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on June 11, 2020, the ZAB conducted the public hearing in accordance with BMC Section 23B.32.030 and approved the application with modified Conditions of Approval; and

WHEREAS, on June 16, 2020, staff issued the notice of the ZAB decision; and

WHEREAS, on June 30, 2020, Lawrence Hickman filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on June 30, 2020, Keki Borjorjee and Jennie Durant filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before September 29, 2020, staff posted the public hearing notice near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on October 13, 2020, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2018-0174, adopts the conditions of approval in Exhibit A and the project plans in Exhibit B, and dismisses the appeals.

Exhibits

A: Findings and Conditions

B: Project Plans, dated December 3, 2019

Exhibit A

Findings and Conditions

FEBRUARY 25, 2019

1346 Ordway Street

Administrative Use Permit #ZP2018-0174 for additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; 4) locate the off-street parking space within the front yard; and 5) eliminate the required 2 ft. landscaped strip that separates the uncovered off-street parking space from the adjacent property line.

PERMITS APPROVED

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing;
- Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and
- Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.

PERMITS DENIED

- Administrative Use Permit, under BMC Section 23D.08.060.B legalize a boundary fence over 6 ft. in height.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Section 153301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to

Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.28.050.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

A. The subject property is equal to or below the Single Family Residential District (R-1A) standards (BMC Section 23D.20.070) for density, height, setbacks, maximum lot coverage, usable open space (1 dwelling on a lot where 1 dwelling is allowed; 32% lot coverage where 40% maximum lot coverage is allowed; and the subject property preserves well beyond 400 sq. ft. of required usable open space). One off-street parking space within the front setback is allowed to comply with BMC Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing. The project would legalize construction of an accessory building in the rear and side yards which is consistent with the single-family use of the subject property, functions as an extension of the main dwelling, is accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scale. The project would also legalize a 14 ft. tall hedge within the north and south side yards in addition to a 9 ft. tall, 21 ft. X 5 ft. trellis, located 3 in. from the south property line and 30 ft. from the rear property line. The proposed hedge and the trellis are small in scale and are not expected to create significant impact to sunlight, air and view for the surrounding neighborhood.

B. Privacy, sunlight, air & view:

- Accessory building: The 128 sq. ft. accessory building functions as an office, which is a quiet activity, and is subject to condition of approval #14 that requires that a "Notice of Limitation of Use" be placed on the deed to the property. This deed restriction prohibits the use or conversion of this habitable accessory building to a dwelling unit unless authorized by an applicable permit.

The accessory building preserves privacy for abutting residences because the entry point (located on the east elevation) faces the main dwelling and while windows are located on south and west elevations, they are small in size and the existing vegetation on the side and rear property lines screen the adjacent properties.

The accessory building is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood. It is separated from the main building on the neighboring property at 1333 Hopkins Street (to the south) by approximately 50 ft. and from its detached accessory structure

(Garage) by approximately 17 ft. This accessory building is separated from the building on neighboring property at 1327 Hopkins (also to the south) by approximately 33 ft.; from the building on the neighboring property at 1341 Peralta Avenue (to the west) by approximately 56 ft.; from the building at neighboring property at 1344 Ordway Street (to the north) by approximately 17 ft.; and from the main dwelling on the subject lot by more than 40 ft.

The accessory building is located at approximately 8 ft. 6 in. from the side property line to the north; about 56 ft. from front property line to the east; 3 ft. 7 in. to 3 ft. 9 in. from side property line to the south; and 4 ft. 1 in. to 4 ft. 3 in. from the rear property line to the west. The accessory building is one story in a district that permits three story main buildings. It is not taller than the main dwelling on the subject lot nor adjacent properties. Due to location and scale, this accessory building does not create significant changes to existing sunlight conditions in the vicinity of the project.

The accessory building's maximum height is 12 ft. 2 in. which is lower than the main dwelling and all abutting buildings. This low roof height and the generally flat topography of the area will ensure that this building would not obstruct or significantly reduce any prominent views that may exist for surrounding neighbors, such as a view of Golden Gate or Bay Bridge, the Downtown San Francisco skyline, the bay, or Treasure Island as defined in BMC Chapter 23F.04.

- Trellis:

While the 105 sq. ft. 9 ft. tall trellis is located at 3 in. from the south side property line, it matches the neighbor's abutting garage in height and length. Additionally, this structure is designed with well-spaced members (1 ft. 9 in. between wood members) which allows for passage of air and light and hence is not expected to create light and air impacts to the nearest property at 1333 Hopkins Street.

- Hedge:

Since the hedge is more than 8 ft. from the nearest abutting property to the south and are light penetrable, it is not expected to significantly obstruct sunlight, air, and views for this neighborhood.

2. BMC Section 23B.52.010 for Reasonable Accommodations, provides that it is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. Therefore, the City will allow the establishment of a front yard off-street parking space 1 ft. 4 in. from the front property line where 20 ft. is required, and 8 in. from the side property line where 2 ft. is required because:
- A. The parking pad will provide fair access to the home of the applicant who has lived there for 4 years and needs an accessible off-street parking space due to a disability as defined by the Fair Employment and Housing Act of 1959, codified as Government Code §§12900 – 12996;
 - B. The Berkeley Zoning Ordinance allows a person to request a reasonable accommodation in the form of modification in the application of a zoning law that acts as a barrier to fair housing access. According to Section 23D.12.080.B, no portion of an off-street parking space may be located in a required front yard unless such location is authorized by an AUP and approved by the Traffic Engineer. Additionally, Section 23D.12.080.E requires that all paved areas for off-street parking spaces and driveways be separated from any adjacent interior side lot line by a landscaped strip at least two feet wide. In this case the modification will apply to: 1) Section 23D.12.080.B in order to allow a new off-street parking space to be created within the required front yard setback; and to 2) Section 23D.12.080.E in order to allow elimination of the required two feet wide landscaped strip. Therefore, allowing a front yard parking space without a two feet landscaped strip is considered a modification in zoning policy for reasonable accommodation for fair housing access; and
 - C. Due to the City's current practice of not permitting a front yard parking space without a two-foot wide landscaped strip, Condition #11 has been added to this permit requiring the restoration of the front yard and restoration of rear or side off-street parking space, if the property is sold, the tenant with medical condition moves out or the disability no longer prevents accessible access.

III. FINDINGS FOR DENIAL

As required by BMC Section 23D.08.060, no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building may exceed six feet in height at any point, unless so authorized by an AUP. The existing 6 ft. to 8 ft. tall wood fence (proposed to become a 8 ft. to 9 ft. tall. wood fence by adding a 2-3 ft. wood lattice above) separates the subject property from the neighbor's property to the south. Based on the property survey submitted by the applicant, it appears that the existing fence is located on the neighbor's property. Fences are usually a shared responsibility between neighbors. In this case, because the fence is located outside the subject property lot line and on the neighbor's property at 1333 Hopkins Street and the neighbor has objected, a recommendation for approval cannot be made by staff.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (BMC Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (BMC Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer.

5. Plans and Representations Become Conditions (BMC Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (BMC Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (BMC Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (BMC Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below:

Project Liaison

_____ Name

_____ Phone #

11. The parking pad must be removed, and the curb cut in filled if the property is sold, the tenant moves out or disability no longer prevents accessible access.
12. Hedge shall not exceed 14 ft. in height.
13. To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30-days after the AUP approval.

Prior to Issuance of Any Building Permit:

14. **Accessory Building:** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this Accessory Building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC Chapter 23F.04. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Standard Construction-related Conditions Applicable to all Projects:

15. **Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
 - Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

16. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

17. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
18. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
19. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
20. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
21. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
22. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
23. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
24. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
25. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
26. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
27. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines Section 15064.5(f), "provisions for historical or unique

archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

28. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

29. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the

resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

Prior to Issuance of Occupancy Permit or Final Inspection:

- 30. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
- 31. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 3, 2019

At All Times (Operation):

- 32. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 33. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.



Prepared by: Nilu Karimzadegan, Assistant Planner
For Steven Buckley, Zoning Officer

PLAT OF SURVEY

LOT 44, BLOCK 6
KEY ROUTE TERRACE NO. 3 (21 M 59)
LOCATED AT 1346 ORDWAY STREET
BERKELEY, ALAMEDA COUNTY, CALIFORNIA

MARCH 14, 2019 SCALE: 1" = 8'



PLANS APPROVED by

February 25, 2020

SIGNATURE

DATE

*AUP Findings and Conditions Attached

LOT 43

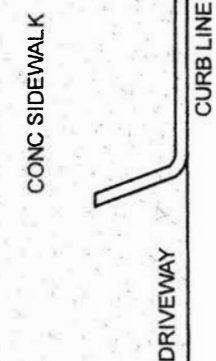
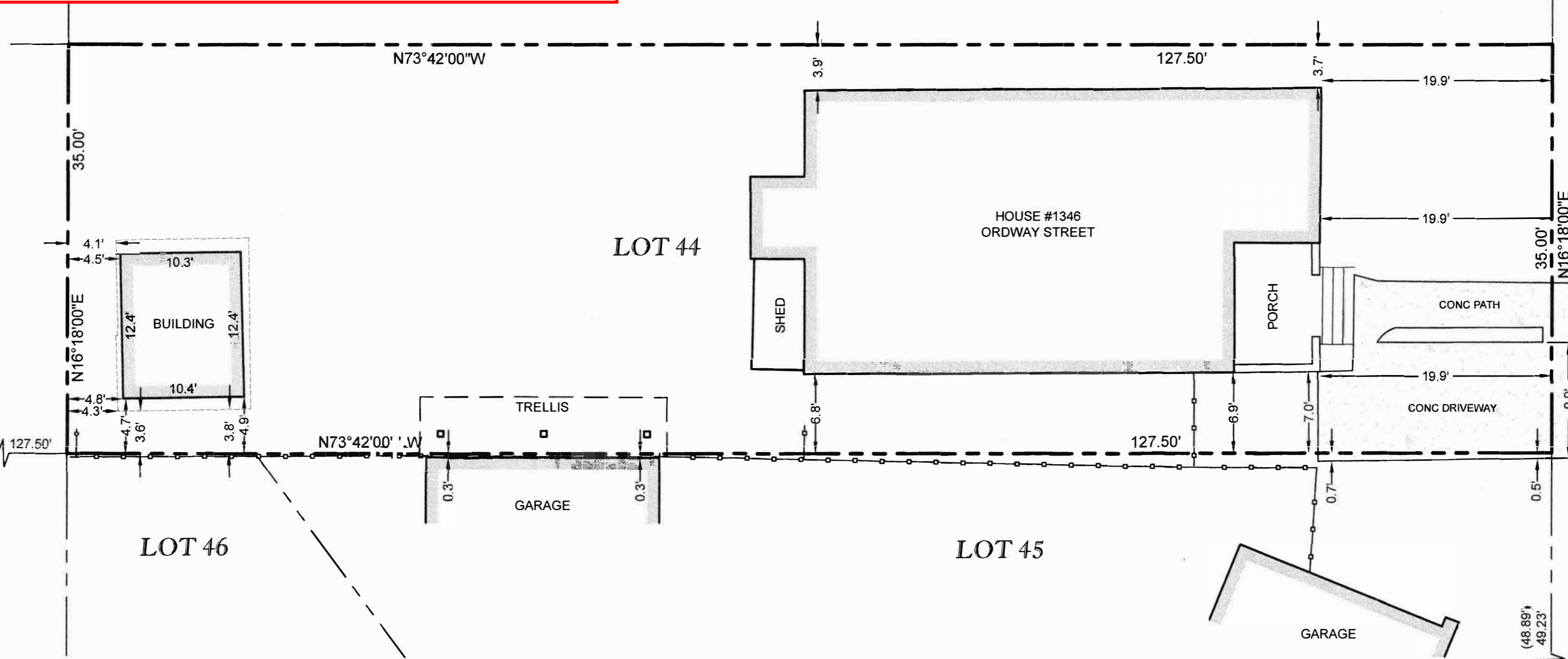
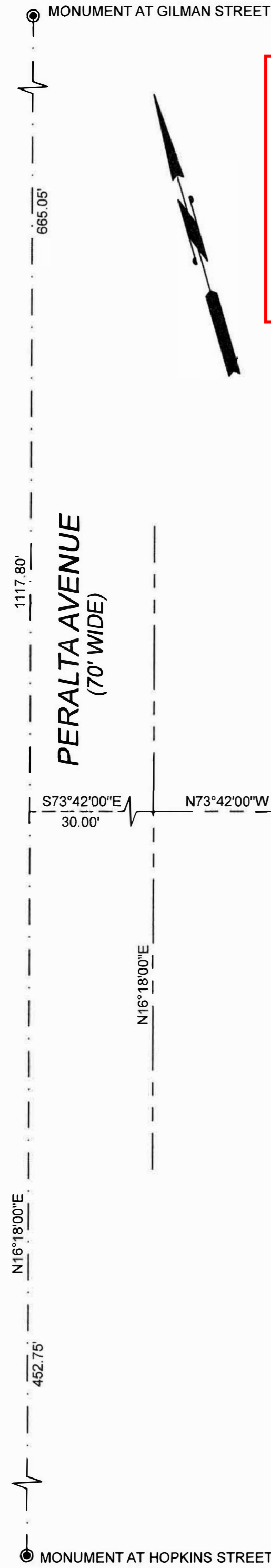
LOT 44

LOT 45

LOT 46

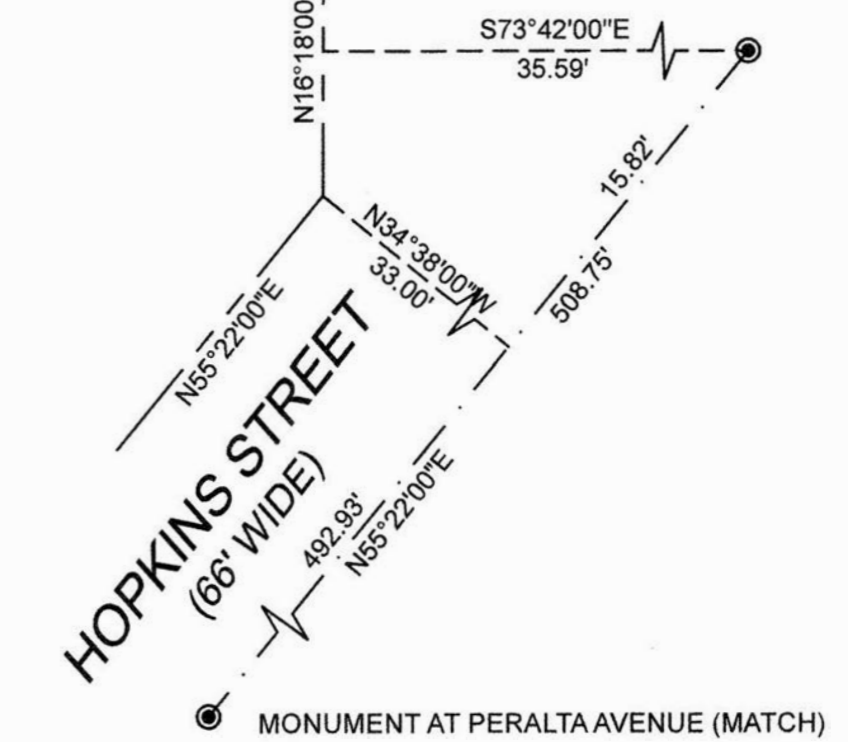
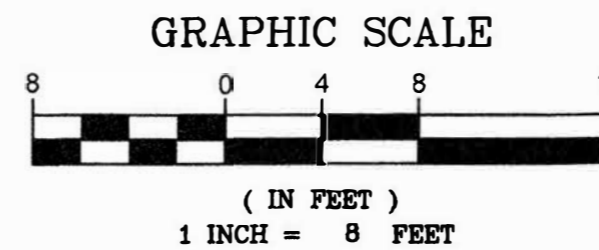
PERALTA AVENUE
(70' WIDE)

ORDWAY STREET
(WIDTH VARIES)



NOTES:
ALL DIMENSIONS ARE IN FEET AND DECIMALS OF A FOOT.
NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.
THE TIE FROM HOPKINS WAS TAKEN AS 49.23' PER OLD CITY OF BERKELEY RECORDS.

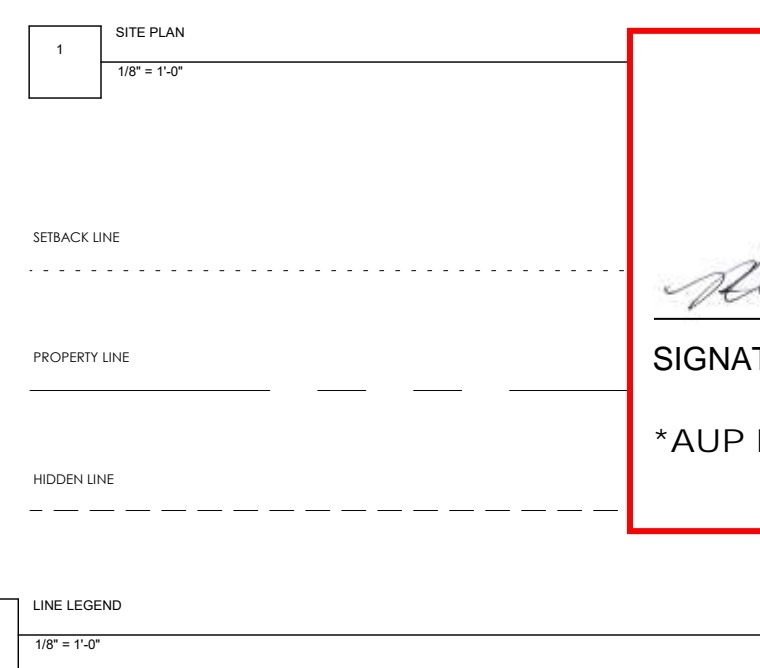
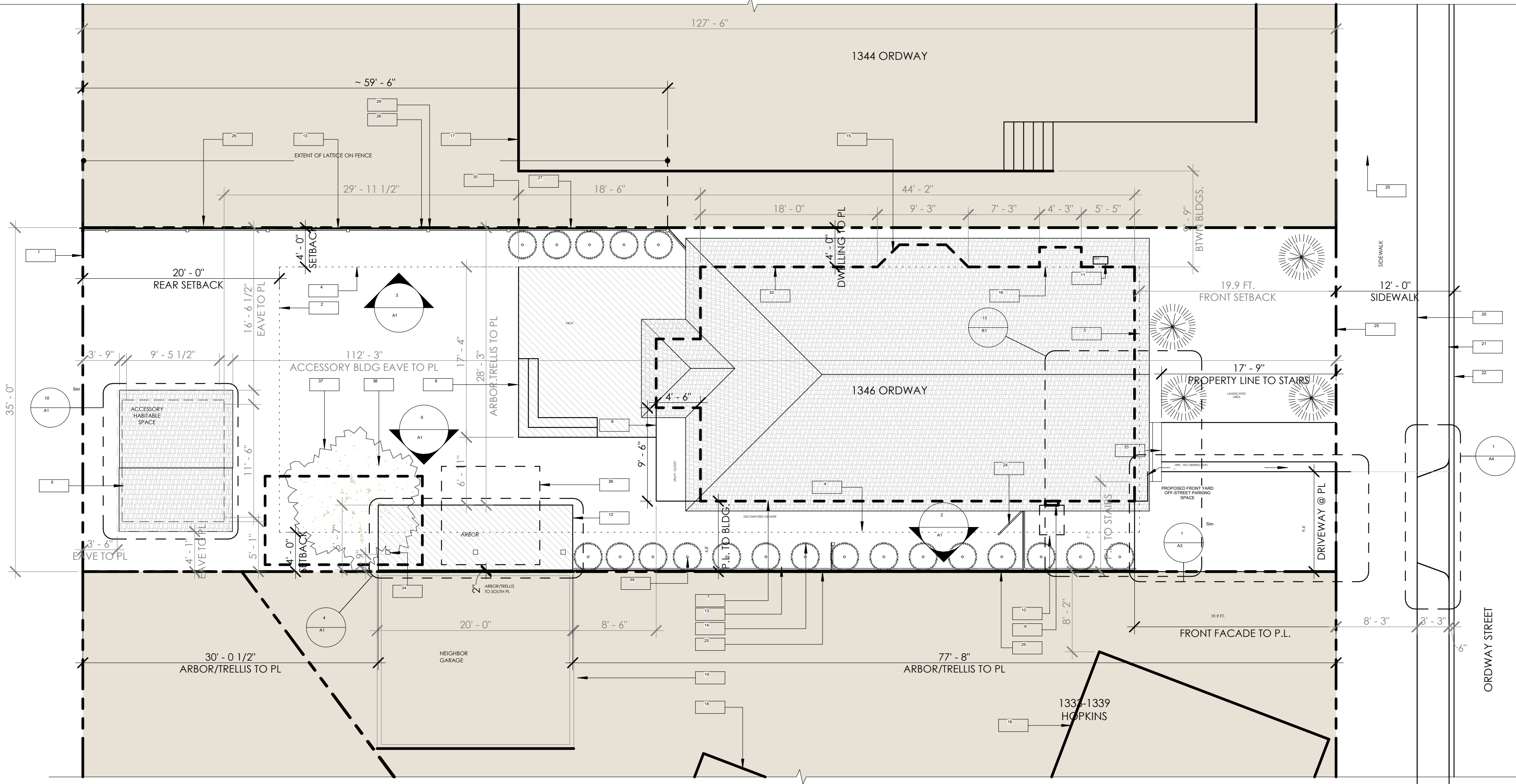
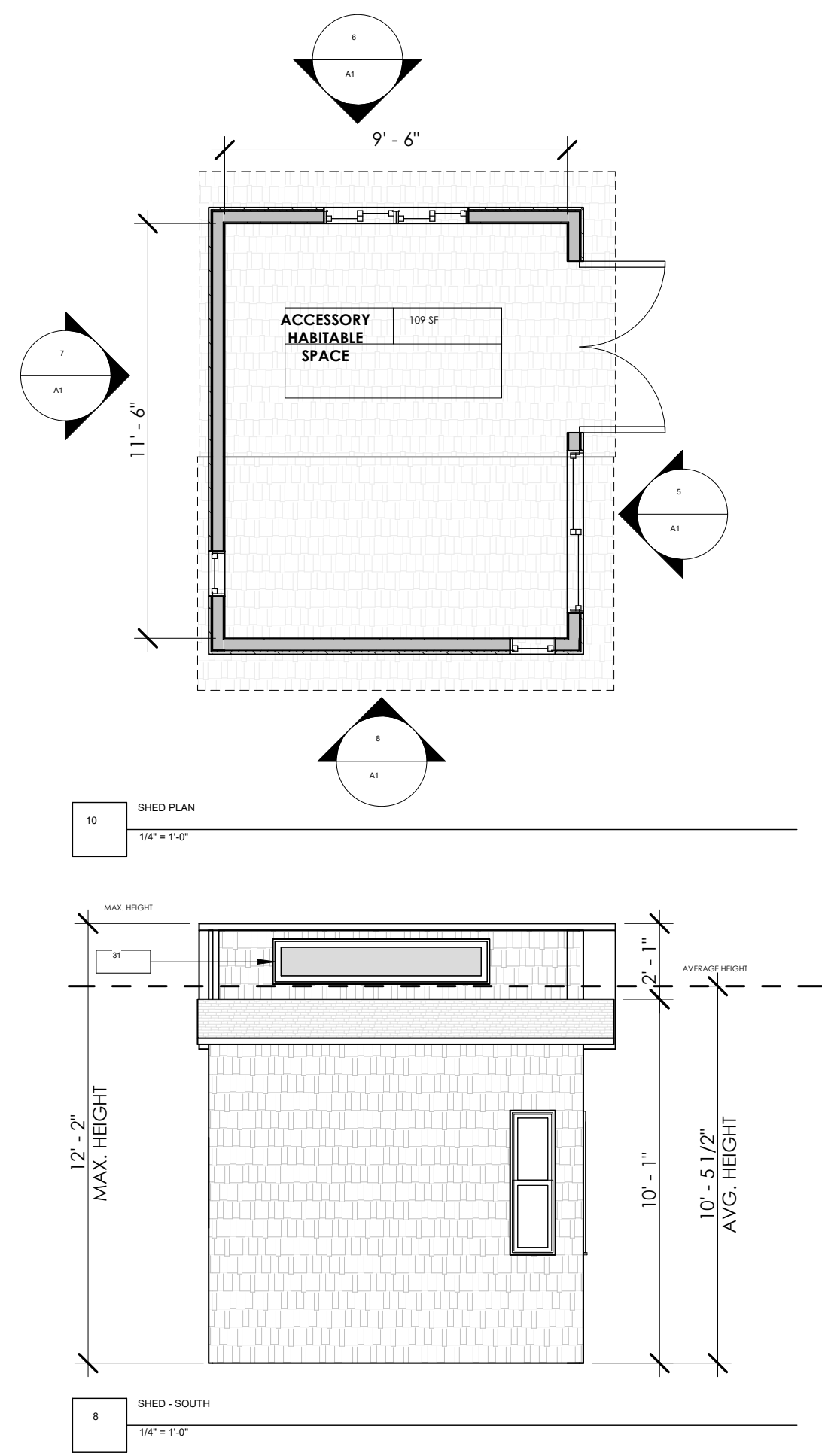
- LEGEND:
- CONC CONCRETE
 - - - - - EAVE EDGE
 - WOOD FENCE
 - CITY MONUMENT




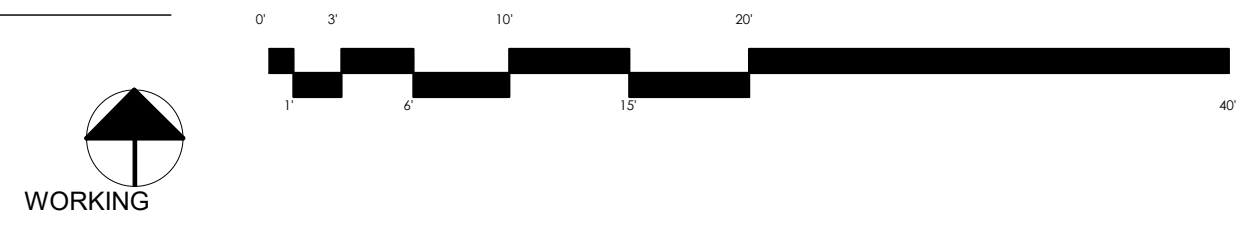
MONUMENTAL LAND SURVEYING

171 MAYHEW WAY, SUITE 207, PLEASANT HILL, CA 94523
(925) 300-3695 MONUMENTAL-LS.COM PROJECT#18114

THE IDEAL DESIGN PLANS, AND DETAILS INDICATED OR REPRESENTED BY THIS DRAWING ARE OWNED BY, AND THE PROPERTY OF THE ARCHITECT AND ARE CREATED AND DEVELOPED FOR USE IN CONNECTION WITH THIS PROJECT ONLY. REUSE OF THE DRAWINGS FOR OTHER PURPOSES DOES NOT CONSTITUTE PUBLICATION. ANY DISCLOSURE, USE, OR REPRODUCTION OF THE IDEAL DESIGN PLANS, AND DETAILS INDICATED HEREIN IS NOT PERMITTED WITHOUT THE WRITTEN AUTHORIZATION OF THE ARCHITECT.

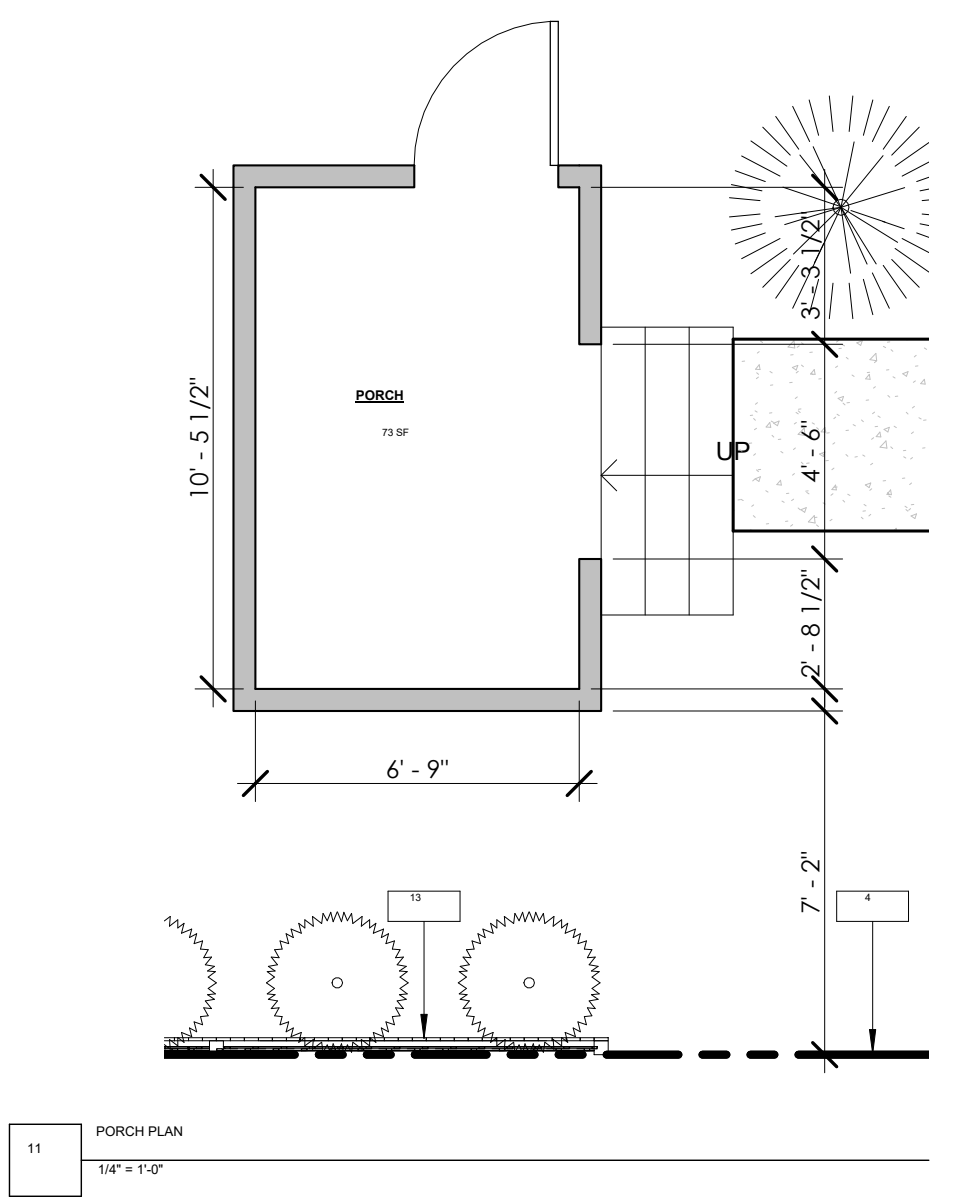
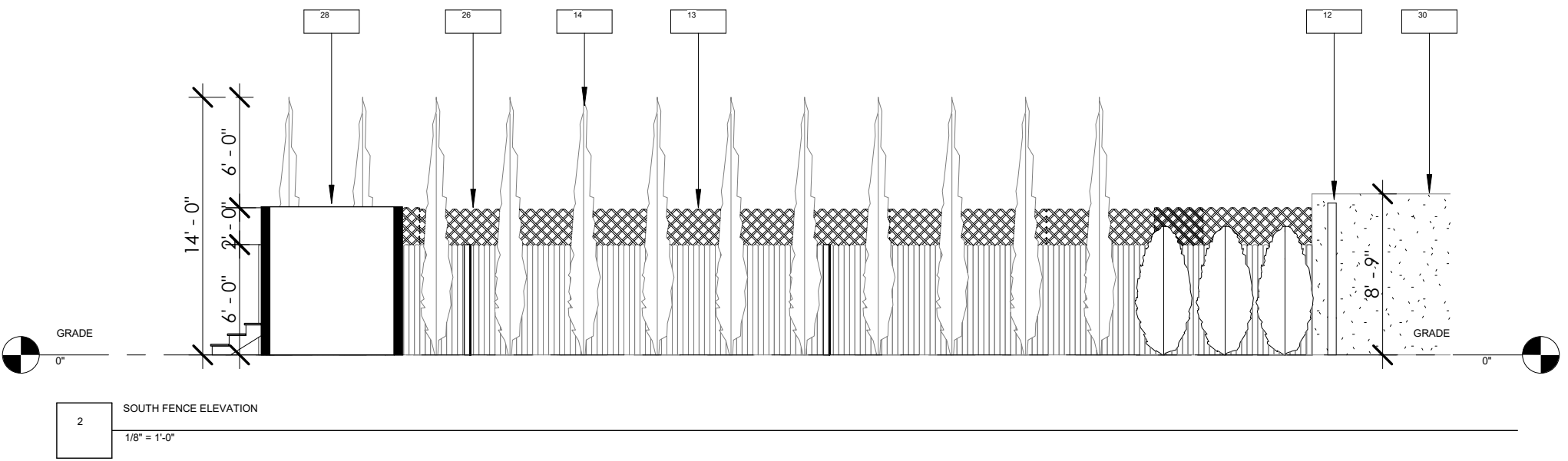
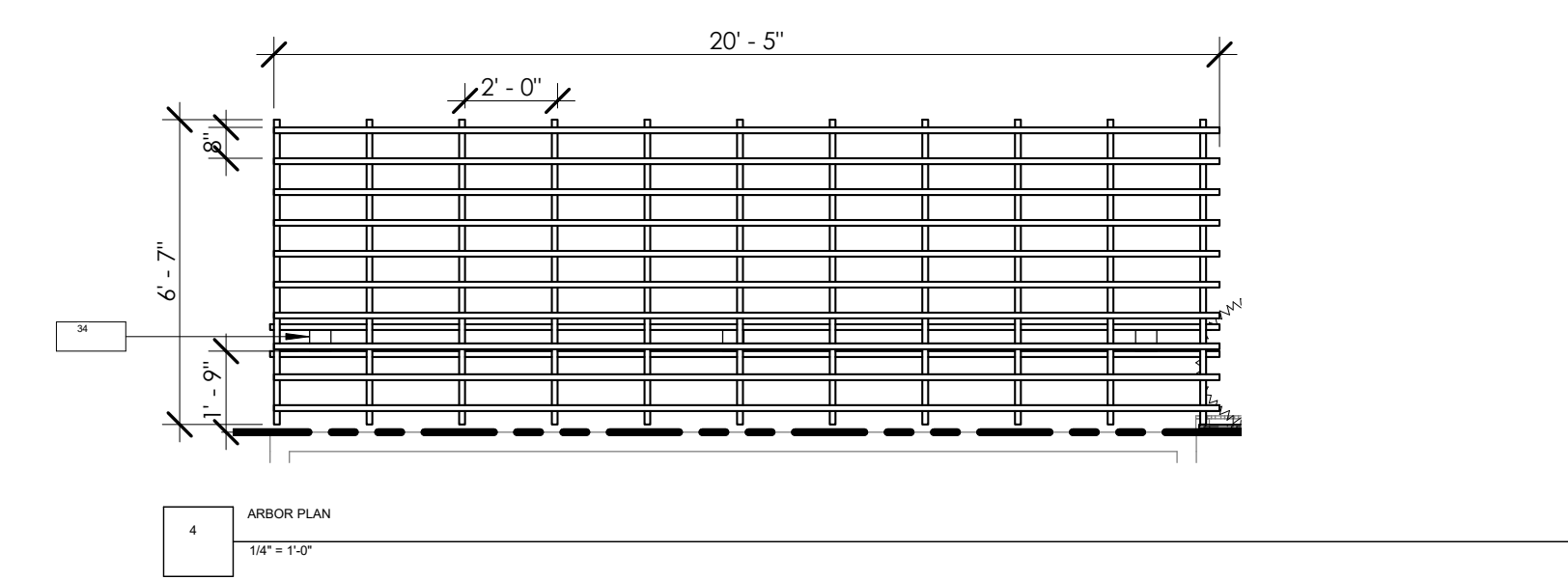
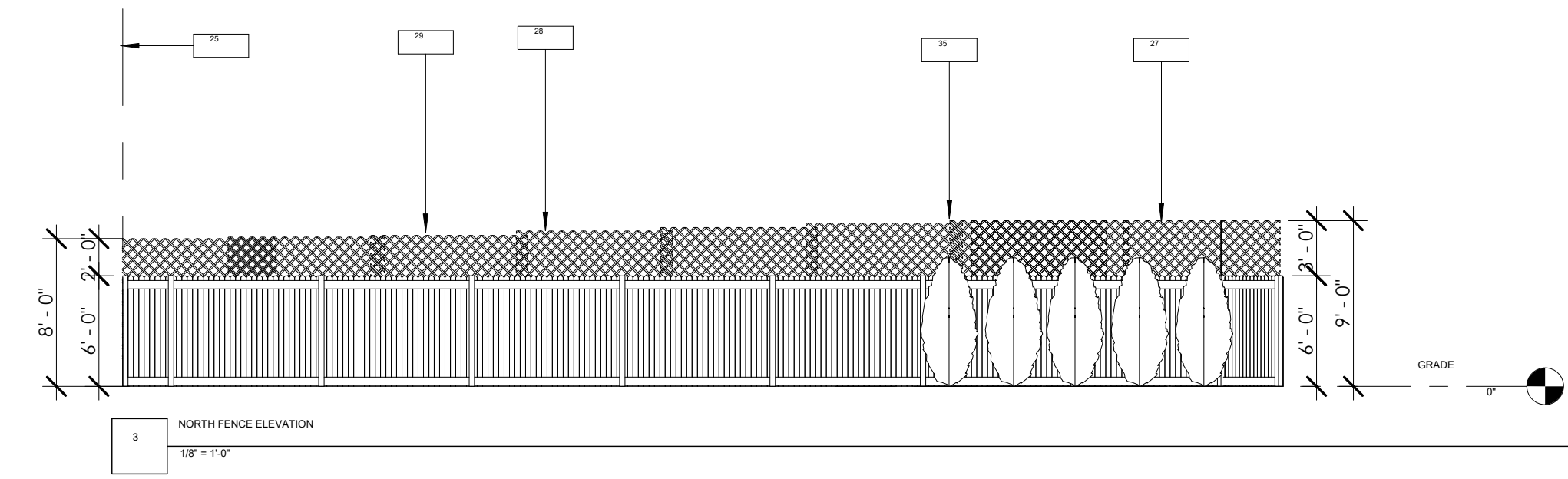
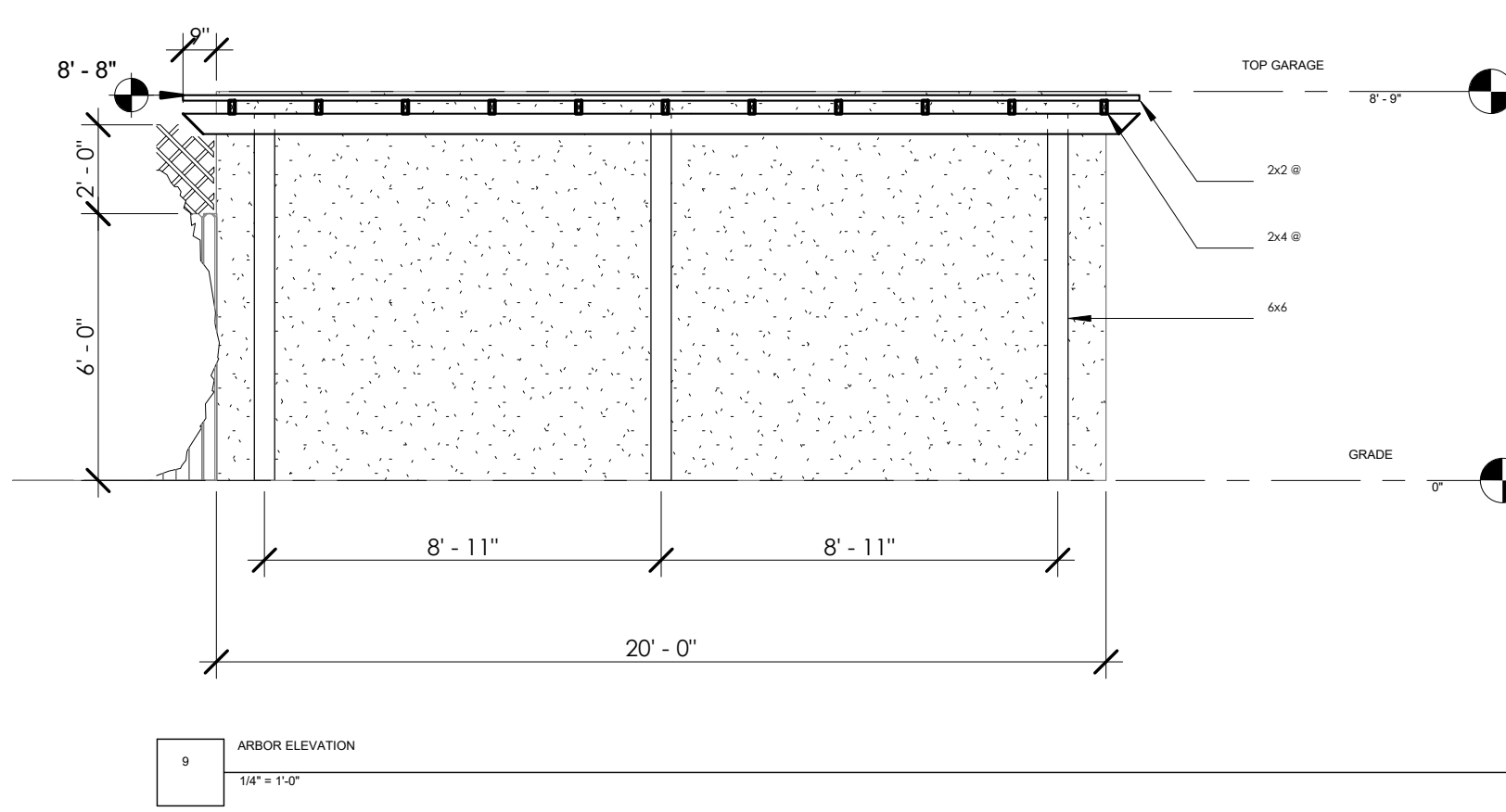


PLANS APPROVED by

February 25, 2020
 SIGNATURE DATE
 *AUP Findings and Conditions Attached



Sheet Number	Sheet Name	Sheet Issue Date
A1	SITE PLAN	12/03/2019
A3	ENLARGED PARKING PLAN	12/03/2019
A4	DETAILS & AREA CALCS	12/03/2019

SHEET NOTES	
Key Value	Keystone Text
1	48" TALL BAMBOO FENCE @ REAR PROPERTY LINE
2	REAR SETBACK LINE
3	FRONT SETBACK LINE
4	SIDE SETBACK LINE
5	SHED
6	REAR DECK
7	BLDG. FOOTPRINT BELOW
8	UTILITY CLOSET
9	ELECTRICAL PANEL
10	MAINTAIN 30" W X 36" D FOR CLEAR WORKING SPACE - N.E.C. 110.26(A)(2) REQUIREMENT.
11	GAS METER
12	ARBOR STRUCTURE
13	6'-0" TALL FENCE AT PROPERTY LINE
14	14' TALL LANDSCAPING/TREES
15	BAY WINDOW
16	FIREPLACE
17	1344 ODWAY RESIDENCE
18	1333-1339 HOPKINS STREET. MAIN STRUCTURE.
19	1333-1339 HOPKINS STREET. GARAGE STRUCTURE.
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
24	GATE
25	PROPERTY LINE
26	24" LATTICE ATOP OF FENCE
27	36" LATTICE ATOP OF FENCE. INSTALLED TO REPLACE (E) 24" LATTICE AT THE TIME OF REMODEL/ADDITION AT 1344 ORDWAY. MUTALLY AGREED UPON WITH NEIGHBOR OF 1344.
28	FENCE AND LATTICE PATTERNS ARE SHOWN CONCEPTUALLY.
29	LATTICE "STEPS-DOWN" APPROX 1.5" EVERY 8'-0" LF TO REFLECT GRADE.
30	NEIGHBOR'S GARAGE STRUCTURE
31	CELESTORY WINDOW
32	BLDG. FOOTPRINT IS AT SETBACK LINE
33	FRONT ENTRY STEPS
34	CLOSEST FACE OF ARBOR POST IS 1'09" FROM PROPERTY LINE. SEE PLAN VIEW.
35	36" LATTICE ATOP OF FENCE EAST OF THIS POINT. 24" LATTICE ATOP FENCE WEST OF THIS POINT
36	APPROX. LOCATION OF PREVIOUS TOOLSHED. APPROX 10'X10'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
37	TREE - REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
38	APPROX. LOCATION OF PREVIOUS TRED SHED. APPROX 9'X16'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
39	TREES ARE APPROX 18" FROM P.L. AND 5'-8" FROM BUILDING FOOTPRINT. CROWN OF TREE IS APPROX. 36" W. TRUNKS < 3" DIA.



TRADE CRAFT

225 VISTA GRANDE, GREENBRAE, CA

ARCHITECT PROJECT #: 18-009

ARCHITECT CONTACT INFORMATION:
NICHOLAS LEONE
415.272.3541
NBL@TRADECRAFTARCH.COM

CONSULTANT:

CLIENT:
Jerrine Durand & Kelli
Bishop

REVISION HISTORY:

Number	Revision Description	Revision Date
1	AUP PERMIT	11/19/18
2	AUP REVISION 1	3/15/19

STAMP:

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED, OR DISCLOSED WITHOUT WRITTEN CONSENT OF THE ARCHITECT.

DRAWN BY: _____ CHECKED BY: _____

SCALE: _____ SHEET SIZE: 24 x 36"

PUBLISH DATE: 12/03/2019 6:44:19 PM

PRINT DATE/TIME: 12/3/2019 6:44:19 PM


SHEET NAME: SITE PLAN

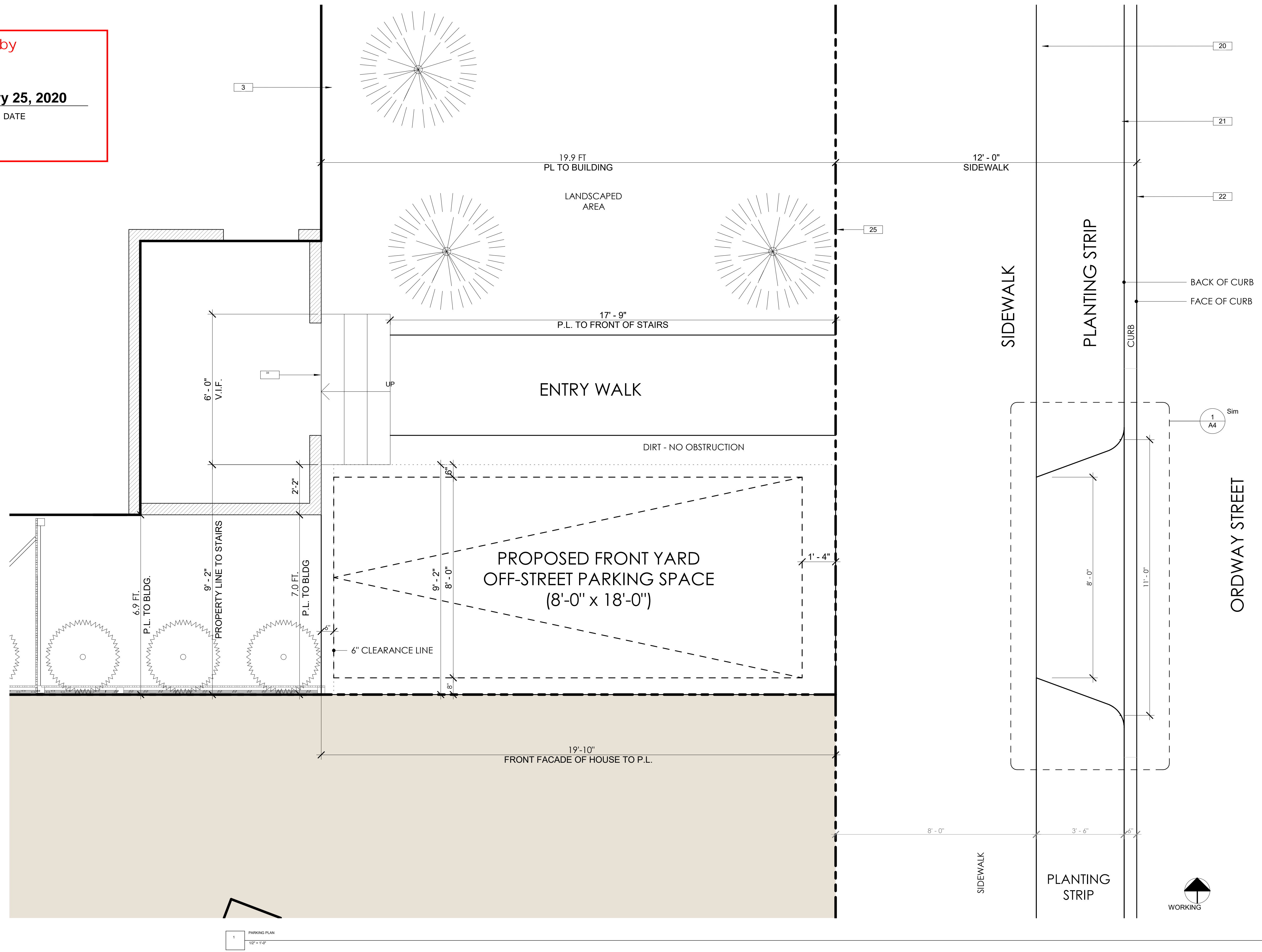
SHEET NUMBER: **A1**

284

PAPER SCALE: 1/2" = 1'-0" THE BASIC DESIGN PLANS & DETAILS INDICATED HEREIN ARE NOT PERMITTED WITHOUT THE WRITTEN AUTHORIZATION OF THE ARCHITECT.

PLANS APPROVED by


 SIGNATURE February 25, 2020
 DATE
 *AUP Findings and Conditions Attached



1 PARKING PLAN
1/2" = 1'-0"

SHEET NOTES	
Key Value	Keynote Text
3	FRONT SETBACK LINE
16	FIREPLACE
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
25	PROPERTY LINE
33	FRONT ENTRY STEPS

TRADE CRAFT

TRADECRAFT
225 VISTA GRANDE, GREENBRAE, CA 94904

ARCHITECT PROJECT #: 18-009

ARCHITECT CONTACT INFORMATION:
NICHOLAS LEONE
415.272.3541
NLE@TRADECRAFTARCH.COM

CLIENT:
Jennie Durant & Keki Burjorjee

1346 ORDWAY

1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date

STAMP:

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED, OR DISCLOSED WITHOUT WRITTEN CONSENT OF THE ARCHITECT. A SIGNATURE ON THE STAMP ABOVE CONSTITUTES THE ARCHITECT'S CONSENT FOR SUBMISSION OF PLANS FOR THE STATED PROJECT.

DRAWN BY: Author CHECKED BY: Checker

SCALE: 1/2" = 1'-0" SHEET SIZE: 24 x 36"

PUBLISH DATE: 12/03/2019

PRINT DATE/TIME: 12/3/2019 6:44:20 PM

SHEET NAME: ENLARGED PARKING PLAN

SHEET NUMBER: A3

285

PLANS APPROVED by

February 25, 2020

SIGNATURE: *[Signature]* DATE: _____

*AUP Findings and Conditions Attached

DRIVEWAY WITH SEPARATED SIDEWALK
W=DRIVEWAY WIDTH (SEPARATED SIDEWALK)

DRIVEWAY WITH MONOLITHIC SIDEWALK
W=DRIVEWAY WIDTH (MONOLITHIC SIDEWALK)

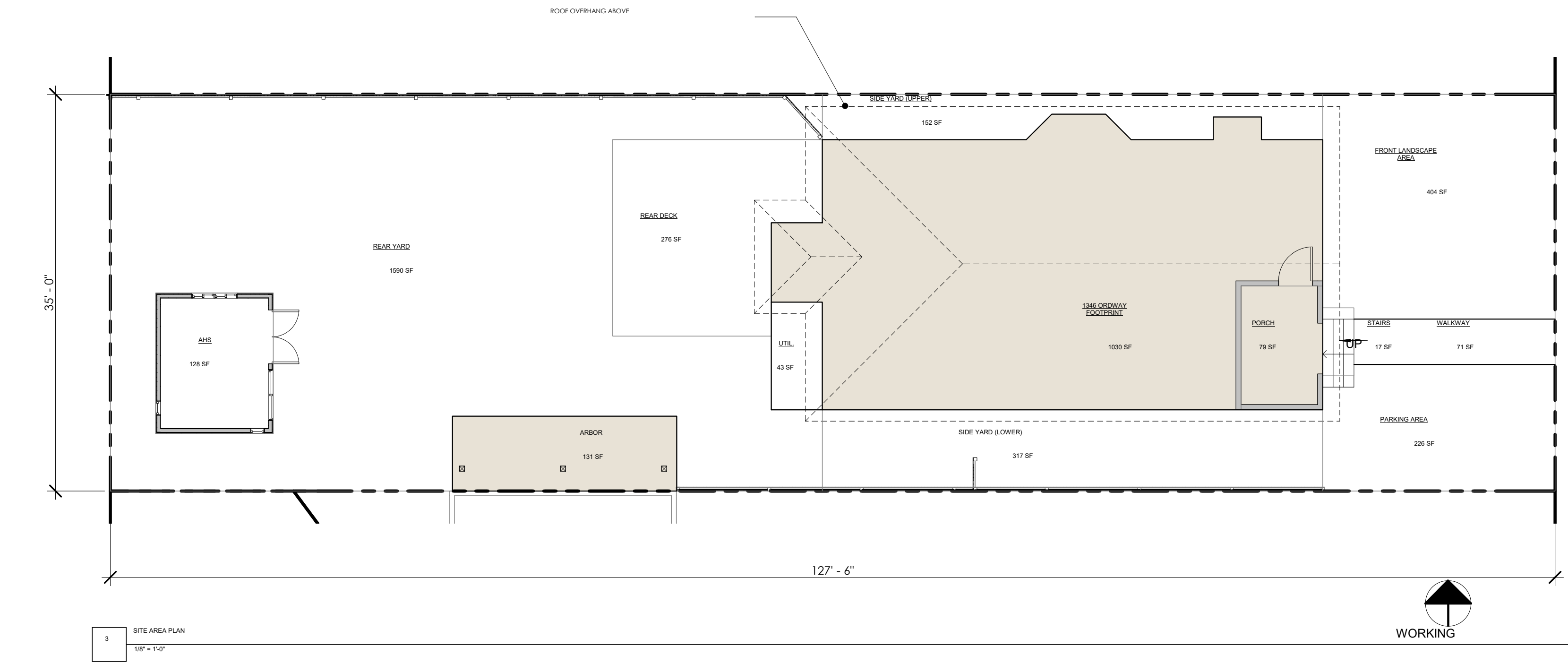
TABLE OF DRIVEWAY DIMENSIONS

Dimension	Commercial & Industrial	Residential
Y	5' MIN	2' MIN
W	12' MIN	8' MIN

NOTES:

- REFER TO GENERAL NOTES FOR CONCRETE WORK.
- RESIDENTIAL DRIVEWAYS SHALL BE 6 INCHES THICK PORTLAND CEMENT CONCRETE (PCC). COMMERCIAL AND INDUSTRIAL DRIVEWAYS SHALL BE 6 INCHES THICK REINFORCED CONCRETE. REINFORCEMENT SHALL BE 6"x6" WELDED WIRE FABRIC, #10 GAUGE MESH OR #4 BARS AT 18 INCH O.C. EACH WAY. THE REQUIRED STRUCTURAL SECTION FOR ANY DRIVEWAY SHALL BE CONTINUOUS FROM THE CURB TO THE BACK OF SIDEWALK.
- DEPTH OF GUTTER FLOWS SHALL BE CALCULATED AND COMPARED TO PROPOSED SIDEWALK ELEVATIONS DURING DESIGN TO ENSURE GUTTER FLOWS ARE CONTAINED AND RUNOFF WITHIN THE PUBLIC RIGHT OF WAY DOES NOT DRAIN ONTO PRIVATE PROPERTY.
- RETAINING CURBS AND DRIVEWAY CONFORMS AS REQUIRED.
- FOR ADDITIONAL REQUIREMENTS, SEE PLAN B144, "CONCRETE WORK NOTES."

BERKELEY STANDARD SIDEWALK DETAIL



1346 ORDWAY - AREA CALCULATIONS

Lot Area (SF) **4,462.5** 11/27/2019

Area Description	Area	(E) Gross Floor Area (GFA)	(P) Gross Floor Area (GFA)	(E) Building Footprint	(P) Building Footprint	(E) Lot Coverage	(P) Lot Coverage	Useable Open Space (UOS)	Landscaped UOS	FAR (GFA/Lot Area)
Accessory Habitable Space (Shed)	128		128		128		128			
Arbor/Trellis	131		NO		131		131			
Rear Deck	276							276		
Home Footprint (Exclude Porch)	1,030	1,030	1,030	1,030	1,030	1,030	1,030			
Porch	79	79	79	79	79	79	79			
Utility Closet	43	43	43	43	43	43	43			
Side Yard (Upper)	152									
Front Landscape Area	404							404	404	
Lower Side Yard	317									
Walkway	71									
Stairs	17									
Parking Area	226									
Rear Yard (Less Arbor & Deck & AHS)	1,590							1,590	1,590	
SUBTOTAL*	4,464	1,152	1,280	1,152	1,411	1,152	1,411	2,270	1,994	29%
Percentage		26%	29%	26%	32%	26%	32%	51%	88%	

May be subject to 1-2 SF discrepancy due to rounding.

THE BASIC DESIGN PLANS, & DETAILS INDICATED OR REFERENCED BY THIS DRAWING FOR PRIVATE PURPOSES DOES NOT CONSTITUTE PUBLICATION. ANY DISCREPANCY BETWEEN THE DRAWING AND THE PROJECT ONLY. BEING OF THE DRAWING FOR PRIVATE PURPOSES DOES NOT CONSTITUTE PUBLICATION. ANY DISCREPANCY BETWEEN THE DRAWING AND THE PROJECT ONLY.

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
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**LETTER OF APPEAL
TO
CITY COUNCIL OF BERKELEY, CALIFORNIA**

June 29, 2020

The City Clerk
City of Berkeley
2180 Milvia Street, 1st Floor
Berkeley, California 94704

RE: ZONING ADJUSTMENTS BOARD DECISION: AUP #ZP2018-0174 -1346 ORDWAY STREET

Dear Mayor and Council President Arreguin and Berkeley's Honorable Councilmembers

I, Lawrence Hickman ("Appellant"), do hereby Appeal Berkeley's Zoning Adjustments Board's decision on the above referenced Administrative Use Permit (AUP), in favor of Jennie and Keki Burjorjee ("Applicants").

This Appeal is filed on grounds the Zoning Adjustment Board's quasi-judicial hearing denied Appellant due process, in that there was no meaningful hearing. There was no discussion of the legal authority, the evidence in the record; and, Appellant was denied any opportunity to respond to and/or rebut evidence. In sum, the hearing was unfair and prejudicial. The result of the hearing is unjust, and totally untethered from the spirit of the City of Berkeley's Municipal Code or the fair administration of justice.

I. STATEMENT OF THE CASE

On February 25, 2020, Zoning Officer Nilourfar Karimzadegan noticed Appellant the above referenced Administrative Use Permit No. ZP20180174 is approved; information was provided setting forth appeal rights.

On March 17, 2020, Appeal was filed by Appellant.

On May 20, 2020, Appellant was noticed of the Hearing date for June, 11, 2020.

On June 11, 2020, the Zoning Adjustment Board conducted a hearing on the matter, and therein denied Appellant's Appeal.

II. STATEMENT OF FACTS

On June 11, 2020, the Zoning Adjustment Board denied Appellant's Appeal, which was filed on March 7, 2020. The facts which presented to the Zoning Adjustment Board are attached hereto as Exhibit A, and

incorporated by reference herein as though set forth at length. These facts should be considered in their entirety to prevent duplicity and wasting time.

The new facts giving rise to this Appeal come from the meaningless aforementioned hearing on June 11, 2020, wherein Appellant was confronted with an unfair and biased process, with testimony and comments not germane to the issues before the tribunal.

For example, there was no discussion as to why the zoning officer withheld the fact that tree and hedges are a fence; no attempt was made to confirm the true property line, on information and belief Appellant asserts that his property line extends further to the North than shown – thus **Applicants’ construction may actually be on Appellant’s property**; there was no discussion from zoning department as to why Applicant were not required to follow Code Enforcement’s instruction to take down the construction until the AUP application had been approved; no basis was given as to why Zoning did **NOT** conduct a site visit, since Appellant complained that Applicants’ trees, hedges, bushes were growing into the fence and vines from the trellis are growing over the top the garage. The questions raised, by the Board Members, beg the question whether Appellant’s Appeal was fully read and considered. Suffice the Zoning Adjustments Board did not carefully examine the applicable Municipal Codes and prevailing law to reach a correct and equitable result.

For the reasons that follow, Appellant submits that the result reached by the Zoning Adjustments Board constitutes a denial of due process and is inconsistent with Berkeley’s Municipal Code, and was **NOT** carefully tailored to achieve a manifestly just resolution in the context of the circumstances before the Zoning Adjustment Board. It should therefore be reversed or remanded.

III. STANDARD OF REVIEW

The sole question now before this Council is whether the Zoning Adjustments Board’s quasi-judicial proceeding constituted denial of due process, contrary to established law and the fair administration of justice

Quasi-judicial proceedings must follow basic standards of due process, including: 1) Proper notice of the hearing; 2) Providing everyone with an interest in the proceedings an opportunity to be heard and to hear what others have to say; 3) Full disclosure to everyone of the facts being considered by the decision-making body (i.e., no ex parte contacts); 4) An impartial decision-maker free from bias and conflicts of interest; 5) Decisions based on the facts of the case, not on political pressure or vocal opposition.

1. Proper Notice of Hearing

Proper notice is not at issue in this matter. Appellant admits to receiving adequate and timely notice.

2. Opportunity To Be Heard And Hear What Other Have To Say

A person facing possible deprivation of a recognized interest has a right to defend herself and present her side of the dispute to the body or hearing officer that will be making the decision. (The “fundamental requisite of due process of law is the opportunity to be heard.” *People v. Swink, supra, 150 Cal.App.3d at 1080.*) The

ability to bring evidence and to respond to evidence presented against her, are essential features of this comprehensive right.

Appellant was denied any opportunity to respond to the evidence and/or inconsistent statements presented against him. Appellant addressed the tribunal first via telephone over an internet Zoom Meeting platform. He was allowed to speak for five minutes and his phone line was muted when the five minutes expired. Several times Appellant wanted to respond to erroneous testimony or comment the true state of the property; however, his phone line was muted.

In conclusion, Appellant was denied a real opportunity to be heard; he was denied a right to respond.

3. A Fair Tribunal – Full Disclosure of The Facts Being Considered

“When ... an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal.” *Morongo*, 45 Cal.4th at 737 citing *Withrow v. Larkin* (1975) 421 US 35, 46. “A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party.” (*Id.*)

The hearing was an unfair and biased process. It appears the City’s zoning officer was prejudice toward the Appellant and she gave favor to Applicant. The zoning officer failed to inform the Appellant or the Board that she had multiple *Exparte* communication with the Applicant. The decision makers’ ultimate decision was an extension of the zoning officers’ recommendation to approve the AUP. The zoning officer failed to fully inform the Board that the non-conforming conditions being applied for were already illegally constructed and presently existing as non-conforming conditions affecting Appellant’s property rights.

Furthermore, the zoning officer failed to fully inform the Board of the City’s Code Enforcement Unit’s Notice of Violation and Administrative Warning issued to Applicants for failure to comply with their and order to reduce the size of the fence (trees) to six (6) feet; as a matter of fact, until prodded, the zoning officer did not disclose the fact, that the BMC, considers trees, hedges and bushes planted in a row to be a fence,

In conclusion, the adjudicative process conducted by the Zoning Adjustment Board was unfair and biased.

4. A Fair Decision - Free From Bias and Conflicts of Interest

“Procedural fairness requires internal separation between advocates and decision makers to preserve neutrality.” *Morongo*, 45 Cal.4th at 737. For a quasi-judicial decision to be fair, the hearing must be conducted by a fair decision making body. “A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party.” *Withrow v. Larkin*, 421 US at 46.

As set forth in #3 above, and incorporated by reference herein as though set forth at length, there appears to be no internal separation between the zoning officer’s advocacy and recommendation and the Zoning Adjustments Board’s decision in support of that recommendation. However, the problem that is the Board’s decision arises from the zoning officer’s lack of neutrality.

In conclusion, the Board's decision not free from bias because of its zoning officer's apparent conflict of interest.

5. Decision Based On Facts Of The Case Not On Political Pressure Or Vocal Opposition

Findings must be relevant to adopted, applicable criteria in statutes or policies. See, e.g. *J.L. Thomas, Inc. v County of Los Angeles (1991) 232 Cal.App.3d 916* (finding adopted by planning commission to support denial of a use permit). Under CCP §1094.5, courts are generally deferential to agencies' decisions under the substantial evidence test; however, courts will invalidate an agency's decision if the agency fails to make required findings or fails to demonstrate the analytical route between the evidence and the action. *West Chandler Blvd. Neighborhood Ass'n v. City of Los Angeles (2011) 198 Cal.App.4th 1506*.

Here, Appellant filed a Notice of Opposition, complaining that Applicants have constructed non-conforming conditions at his property's edge, or on his property, causing diminution of value and quiet enjoyment. The City's Code Enforcement Unit conducted site visit and confirmed Appellant's complaint ... the non-conforming conditions have been illegally constructed and do exist on Applicants property in violation of the BMC. Applicant was issued Notice of Violation, Administrative Warning Citation, and Order to remove or correct the illegal non-conforming conditions

Yet, the City's zoning officer over the objection of its Code Enforcement Unit, or perhaps, in collaboration with, approves Applicant's AUP ... rewarding Applicants for years of illegal conduct. On the other hand, Appellant, a law abiding citizen, is ignored and left without remedy.

In this instant, the zoning officer, and by extension the Zoning Adjustments Board failed to present any rational explanation or demonstrate a rational basis for this unjust result.

IV. CONCLUSION

For the foregoing reasons, Appellant submits that the result reached by the Zoning Adjustments Board is contrary to laws governing due process and inconsistent with Berkeley's Municipal Code, and was **NOT** carefully tailored to achieve a manifestly just resolution in the context of the circumstances before the Zoning Adjustment Board. It should therefore be reversed or remanded.

Dated: June 29, 2020

Respectfully submitted,



Lawrence Hickman

EXHIBIT A

EXHIBIT A
STATEMENT OF FACTS

EXHIBIT A





STATEMENT OF FACTS

Since 1990 Appellant has peacefully owned the property located at 1333 and 1346 Hopkins Street. In 2005, the Appellant consulted the City of Berkeley, and with the consent of the prior owner of the 1346 Ordway Street property, legally constructed a 6' fence along the property line of 1333 Hopkins Street.

In 2015, Applicants purchased the subject property at 1346 Ordway Street, Berkeley, California.

In, or around, 2017, Applicants approached Appellant attempting to discuss their (Applicants') intent to add a 4' lattice of top of Appellant's fence. Appellant informed Applicants that he (Appellant) had no interest in adding anything to the top of the fence.

About 2018, Applicants planted a row of tall tree along the entire South border of Appellant's property line, except the area where the garage sits on the property line – approximately 3" from Appellant's property line.

Next, Applicant (Keki Burjorjee) came onto Appellant's property, using profanity and in a threatening tone and manner, attempting to discuss adding the 4' lattice to the fence, or adding lattice to the tall 4 x 4s that had been placed in the ground. Appellant told Applicant that he had no interest in discussing his property improvements; and, advised him to direct his concerns to the City of Berkeley's Planning and Land Use Division.

The next day, Appellant noticed and approached a workman (carpenter) in the Applicants' yard, setting tall post up against his fence. Appellant approached the workman and inquired "do you have a permit to build a fence over 6' tall?" Workman came over into Appellant driveway and began to argue for consent to continue building. Appellant told the workman only the City of Berkeley can grant you a permit to build the fence over 6' tall.

Appellant told Applicants' workman, "Let's call the City's Code Enforcement Unit right now." Appellant, in fact, called Code Enforcement shortly thereafter.

On May 10, 2018, the City of Berkeley's Code Enforcement Inspector, Tim Kittor, conducted a brief site visit at the 1346 Ordway Street property. As a result of Inspector Kittor's finding, he issued a Notice of Violation (NOV) Case #397755 – both noticing and warning Applicants of unpermitted and non-conforming conditions on their property. As a matter of fact, Inspector Kittor instructed Applicants to reduce the size of the trees to 6' tall. (See Exhibit A – NOV)

On September 7, 2018, Applicants submitted an application for an Administrative Use Permit (AUP) ZP2018-0174 to: 1) install a two foot (2') lattice on top of Appellant's six feet (6') fence; and, 2) plant fifteen (15), approximately 14' trees alongside – the full length – of the subject fence and property line; the application was for conditions they had already created and constructed.

On September 19, 2018, the City of Berkeley's Planning Dept. Technician, Nilu Karimzadegan, via letter, acknowledged receipt of the aforementioned AUP application, and advised Applicants she would be processing the application in due course.

On September 20, 2018, Appellant filed a letter serving Notice of Opposition (NOO) to Applicants' proposed plans, as set forth in the AUP application under consideration by the Planning Department. It should be noted that Appellant's Letter of Opposition was not included in Applicants' application package. Equally important, Appellant's NOO letter informed the Planning Department of the fact the AUP application omitted the fact that the trees Applicants requested to plant were already planted without permit, along with other non-conforming conditions, e.g., the trees were planted 3" from the subject fence - within 2' of the property line. In short, it was Appellant's complaint to Code Enforcement that spurred Applicants' impetus to apply for the AUP – otherwise, the subject non-conforming unpermitted conditions would have likely continued unabated. This conclusion is reasonable in view of the fact that the architectural drawing submitted with the original application failed to show certain non-conforming and unpermitted conditions; conditions that would have gone unnoticed but for Appellant's bringing omitted matters to the attention of the City Planner. (See Exhibit B – NOO)

On October 5, 2018, the City's Planning Department issued a letter requesting and setting forth requirements necessary to proceed with the AUP application. The letter speaks to permit requests that were not mentioned in the initial AUP application. For example, the letter addresses 1) proposed parking space on site plan, trellis, tree trunks crowns, and sheds. It appears another AUP application, or an updated version, was submitted after the September 7, 2018 AUP application. These aforementioned matters appear to have been intentionally omitted in the original application.

However, on December 3, 2018, Applicants completed and submitted the City's required Tabulation Form (showing the property's existing status and what conditions were non-conforming/unpermitted and requiring permits), was submitted back to the Planning Department, evidencing that the required Southside yard setback is 7'-2" and a parking space requires a permit.

On February 8, 2019, the City responded to Applicants' revised AUP application materials. Therein the City requested additional information to complete Applicants' application requests.

Specifically, the letter noted that "because the application is a result of NOV and it also includes an unpermitted accessory building and an unpermitted trellis. Moreover, the letter appears to request information and details on non-conforming and unpermitted conditions omitted in the initial AUP application. (See Exhibit C – Re-submittal/Revised Application)

July 2, 2019, the City informed Applicants "after reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel ... all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval of this permit." Hence, revised plans were required showing the changes regarding parking were to be submitted to continue processing the AUP application. Applicants were invoiced an additional \$1600.00 additional AUP permits (AUP080). (See Exhibit D – No off-street parking determination)

On July 16, 2019, 2:02 p.m. Applicant (Jennie Durant) emailed Peter Chun, at the City's Transportation – Public Works Department regarding off-street parking. Applicant was seeking an answer as to whether she could apply for an AUP for her front yard parking space, with only a 6'-9" wide driveway – from house to property line. It was previously determined that Applicant has no legal parking space on the 1346 Ordway Street property. At 3:02 p.m., Nilu, the Applicants' City Planner emailed Peter, with a CC to Jennie stating "to clarify, after the review of this application with the zoning officer, it is determined that this [1346 Ordway Street] property has no legal [off-street] parking." Further Nilu stated "Jennie ... there is a Zoning determination as well and a Traffic Engineer review of the application. The off-street parking space in the front setback will not accommodate the 2' landscaping strip which requires a variance."

On July 17, 2019, at 10:22 a.m., Traffic Engineer, Peter Chun emailed Nilu, with a CC to Jennie, stating "my recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended ... I generally support the setback requirements (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking. (See Exhibit E – Recommendation to remove driveway)

On July 17, 2019, at 12:09 p.m., Nilu emailed Applicant (Jennie), with CC to Peter Chun stating "I also discussed options regarding this project with the Zoning Officer this morning. It seems like you

have three options: 1) Restore site to its original state – remove all unpermitted accessory building, shed, trellis, hedge and fence; 2) Staff will recommend approval of AUP application, with Conditions of Approval (COA) – remove curb cut and parking; or, 3) You can apply for (a) an AUP for a front yard off-street parking space; and (b) a Variance – there is not enough space to provide the 2' landscaping strip.

On August 27, 2019, at 11:11 a.m., Nilu emailed Applicants, with CC to Code Enforcement Office, Wanda Drouillard. Therein, Nilu set forth: 1) Required Fees for AUP and penalties; 2) Required revisions on Site Plan; 3) Variance statement requirements – **“staff can recommend a Variance only if there are no other option available on the site ... in your case, there is the option of relocating the stairs to create room for the 2' landscaping strip.”** and, 4) Code Enforcement will follow up regarding deadlines.

September 10, 2019, the City's Code Enforcement Unit issued an Administrative Citation Warning (ACW), wherein Applicants were reminded the NOV, issued May 10, 2018 – requiring correction of violation on the subject property; the Citation Warning for outstanding violations the Berkeley Municipal Code (BMC), issued August 30, 2018. Pursuant to NOV and ACW, Applicant was required to reduce the height of the hedges that exceed 6', without a permit. Code Enforcement further reminded Applicant that their plans submitted on September 2018 for a Variance on the hedges were additionally unpermitted construction (accessory building and trellis – identified by the Planning Department and, as of Sept 9, 2019, the violations remain; and, Applicants have failed to comply with Planning Department's deadlines for submitting corrections regarding plan check requested via letter and email. (See Exhibit F – AWC)

Since the project is associated with a Code Enforcement case, specified deadlines are enforced and take precedent over any timelines related to the permit process. In sum, Applicant were Ordered to comply with certain deadlines, and were put on Notice that, **“in light of the history of non-compliance on the property,”** further failures to timely comply would, as of September 25, 2019, result in Citation penalties.

On September 17, 2019, Applicants submitted a Variance Statement, because City had determined the 1346 Ordway Street property does not have a legal parking space. Applicants acknowledge they have an option to achieve off-street parking – in the setback area of their front yard - other than being granted the requested Variance. Nevertheless, Applicants persist in asking the City to take the extraordinary step of granting a special exception Variance, although to do so

would violate the City's rules - present policy, practice and procedure - "**staff can only recommend a Variance if there is no other option available on the site.**" Applicants' argument the City should make a special exception for them and waive or reduce the 2' landscaping requirement to accommodate their desire to save money - eliminate their cost/expense associated with adjusting their front steps and rebuilding the curb cut accordingly. Also, they claim Applicant (Jennie Durant) has a "temporary handicapped" placard, giving rise to the question of whether her temporary condition requires an exceptional Variance granting off-street parking on a property deemed to have no legal parking space.

In sum, Applicants responded to the City's requirement for Variance follows: 1) the need for exceptional or extraordinary circumstance is met because Jennie Durant has a "temporary handicapped" placard; 2) necessary for preservation and enjoyment of substantial property rights: here Applicant assert a parking space is necessary for the enjoyment and full use of home; 3) does the use materially impact health, safety, public welfare, injurious to property or improvement – generally benefit the City: answer is non-responsive –

Applicants merely states, "we are simply requesting that our current parking space be allowed to remain where it is." Granting the variance would reduce environmental waste associated with remodeling stairs and curb cuts.

On November 5, 2019, the Planning Departments Tabulation Form appears re-submitted, including sizes, dimension, existing and permitted required details, including: 1) Units, Parking spaces, and bedrooms; 2) yards, heights and setbacks; Areas – building, lot, usable space, etc.; 3) Arbor specifics – setbacks and area; 4) Accessory habitable space specifics; Area calculations; and, 5) Plat survey map.

On November 19, 2019, the City Planning Department communicated its need for clarity for the Zoning Office. Noted there is the fact that the application say 15 [trees] hedges, but the site plan only show twelve. Also, on November 19, 2020, Applicants submitted an update/revised Variance Request. Therein, Applicant set forth a quasi-promise, if the Variance is granted – "we would install/build a green, ecologically friendly and attractive parking spot."

On November 20, 2020, Applicant sent email to Nilu, with updated Tabulation Form and Updated Variance Request.

On November 25, 2020, Nilu emailed Applicant (Jennie Durant) and advised that she needed certain corrections on the Tabulation Form A.S.A.P.

On November 26, 2019, Jennie forwarded Nilu's email of November 25 to her architect, Nick Leone, regarding the Tabulation Form revisions/correction requested.

On November 27, 2019, at 10:59 a.m., Nick Leone emailed Nilu, requesting a telephone conversation to review her comments regarding the 1346 Ordway Street project. At 3:14 p.m., on November 27, 2019, Nick Leone emailed Nilu, sending her, in an attachment, the aforementioned revisions requested pursuant to their telephone conversation.

On December 3, 2019, Nilu emailed Nick, with CC to Applicant (Jennie Durant), advising that "Enlarged site plan submitted on 11-20-19 does not show accurate dimensions ... this needs to be corrected." Nilu further advised that the "enlarged plan for parking is very confusing and busy. Please look at what I drew and draw something simple and clear ... the Variance Statement should reflect the correct dimension for the remaining landscape area as well (8") ..."

On December 4, 2020, Applicant (Jennie Durant) sent another (3rd) Variance Statement. Again, restating their willingness to remove the existing concrete and install permeable paver parking strips, a demoniac lawn to act as a 1" landscaping barrier.

On December 19, 2019, the City provided a list of addresses of community members to which Notices of the 1346 Ordway Street project could be mailed – 126 names and addresses.

On February 13, 2020, Applicant submitted a request for fee adjustment or refund, claiming that a change of permit type qualifies Applicants for an adjustment and/or refund.

On February 25, 2020, the City Approved AUP #ZP-2018-0174 and sent post card Notice of Decision (NOD) to 1346 Ordway Street neighborhood residents – 36 names and addresses.

The NOD reads as follows:

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has **APROVED** the following permits pursuant to Berkeley Municipal Code (BMC) § 23B.28.050, and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52 010 for Reasonable Accommodation for Fair Access to Housing;
- Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building:

- **Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line:**
- **Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and**
- **Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.**

BMC § 23B.52.010, in pertinent part, provides for reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing, pursuant to the American with Disabilities Act and California Fair Housing and Employment Act. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The finding for Issuance, Denial and/or Conditions follows:

- A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.
- C. The Zoning Officer shall deny an application for an AUP if he/she determines that he/she is unable to make any of the required findings, in which case he/she shall state the reasons for that determination.
- D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

EXHIBIT B

EXHIBIT B
ZONING ADJUSTMENTS BOARD
APPEAL DOCUMENTS

EXHIBIT B

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

APPEAL LETTER

March 16, 2020

Igor Tregub, Chairperson
City of Berkeley
Land Use Planning Division
Attn: Zoning Adjustments Board Members
1947 Center Street
Berkeley, CA 94704

**RE: APPEAL- AUP #ZP2018-0174 FOR 1346 ORDWAY STREET; AND
REQUEST ZONING ADJUSTMENTS BOARD PUBLIC HEARING**

Dear Chair Tregub and Board Members:

I, Lawrence Hickman (“Appellant”), do hereby Appeal the City of Berkeley Zoning Officer’s Findings and Approvals of the above referenced Administrative Use Permit (AUP); and, I request a Public Hearing before the Zoning Adjustments Board on this matter. This Appeal is filed on the grounds the Zoning Officer’s Findings and Approvals are unsupported by evidence in the record and inconsistent with the administration of fair and equitable justice, as required by the City of Berkeley Municipal Code (BMC). Moreover, the Zoning Officer appears to ignore the need to recognize the importance of sustaining and maintaining harmony among longtime home owners. The proposed Conditions are inadequate to protect Appellant unreasonable diminution of property value.

INTRODUCTION

This matter arises out of a real property dispute between neighbors. For over twenty-nine years Appellant has owned the large parcel of real property located at the corners of Hopkins and Ordway Streets, also known as, 1333 Hopkins Street, Berkeley, California. For over twenty-five of those years, Appellant experienced quiet enjoyment of ownership with his previous neighbor, Ms. Taylor, owner of the smaller parcel next door at 1346 Ordway Street without incident. Shortly after Ms. Taylor’s death, her property was sold to Jennie Durant and Keki Burjorjee (“Applicants”) and they began engaging in illegal outdoor construction projects; projects that were unpermitted and non-conforming, all violations of the Berkeley Municipal Code (BMC). The illegal projects infringed upon Appellant’s property rights. Moreover, the Applicants continued to initiate and maintain unpermitted conditions even after being notified and warned about some of their illegal construction.

So now, in the form of an application for an Administrative Use Permit, Applicants are seeking forgiveness, permissions, approvals and the legal right to keep and maintain all of the unpermitted, non-conforming and illegal construction projects. The forgiveness, permissions, approvals and legal rights being sought by these outlaws appear to be on the verge of being granted, despite Appellant's Notice of Opposition (NOO), City of Berkeley's Code Enforcement Notice of Violation (NOV), Administrative Citation Warning (ACW) and Order for non-compliance, and their continued infringement on the quiet enjoyment and health and safety of the community at large.

Based upon the foregoing, facts set forth herein, other documents and statements on file, and statements during oral arguments before the Board, Appellant ask this Board to uphold the BMC and affirm this Appeal.

STATEMENT OF FACTS

Since 1990 Appellant has peacefully owned the property located at 1333 and 1346 Hopkins Street. In 2005, the Appellant consulted the City of Berkeley, and with the consent of the prior owner of the 1346 Ordway Street property, legally constructed a 6' fence along the property line of 1333 Hopkins Street.

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However, on December 3, 2018, Applicants completed and submitted the City's required Tabulation Form (showing the property's existing status and what conditions were non-conforming/unpermitted and requiring permits), was submitted back to the Planning Department, evidencing that the required Southside yard setback is 7'-2" and a parking space requires a permit.

On February 8, 2019, the City responded to Applicants' revised AUP application materials. Therein the City requested additional information to complete Applicants' application requests.

Specifically, the letter noted that "because the application is a result of NOV and it also includes an unpermitted accessory building and an unpermitted trellis. Moreover, the letter appears to request information and details on non-conforming and unpermitted conditions omitted in the initial AUP application. (See Exhibit C – Re-submittal/Revised Application)

July 2, 2019, the City informed Applicants "after reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel ... all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval of this permit." Hence, revised plans were required showing the changes regarding parking were to be submitted to continue processing the AUP application. Applicants were invoiced an additional \$1600.00 additional AUP permits (AUP080). (See Exhibit D – No off-street parking determination)

On July 16, 2019, 2:02 p.m. Applicant (Jennie Durant) emailed Peter Chun, at the City's Transportation – Public Works Department regarding off-street parking. Applicant was seeking an answer as to whether she could apply for an AUP for her front yard parking space, with only a 6'-9" wide driveway – from house to property line. It was previously determined that Applicant has no legal parking space on the 1346 Ordway Street property. At 3:02 p.m., Nilu, the Applicants' City Planner emailed Peter, with a CC to Jennie stating "to clarify, after the review of this application with the zoning officer, it is determined that this [1346 Ordway Street] property has no legal [off-street] parking." Further Nilu stated "Jennie ... there is a Zoning determination as well and a Traffic Engineer review of the application. The off-street parking space in the front setback will not accommodate the 2' landscaping strip which requires a variance."

On July 17, 2019, at 10:22 a.m., Traffic Engineer, Peter Chun emailed Nilu, with a CC to Jennie, stating "my recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended ... I generally support the setback requirements (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking. (See Exhibit E – Recommendation to remove driveway)

On July 17, 2019, at 12:09 p.m., Nilu emailed Applicant (Jennie), with CC to Peter Chun stating "I also discussed options regarding this project with the Zoning Officer this morning. It seems like you have three options: 1) Restore site to its original state – remove all unpermitted accessory building, shed, trellis, hedge and fence; 2) Staff will recommend approval of AUP application, with Conditions of Approval (COA) – remove curb cut and parking; or, 3) You can apply for (a) an AUP for a front yard off-street parking space; and (b) a Variance – there is not enough space to provide the 2' landscaping strip.

On August 27, 2019, at 11:11 a.m., Nilu emailed Applicants, with CC to Code Enforcement Office, Wanda Drouillard. Therein, Nilu set forth: 1) Required Fees for AUP and penalties; 2) Required revisions on Site Plan; 3) Variance statement requirements – **“staff can recommend a Variance only if there are no other option available on the site ... in your case, there is the option of relocating the stairs to create room for the 2’ landscaping strip.”**; and, 4) Code Enforcement will follow up regarding deadlines.

September 10, 2019, the City’s Code Enforcement Unit issued an Administrative Citation Warning (ACW), wherein Applicants were reminded the NOV, issued May 10, 2018 – requiring correction of violation on the subject property; the Citation Warning for outstanding violations the Berkeley Municipal Code (BMC), issued August 30, 2018. Pursuant to NOV and ACW, Applicant was required to reduce the height of the hedges that exceed 6’, without a permit. Code Enforcement further reminded Applicant that their plans submitted on September 2018 for a Variance on the hedges were additionally unpermitted construction (accessory building and trellis – identified by the Planning Department and, as of Sept 9, 2019, the violations remain; and, Applicants have failed to comply with Planning Department’s deadlines for submitting corrections regarding plan check requested via letter and email. (See Exhibit F – AWC)

Since the project is associated with a Code Enforcement case, specified deadlines are enforced and take precedent over any timelines related to the permit process. In sum, Applicant were Ordered to comply with certain deadlines, and were put on Notice that, **“in light of the history of non-compliance on the property,”** further failures to timey comply would, as of September 25, 2019, result in Citation penalties.

On September 17, 2019, Applicants submitted a Variance Statement, because City had determined the 1346 Ordway Street property does not have a legal parking space. Applicants acknowledge they have an option to achieve off-street parking – in the setback area of their front yard - other than being granted the requested Variance. Nevertheless, Applicants persist in asking the City to take the extraordinary step of granting a special exception Variance, although to do so would violate the City’s rules - present policy, practice and procedure - **“staff can only recommend a Variance if there is no other option available on the site.”** Applicants’ argument the City should make a special exception for them and waive or reduce the 2’ landscaping requirement to accommodate their desire to save money - eliminate their cost/expense associated with adjusting their front steps and rebuilding the curb cut accordingly. Also, they claim Applicant (Jennie Durant) has a “temporary handicapped” placard, giving rise to the question of whether her temporary condition requires an exceptional Variance granting off-street parking on a property deemed to have no legal parking space.

In sum, Applicants responded to the City’s requirement for Variance follows: 1) the need for exceptional or extraordinary circumstance is met because Jennie Durant has a “temporary handicapped” placard; 2) necessary for preservation and enjoyment of substantial property rights: here Applicant assert a parking space is necessary for the enjoyment and full use of home; 3) does the use materially impact health, safety, public welfare, injurious to property or improvement – generally benefit the City: answer is non-responsive –

Applicants merely states, “we are simply requesting that our current parking space be allowed to remain where it is.” Granting the variance would reduce environmental waste associated with remodeling stairs and curb cuts.

On November 5, 2019, the Planning Departments Tabulation Form appears re-submitted, including sizes, dimension, existing and permitted required details, including: 1) Units, Parking spaces, and bedrooms; 2) yards, heights and setbacks; Areas – building, lot, usable space, etc.; 3) Arbor specifics – setbacks and area; 4) Accessory habitable space specifics; Area calculations; and, 5) Plat survey map.

On November 19, 2019, the City Planning Department communicated its need for clarity for the Zoning Office. Noted there is the fact that the application say 15 [trees] hedges, but the site plan only show twelve. Also, on November 19, 2020, Applicants submitted an update/revised Variance Request. Therein, Applicant set forth a quasi-promise, if the Variance is granted – “we would install/build a green, ecologically friendly and attractive parking spot.”

On November 20, 2020, Applicant sent email to Nilu, with updated Tabulation Form and Updated Variance Request.

On November 25, 2020, Nilu emailed Applicant (Jennie Durant) and advised that she needed certain corrections on the Tabulation Form A.S.A.P.

On November 26, 2019, Jennie forwarded Nilu’s email of November 25 to her architect, Nick Leone, regarding the Tabulation Form revisions/correction requested.

On November 27, 2019, at 10:59 a.m., Nick Leone emailed Nilu, requesting a telephone conversation to review her comments regarding the 1346 Ordway Street project. At 3:14 p.m., on November 27, 2019, Nick Leone emailed Nilu, sending her, in an attachment, the aforementioned revisions requested pursuant to their telephone conversation.

On December 3, 2019, Nilu emailed Nick, with CC to Applicant (Jennie Durant), advising that “Enlarged site plan submitted on 11-20-19 does not show accurate dimensions ... this needs to be corrected.” Nilu further advised that the “enlarged plan for parking is very confusing and busy. Please look at what I drew and draw something simple and clear ... the Variance Statement should reflect the correct dimension for the remaining landscape area as well (8”) ...”

On December 4, 2020, Applicant (Jennie Durant) sent another (3rd) Variance Statement. Again, restating their willingness to remove the existing concrete and install permeable paver parking strips, a dymondia lawn to act as a 1” landscaping barrier.

On December 19, 2019, the City provided a list of addresses of community members to which Notices of the 1346 Ordway Street project could be mailed – 126 names and addresses.

On February 13, 2020, Applicant submitted a request for fee adjustment or refund, claiming that a change of permit type qualifies Applicants for an adjustment and/or refund.

On February 25, 2020, the City Approved AUP #ZP-2018-0174 and sent post card Notice of Decision (NOD) to 1346 Ordway Street neighborhood residents – 36 names and addresses.

The NOD reads as follows:

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has **APROVED** the following permits pursuant to Berkeley Municipal Code (BMC) § 23B.28.050, and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- **Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52 010 for Reasonable Accommodation for Fair Access to Housing;**
- **Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;**
- **Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;**
- **Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and**
- **Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.**

BMC § 23B.52.010, in pertinent part, provides for reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing, pursuant to the American with Disabilities Act and California Fair Housing and Employment Act. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The finding for Issuance, Denial and/or Conditions follows:

- A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.
- C. The Zoning Officer shall deny an application for an AUP if he/she determines that he/she is unable to make any of the required findings, in which case he/she shall state the reasons for that determination.

D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

ISSUES ON APPEAL

I

APPROVAL OF AUP FOR REASONABLE ACCOMODATION FOR FAIR ACCESS TO HOUSING, UNDER, BMC § 23B.52.010

Finding 1: One off-street parking space, within setback, is allowed to comply with BMC § 23B.52.010 for Reasonable Accommodation for Fair Access to Housing.

Finding 2: The City also recognizes the importance of sustaining and enhancing neighborhoods.

Conditions: Pursuant to the above referenced AUP, Zoning Officer has attached the following conditions: The parking pad must be removed, and the curb cut in filled if: 1) the property is sold; 2) the tenant move moves out; or, 3) the disability no longer prevents accessible access.

Appellant Appeal the Findings and Approval on the grounds that legalizing off-street parking in the front yard setback creates a hazardous and unsafe condition and is detrimental and injurious to the economic value of neighboring property. Furthermore, the record is absent of sufficient proof to establish Applicants qualifies as disabled, pursuant to the provisions of the Americans with Disability and the California Fair Employment and Housing Acts.

Applicants' states "one of the owners, Jennie Durant, has a temporary handicapped placard for a spine condition and needs a parking [space] spot close to the front door." The claim of possessing a "temporary disability placard" is NOT dispositive proof of a need qualifying under the aforementioned Acts, such that a need for reasonable accommodation is necessary to access housing. Therefore, the need for off-street parking is not established.

In reviewing Applicants' application, the Zoning and Transportation departments determined that Applicants has no legal [off-street] parking space on the 1346 Ordway Street property. Furthermore, it was determined that the off-street parking space in the front setback will not accommodate the 2' landscaping strip required, which would require a Variance. Instead of applying for a Variance to circumvent the 2' landscaping requirement, here, it appears Applicants chose to apply for an AUP.

Except for Applicants claim of temporary disability placard, there is nothing more in the record to substantiate that claim, e.g., there is no copy of Applicants' application for the placard, nor is there any authorizing documentation signed by a qualifying medical professional, nor is there a copy of the placard.

Allowing a front yard parking space inside the required setbacks, especially since there is a newly installed 6' fence on the South property line, creates a public health hazard. The view of pedestrians and on-coming vehicles is obscured. Proper setbacks allow time for persons to see what is going on around them. Parking along the street appears to be a safer option for all involved. Applicants' health and well being is NOT jeopardized and/or compromised should they have to walk from the curb to the front porch; the difference in distance in walking from the car to the porch and walking from the curb to the porch is approximately minimal - 8' to 10'. Accessing the house from the curb appears not be too difficult, as Applicant is frequently seen walking throughout the neighborhood, cleaning her car, pushing a stroller and carrying groceries.

Detrimental/Injurious to Property and Improvements

Legalizing a parking space, with front yard setbacks, rewards Applicants for long-standing history of non-compliance. It creates a potentially economic injury to Appellant, situating because his property become situated next property with non-conforming uses.

Making other Findings

Here, the Zoning Officer appears to fail to make the finding that altering the BMC was not the only option for granting Applicants' reasonable and fair access to the property. Applicants, if truly eligible under the American with Disabilities and California Fair Housing and Employment Acts, could easily apply for the privilege to have a handicap parking space directly in front of the house.

No Tenants (only owners) and Health Condition Unconfirmed

The Zoning Officer's requirement that the concrete parking pad be removed effectively represents the spirit of the Ordinance. Additionally, the Applicants are not tenants and it is NOT clear that Applicants' temporary health condition prevents accessible access.

For the foregoing reasons, this Appeal must be affirmed, the AUP must be rescinded, and the parking pad removed.

II

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING OVER 10' AV HT. W/I "4" FT OF PROPERTY LINE, UNDER BMC § 23D.08.020 and APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING UNDER, BMC § 23D.08.005.A1

Finding 1: The project would legalize construction building in the rear and side yards, which is consistent with the single-family use of the subject property function as an extension of the main dwelling is a accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scales, under BMC §§ 23D.08.005.A and 23D.08.005.A1 to Construct a Habitable Accessory Building.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Page 5 of 24
Appellant Appeal the Findings and Approval on the grounds that the City failed to act responsibly when approving this AUP, because authorizing construction of a building that projects into the setbacks, diminishing the use, quiet enjoyment and economical value of neighboring property?

BMC § 23D.08.005 Addresses Permitted Uses in Accessory Buildings and Structures; BMC § 23D.08.005.A1 provides that no Accessory Building may be constructed unless authorized by an AUP. A Zoning Certificate shall be required for alteration of an existing Accessory Building.

Appellant argues that permitting an Accessory Structure to be constructed as planned ignores the fact that shadows will be created over the most usable area of the neighboring yard. Furthermore, the quiet enjoyment of the neighboring property will be interfered with and the neighbors (Appellant and Applicants) will complain about activity and noise when either of them do building and yard maintenance, office work, and/or entertain. Additionally, Appellant does anticipate significant change in sunlight and lighting generally; and, since there is no evidence any site visit was conducted on the subject, Appellant disagrees with Zoning Officer's assumptions.

Moreover, the prospective economic value of the neighboring property is likely to be diminished; because, having a non-conforming condition on the property next door will create limits upon what a new owner could get approved should the Appellant choose to sell the Hopkins Street property.

For the foregoing reasons, the approval of this AUP must be rescinded and this Appeal affirmed.

III

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING THAT IS OVER 12 FT. IN AVERAGE HEIGHT, WITHIN 4 TO 10 FT. OF THE PROPERTY LINE, UNDER BMC 23D.08.020.B

Finding: AUP would legalize 9 ft. tall, 21 x 5 ft. trellis, located 3 inches from the South property line and 30 ft. from the rear property line.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Finding and Approval on the grounds that the Zoning Officer ignored the needs of the neighboring property owner, by permitting an illegally constructed trellis to remain in place right up against the neighbor's garage. Appellant's garage has legally existed on the property line since 1948. Approving this illegally constructed - 9' tall, 21' x 5' - trellis to exist, only 3 inches from side of a neighbor's garage, is obscured and negligence.

Furthermore, this approval interferes with neighbor's quiet enjoyment and denies access to the garage for painting, maintenance and other improvements. In fact, Applicants are presently growing vines over the top of the trellis, which are already growing onto roof of the garage and fence.

Moreover, the property value is diminished by virtue of having illegally constructed conditions so close to the neighboring structure; and, as it relates to the Condition, please note that the trellis is already constructed.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

IV

APPROVAL OF AUP FOR CONSTRUCTION OF ACCESSORY STRUCTURES, UNDER BMC § 23D.08.060.A2

Finding: AUP legalizes a 14 ft. tall hedge within the South and North side yards.

Appellant Appeals the Finding and Approval on the grounds Zoning Officer misstate the non-conforming condition of Applicants' application. What the Zoning Officer is calling "a 14' tall hedge" is actually sixteen or more 14' tall, illegally planted trees – **NOT A HEDGE**. These trees were illegally planted within 3" of the property line, up against the existing fence. This condition is tantamount to creating a much taller fence than the 6' allowed. The trees were illegally planted along the entire length of the property line from front to back, except the space where the illegally constructed trellis was built. Furthermore, the trees are presently growing over the fence and into the fence. It's only a matter of time before the trees began to push against the fence, creating cost and an argument over maintenance – the disturbing the quiet enjoyment of the community.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

V

CONCLUSION

WHEREFORE, Appellant LAWRENCE HICKMAN herein prays for a RULING affirming this Appeal.

Respectfully submitted

By: 
Lawrence Hickman

EXHIBITS

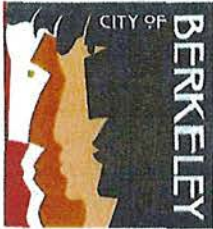
EXHIBITS

EXHIBITS

EXHIBIT A

EXHIBIT A

EXHIBIT A



Office of the City Manager
Code Enforcement Unit
2180 Milvia Street
Berkeley, California 94704
Tel 510.981.2489 Fax 510.981.2499

NOTICE OF VIOLATION

- First Notice
- Final Citation Warning

Date: 5/10/18 Time: 4:12pm Re-inspection Date: 5/24/18

Name of Person Contacted: KEKI BORJORJEE / JENNIE DURANT

The property at: 1346 ORDOVAY ST. BERKELEY, CA

was inspected because of concerns expressed to this office. The following code violation(s) were identified during this site visit:

- | | | |
|--|-------------------------|-------------------------|
| <input type="checkbox"/> Illegal Dumping | Berkeley Municipal Code | Chapter 12.40.080 |
| <input type="checkbox"/> Accumulation of Trash & Debris | Berkeley Municipal Code | Chapter 12.32.020 |
| <input type="checkbox"/> Graffiti Nuisance | Berkeley Municipal Code | Chapter 13.98.030 |
| <input type="checkbox"/> Blight Nuisance | Berkeley Municipal Code | Chapter 12.92.030 |
| <input checked="" type="checkbox"/> Zoning | Berkeley Municipal Code | Title 22 & Sub-Title 23 |
| <input type="checkbox"/> Building & Safety | Berkeley Municipal Code | Chapter 19.28 |
| <input type="checkbox"/> Obstruction of Streets or Sidewalks | Berkeley Municipal Code | Chapter 14.48.020 |
| <input type="checkbox"/> Signage | Berkeley Municipal Code | Chapter 20.16.010 |

Other (Code/Section/Title): BMC 23D.08.060 FENCES

(The entire Berkeley Municipal Code may be viewed or printed from the City's web site at www.cityofberkeley.info/Home, specifically www.codepublishing.com/CA/Berkeley).

Attached brochure(s) will give you more code information: _____

Please perform the following corrections before the re-inspection date to avoid citations, fees, and/or fines starting at \$100-500 per violation/per day:

- NO FENCE ON PROPERTY LINE MAY EXCEED 6 FEET IN HEIGHT.

PLEASE SEE ATTACHED DEFINITIONS.

* HEDGE MUST BE TRIMMED TO 6' - THANK YOU

It is our intent to work with property owners to encourage voluntary compliance. Your cooperation in correcting the violation(s) is greatly appreciated. If you have any questions, please contact the Enforcement Officer at 510.981. 2481.

Issued by: Tom Vetter Enforcement Officer Case #: 397755

Notice of Violation
Revised 12/01/17



EXHIBIT B

EXHIBIT B

EXHIBIT B

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

RECEIVED

SEP 19 2018

LAND USE PLANNING

September 19, 2018

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether ***BMC Ch. 23D.08.060 § A(2)*** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following ***"no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may not exceed six feet in height at any point ... unless so authorized by an AUP"***

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Allowing the existing nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** - prevents me from maintaining my property adequately.

I've owned my property at 1333 Hopkins Street for twenty-eight years, without incident. However, Resident Applicant recently approached me in my yard initiating an argument about the complaint I lodged with Code Enforcement. I believe Resident Applicant was attempting to intimidate me prior to filing this deceptive AUP application.

Furthermore, the subject application was only made after the aforementioned conditions were exposed, reported and cited. Moreover, the **Resident Applicant is seeking approval for conditions that already exists**, as if they are correctly planning to create a new condition.

On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



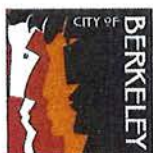
Lawrence Hickman

EXHIBIT C

EXHIBIT C

EXHIBIT C

UL / 770119 18
10/6/18 5/8/2019
10/5/18
5/8/19 (5)



Planning and Development Department
Land Use Planning Division

5/8/2019 Response Letter III

February 8, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

This letter is in response to the resubmittal of revised application materials, submitted on January 09, 2019. To complete this application, please respond to the following:

1) A new invoice will be provided

1) Additional AUPs & Fees: At the time of project submittal, fees were assessed as \$970 for one Tier 3 AUP to construct an accessory structure over 6' within required setbacks. However, because the application is a result of a Notice of Violation and it also includes an unpermitted accessory building and an unpermitted trellis, additional AUPs will apply to the project resulting in a fee increase. We will issue an additional invoice upon the receipt of additional information (requested below).

- List of additional Fees
- 1) \$1970 for fence + hedge Nov
 - 2) Establish an accessory building
 - 3) Accessory building in rear + side setbacks (x2)
 - 4) Trellis

2) Dimensions on site plan do not match dimensions on survey

2) Survey:

Survey	Site Plan
Driveway 9'-9"	Driveway 10'-2"
DU to front PL 19'-9"	DU to front PL 20'-6"
DU to side PL 6'-8"-7"	DU to side PL 7'-2" - 8'-2"

- A. Provide dimensions from the main dwelling and the front porch to the front and side property lines.
- B. Provide the width of driveway on the front property line.
- C. Include the accessory building's dimensions on the survey and exhibit the distance from its eave to the rear and side property lines.

5) Front yard parking (to be confirmed by the Traffic Eng. + zoning officer)

3) Site Plan:

3) Any hot tubs yet?

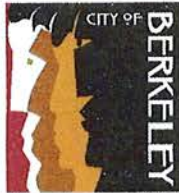
- A. Accessory building: Please revise the accessory building's name to read as "Accessory Habitable Space" and not a "Shed" on Site Plan. Additionally, include the average and maximum height on the elevation.
- B. Trellis: include trellis's coverage in the overall lot coverage on Tabulation Form.
- C. Exhibit the front porch and its dimensions.
- D. Include the shed (and its dimensions) that is shown on survey and is attached to the rear of the dwelling.

EXHIBIT D

EXHIBIT D

EXHIBIT D

9



Planning and Development Department
Land Use Planning Division

July 2, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

Thank you for the electronic resubmittal of the revised Site Plan on June 5, 2019. After reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel. Note that all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval on this permit. (Additionally on Site Plan, remove the label "Existing Parking Space" within the front yard setback and include a note for the removal of parking related paved areas and curb cut.). To complete your application, submit revised plans that reflect these changes and submit the additional required payment (see attached invoice).

In your resubmittal, include a cover letter stating how you have addressed the incomplete items. **Any changes or corrections must be clouded, and accompanied by a number** to allow for easier identification. If new plans are submitted, please deliver two **(2) sets** of plans (at least one set to scale) and submit **both a paper and an electronic copy** of the resubmittals to the zoning counter during normal business hours (Monday thru Thursday 8:30 am – 4:00 pm). If you take no action to address the above items **within 30 days**, the application may be deemed withdrawn and returned to you. Please contact me if you have any questions at (510) 981-7419.

Sincerely,
Nilu Karimzadegan, Planning Technician
CC: Greg Powell, Principal Planner

EXHIBIT E

EXHIBIT E

EXHIBIT E

2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner;
3. The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole;
4. Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.

B. The Board shall deny an application for a Variance if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination. (Ord. 6478-NS § 4 (part), 1999)

Please consider your options and let me know which path you would like to take.

Thank you,

Nilu

From: Chun, Peter
Sent: Wednesday, July 17, 2019 10:22 AM
To: Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>
Cc: 'Jennie Durant' <jenniedurant@gmail.com>
Subject: RE: Parking spot AUP

Hi Jennie,

My recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended. I was not aware of the 7 ft. threshold and the Planning Dept. document you provided. I have reviewed and approved many projects with 7 ft. driveways, even 6' – 6" as applicants have indicated their driveway is existing and they squeeze through. I generally support the setback requirement (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking.

Sorry I am sure this is not what you were hoping to hear from our office.

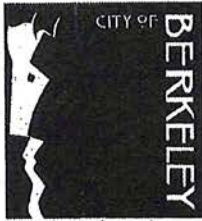
Sincerely,

Peter Chun, T.E.
Associate Traffic Engineer

EXHIBIT F

EXHIBIT F

EXHIBIT F



Office of the City Manager
Neighborhood Services-Enforcement Division

September 10, 2019

Jennie Durant/Keki Burjoree
1346 Ordway Street
Berkeley CA 94702-1124

Subject: **Administrative Citation Warning**

Dear Property Owner:

This letter is confirming that on May 10, 2018 the Code Enforcement Unit issued Notices of Violation requiring that you correct all violations at 1346 Ordway Street. On August 30, 2018 a Citation Warning for the outstanding violations of the Berkeley Municipal Code (BMC). Pursuant to the Notice of Violations and Administrative Citation Warning, you were required to reduce the height of your hedges that exceed 6 feet allowed without a permit.

On September 7, 2018, plans were submitted to the Planning Department for a variance on the hedges where additional unpermitted construction (accessory building & trellis) was identified by the planning department.

As of September 9, 2019, the violations remain and you have failed to comply with the Planning Department requirements and deadlines in submitting corrections to the plan check request by letters and email.

Since this project is associated with a Code Enforcement case specified deadlines are enforced and take precedence over any timelines specific to the permit process.

YOU ARE HEREBY ORDERED TO:

- Within fifteen (15) days of this Administrative Citation Warning respond to the Planning Department emails regarding the Plan check revisions;
- You must respond to any other plan checks comments issued by all reviewing agencies within fifteen (15) days of issuance of comments;
- Within thirty (30) days of the issuance of the required zoning permit, obtain all required building, electrical, plumbing and mechanical permits from the Building and Safety Division; and
- Upon issuance of building permits, complete all work within one hundred eighty (180) days.

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7000 TDD: 510.981.6903 Fax: 510.981-2499
E-mail: codeenforcement@cityofberkeley.info

Keki Borjorjee/Jennie Durant
1346 Ordway Street
Berkeley, CA 94702

Administrative Citation Warning
September 10, 2019
Page 2 of 2

Please note: Given the history on non-compliance on the property as described above, the City is putting you on notice that any future failure to comply completely with all City laws and regulations will result in daily administrative citations without further notice to you, which will increase as time passes until all violations are corrected. Part compliance or correction of any violation will be regarded as non-compliance.

Commencing September 25, 2019, if you have failed to comply in full with the May 10, 2018 Notice of Violation and the Plan Check corrections request by planning you may be issued administrative citations on a daily basis for each of the above violations without further notice to you. **Citation penalties will begin at a rate of one hundred dollars (\$100.00) per violation, per day and may increase with subsequent citations to two hundred dollars (\$200.00) per violation, per day and five hundred dollars (\$500.00) per violation, per day.**

If you have any questions regarding this Citation Warning Letter, you may contact me at (510) 981-2482 or e-mail me at wdrouillard@cityofberkeley.info.

Sincerely,



Wanda Drouillard
Code Enforcement Officer

cc: Planning Department
David Lopez, Deputy Building Official
Erin Steffen, Assistant to the City Manager

RECEIVED

June 30 ~~JUL 02~~ 2020 (TLB)

CITY OF BERKELEY
CITY CLERK DEPARTMENT

June 30, 2020

Dear Members of the Berkeley City Council,

We are writing to appeal the decision of the Zoning Adjustment Board (ZAB) on June 6, 2020 regarding the height of the hedge along the southern property line of our property at 1346 Ordway St. The Zoning Office had previously approved a maximum hedge height of 14 feet, along with several other AUP permits. Our neighbor at the property adjacent to us, Lawrence Hickman at 1333 Hopkins St., appealed the decision and we had a ZAB hearing as a result. During the hearing, ZAB approved all of the permits requested, including the permit for the hedge, but lowered the maximum hedge height from 14 feet to 11 feet.

We request that the City Council raise the maximum hedge height from 11 feet back to the 14 feet originally approved by the Zoning Office. We planted the hedge because of our need for safety and privacy, and to screen off Mr. Hickman's property, which has been under construction for the four and a half years we have lived in our home. We are requesting that the maximum hedge height be raised back to 14 feet because a maximum of 11 feet does not adequately address the three concerns mentioned above. Additionally, at a maximum height of 11 feet, the hedge would require frequent pruning, making it bushier and incurring significant maintenance costs. Finally, a hedge with a maximum height of 14 feet does not materially impact our neighbor's view, nor is it outside the norm of AUPs granted in the past. We provide further details below.

Safety

There is a documented history of arrests at Mr. Hickman's property, one involving domestic violence in 2019, and another more recently in April 2020 that involved six police cars. Mr. Hickman's property has been vacant for extended periods in the past, and we have seen homeless people sleeping on the back porch, which has a direct view of our daughter's bedroom. We believe that a tall hedge will act as a physical barrier between his property and ours.

Privacy

The windows of Mr. Hickman's two-story house have a direct view into the bathroom and bedrooms of our single-story home (including our daughter's bedroom). An 11-foot hedge only screens off our bedrooms and bathroom from only the first floor windows of Mr. Hickman's house, not the second floor windows (see Figure 1.). We seek privacy from the windows on the second floor as well.



Figure 1: View of Mr. Hickman's property from our bedroom windows. The height of the hedge in these photos exceeds 11 feet at its tallest point

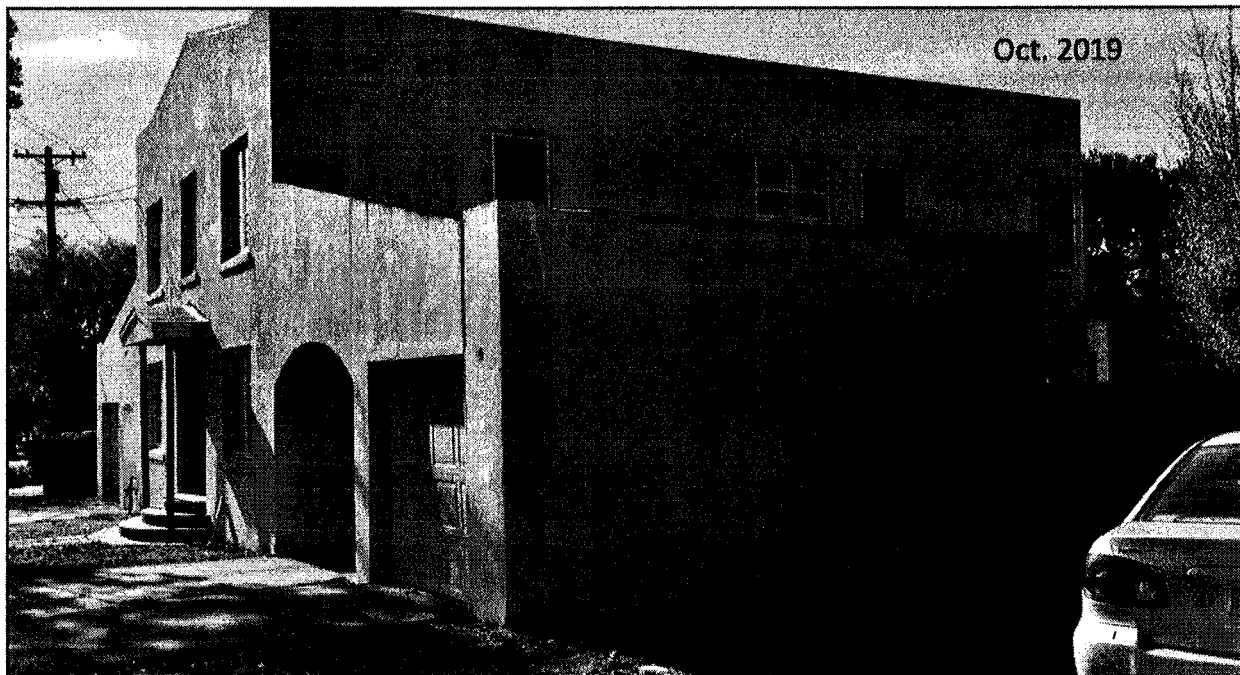


Figure 2: A gutter has been hanging off the side of Mr. Hickman's house since October of 2019

Screening off Mr. Hickman's property from view

Mr. Hickman's property has been under construction since we moved into our home in November 2015--and according to our neighbors and Google Map photos, for over a decade before that. The windows on his property that face our bedroom are unfinished and have had cement around the frames since we moved in. Additionally, a gutter has been hanging off the side of Mr. Hickman's property since October of 2019 (see Figure 2). Given the current and historic state of Mr. Hickman's property, we seek a visual barrier that entirely screens it off from view. At a maximum height of 11 feet (i.e. the current height of the trees in the photos in Figure 1) , the hedge would barely screen off the hanging gutter and first floor windows and leaves the unfinished second floor windows in plain view.

Affordability of hedge maintenance

Our hedge is made of 12 *Pittosporum tenuifolium* trees, a.k.a. 'Silver Sheen', fast growing shrubs that provide loose, airy screening and do not block much light. We prefer to keep the hedge thin and delicate so that light can shine through onto both properties. However, if we must keep the hedge at 11 feet, it would have to be pruned in a way that will cause it to become thick and dense. Our gardener had the following advice for us on this matter:

If keeping the shrubs lower is necessary then they will have to be pruned harder and more frequently, probably every couple of months, and they will become dense, and "hedge" like. This is not the best way for these shrubs to be used, and will result in much denser look as well as much more expensive upkeep. [Rest of the letter is attached]

Additionally, the shrub sends up thin shoots that tower above the rest, exceeding 11 feet while providing little privacy or visual screening. Adding 3 feet to the maximum height limit would allow for the growth of these shoots, keep our pruning costs down, and let us keep the hedge light and airy so it feels less like a wall to us and Mr. Hickman.

Hedge is not a detriment to our neighbor's view

We do not believe a 14-foot hedge would be a detriment to Mr. Hickman's view. The hedge is south of his property and the shadows from the hedge fall onto our house, not his property (see left photo in Figure 3). Additionally, his building is over 8 feet from the hedge, with a driveway in between (see right photo in Figure 3), and the only view of his that we block with the hedge is the one he would have into our daughter's and our bedroom windows.

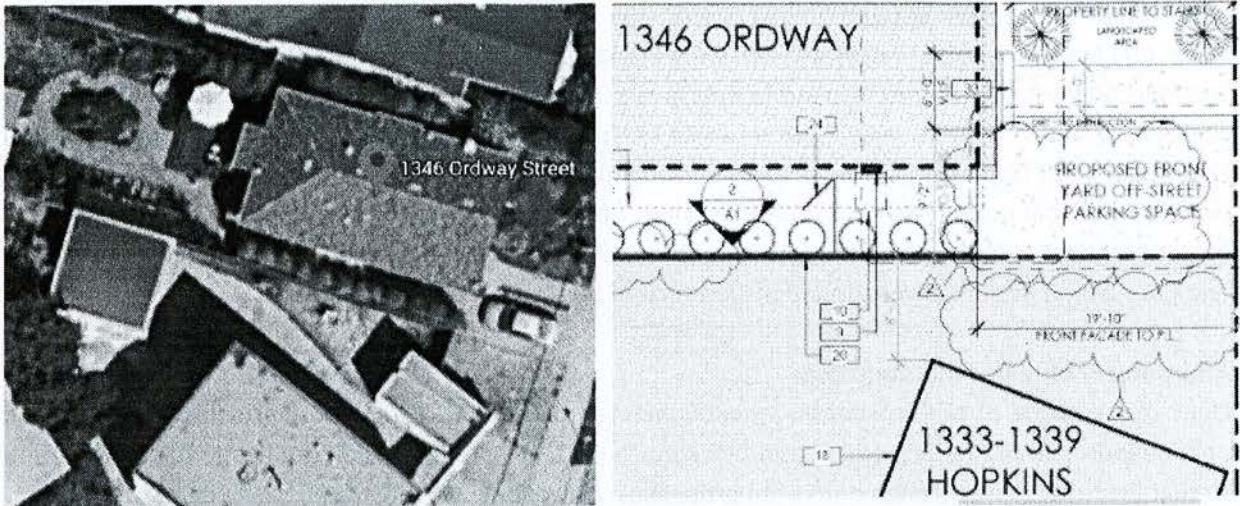


Figure 3: (Left photo) Shadows from the hedge fall onto our property, not Mr. Hickman's.
 (Right photo) The site plan shows that Mr. Hickman's property is 8'2" from the hedge.

A maximum hedge height of 14 feet is not out of the ordinary

At around the 1hr 35 min mark of the ZAB hearing on June 6, 2016, Land Use Planning Manager Steven Buckley said the following in response to a question from ZAB member Igor Tregub about the maximum fence/hedge height that can be granted in an AUP:

"The height of that is limited really by our accessory structure regulations which are pretty liberal. You can go up to say 12 or 24 or 35 feet with those depending on the permit. [...] And there isn't really a maximum. Certainly, 12 or 14 feet, that's normal."

So, according to Mr. Buckley, the maximum hedge height we are requesting (14 feet) falls within the normal range of hedge height requests.

In closing, we hope that City Council will raise the maximum hedge height back to the 14 feet we were initially granted to provide us with the safety, privacy, and visual barrier we seek for our family. We have enclosed a letter from our gardener about the *Pittosporum* and our letter to ZAB responding to our neighbor's appeal in case this is helpful.

Sincerely,

Two handwritten signatures in black ink. The first signature is 'Jennie Durant' and the second is 'Keki Burjorjee'.

Jennie Durant and Keki Burjorjee
 1346 Ordway Street
 Berkeley, CA 94702



Jennie Durant <jenniedurant@gmail.com>

Information On Pittosporum tenuifolium 'Silver Sheen'

2 messages

Cecily Hunter <cecilyhunter@gmail.com>
To: Jennie Durant <jenniedurant@gmail.com>

Tue, Jun 23, 2020 at 7:10 PM

Hi Jennie,

Here is some information about the Pittosporum tenuifolium 'Silver Sheen' that we planted, and why I recommended that shrub.

The Pittosporum tenuifolium 'Silver Sheen' is a fast growing shrub that provides loose, airy screening and does not block light very much. The leaves are very small, and the habit is delicate. In addition, it is adaptable to both sun and shade, does not require much water at all once it is established, and is relatively easy to maintain. As a gardener I find it to be one of the most generally pleasing shrubs. It is not very messy (it drops some leaves a few times a year, but does not have berries, or large amounts of leaf drop, or branch drop), it is a very nice habitat for small songbirds, the flowers, which are small, and brief are attractive to beneficial insects. And, it is compatible with many other plants. I prefer to keep it loose and delicate, allowing light to come through, and allowing it to move gently in the breeze. This is done by pruning it gently in a natural fashion a couple times a year to control height to some extent, and some thinning to accentuate the natural habit, as we have been doing until more recently when we began controlling the height. If keeping the shrubs lower is necessary then they will have to be pruned harder and more frequently, probably every couple of months, and they will become dense, and "hedge" like. This is not the best way for these shrubs to be used, and will result in much denser look as well as much more expensive upkeep.

I hope this helps.

Best,

Cecily

Jennie Durant <jenniedurant@gmail.com>
To: Cecily Hunter <cecilyhunter@gmail.com>

Mon, Jun 29, 2020 at 10:16 PM

Thank you so much, Cecily! This is enormously helpful!!

Jennie

[Quoted text hidden]

Appendix B: Letter to Zoning Adjustment Board

May 25, 2020

Dear Members of the Zoning Adjustment Board,

Thank you for taking the time to read our materials for this appeal hearing. We would like to respond to the points made in the "Issues on Appeal" section starting on page 8 of the Appellant's (Lawrence Hickman's) appeal letter to ZAB. To keep this rejoinder letter to the point, we choose not to respond to the many falsehoods about our personal interactions with the Appellant in the "Statement of Facts" section and instead focus on the Appellant's "Issues on Appeal."

Regarding Point 1 of the "Issues on Appeal" section of the Appellant's letter: Approval of AUP for reasonable accommodation for Fair Access to Housing under §23B.52.010:

1. The Appellant is not aware of the full nature of the Applicant's handicap. This is by design, as the Applicant wishes to preserve her privacy on this matter. We have submitted documentation to the City Zoning office, including doctor's forms, photocopies of the placard application, and the final placard, all of which informed the Zoning Office's determination.
2. Regarding the "Health and Safety section": The newly installed 6' fence mentioned by the Appellant was installed *after* the Zoning Office's findings were posted (during the window of appeal). It's hard not to surmise that this fence was installed by the Appellant for the express purpose of making the argument that our "view of pedestrians and oncoming traffic is obscured." That said, oncoming traffic approaches us from the direction opposite to the location of the fence, so we can see it just fine. Secondly, we have not had any problems spotting pedestrians as we slowly pull out of our lot. Additionally, we have noted that several garages on Ordway street extend out to the sidewalk. The view of the street and sidewalk from inside these garages is more obscured than ours, but this does not seem to make them non-conforming.
3. As to the point that the "Applicant's health and well-being is NOT jeopardized and/or compromised should they have to walk from the curb": Again, the Appellant is unaware of the Applicant's physical condition. The Applicant's prognosis is degenerative and currently under evaluation. Carrying heavy items can cause excruciating pain. Having to walk from a parking space (whether from the curb, or from down the street) carrying heavy bags of groceries, our child, or an infant car seat should we expand our family, would be an untenable situation. This is why we have requested an AUP be granted for our front parking space.
4. Numerous residents on our street park in front of their houses. We have included several photos of this in our immediate neighborhood (Figure 1), so approving the AUP would not undermine the aesthetic of our neighborhood.

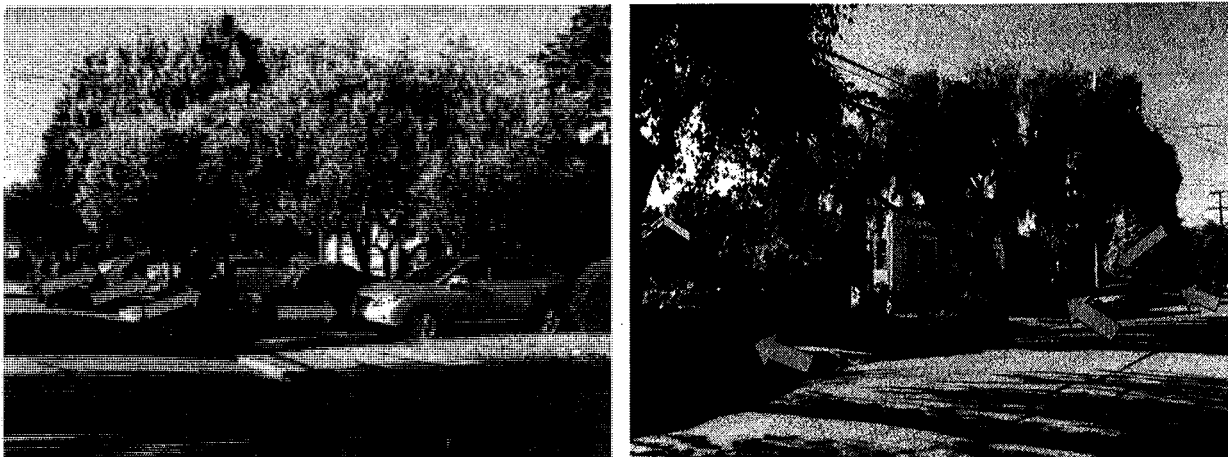


Figure 1. Cars parked in front parking spaces on the 1300 block of Ordway Street (our block), on our side of the street (right photo) and across the street (left photo). Orange arrows indicate parked cars.

5. Finally, we would like to point out that the Appellant and his tenant consistently park in a manner that blocks the sidewalk in front of the Appellant's property, forcing people with strollers or wheelchairs out into the street. Our neighbors frequently express their frustration with this to us. We have included examples below (Figure 2).

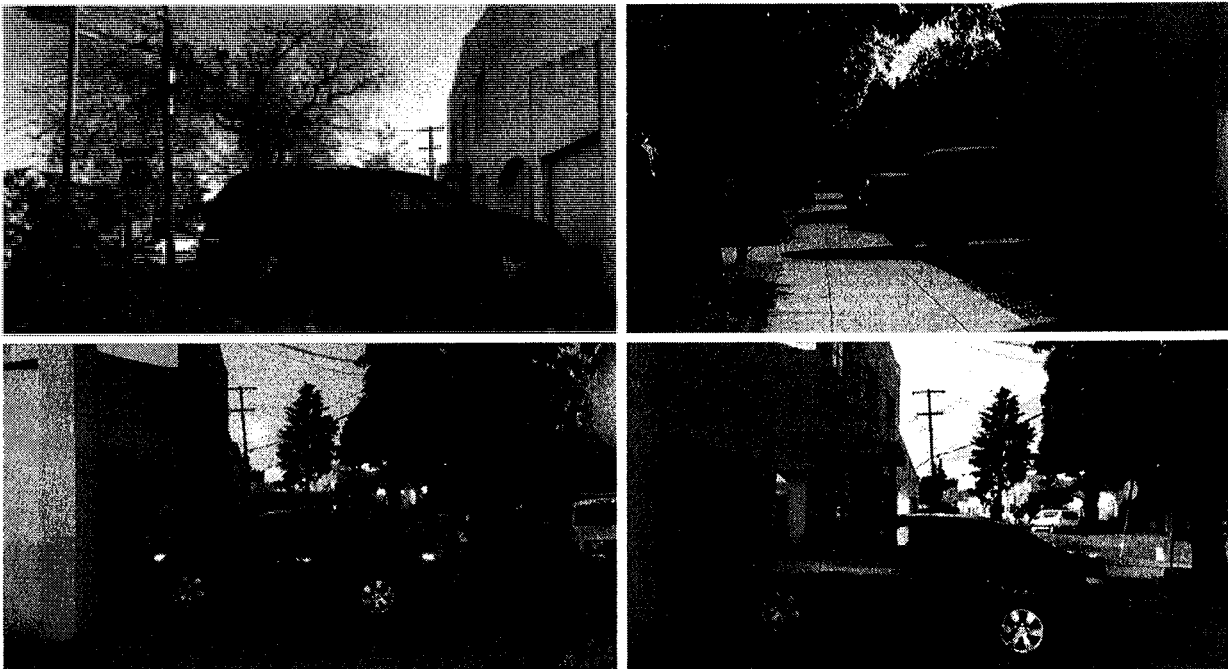


Figure 2. The upper left photo shows the Appellant's van blocking the sidewalk, a frequent occurrence. The other three photos are of a tenant or frequent visitor, who consistently parks in the sidewalk. These three photos were taken on May 18, 19, and 20, 2020.

Regarding Point II: Approval of AUP to construct a habitable accessory building over 10' AV HT. W/1 "4" FT of Property Line, under BMC §23D.08.020 and Approval of AUP to construct a habitable accessory building under BMC § 23D.08.005.A1

1. The accessory building casts no shadows on the Appellant's property because it is A) NOT adjacent to the Appellant's property (it is adjacent to Lot 46 on the Survey Plat Map in Fig. 3) and B) It is north-east of the Appellant's property and is therefore physically unable to cast shadows on the Appellant's property.
2. In fact, it is the Appellant's garage ("Garage" on Lot 45 in section of Survey Plat Map, Fig. 3), on our southern property line that casts a shadow onto *our* property from late morning onwards (Figure 3). A full Survey Plat Map with a compass is at the end of the letter and in our application.

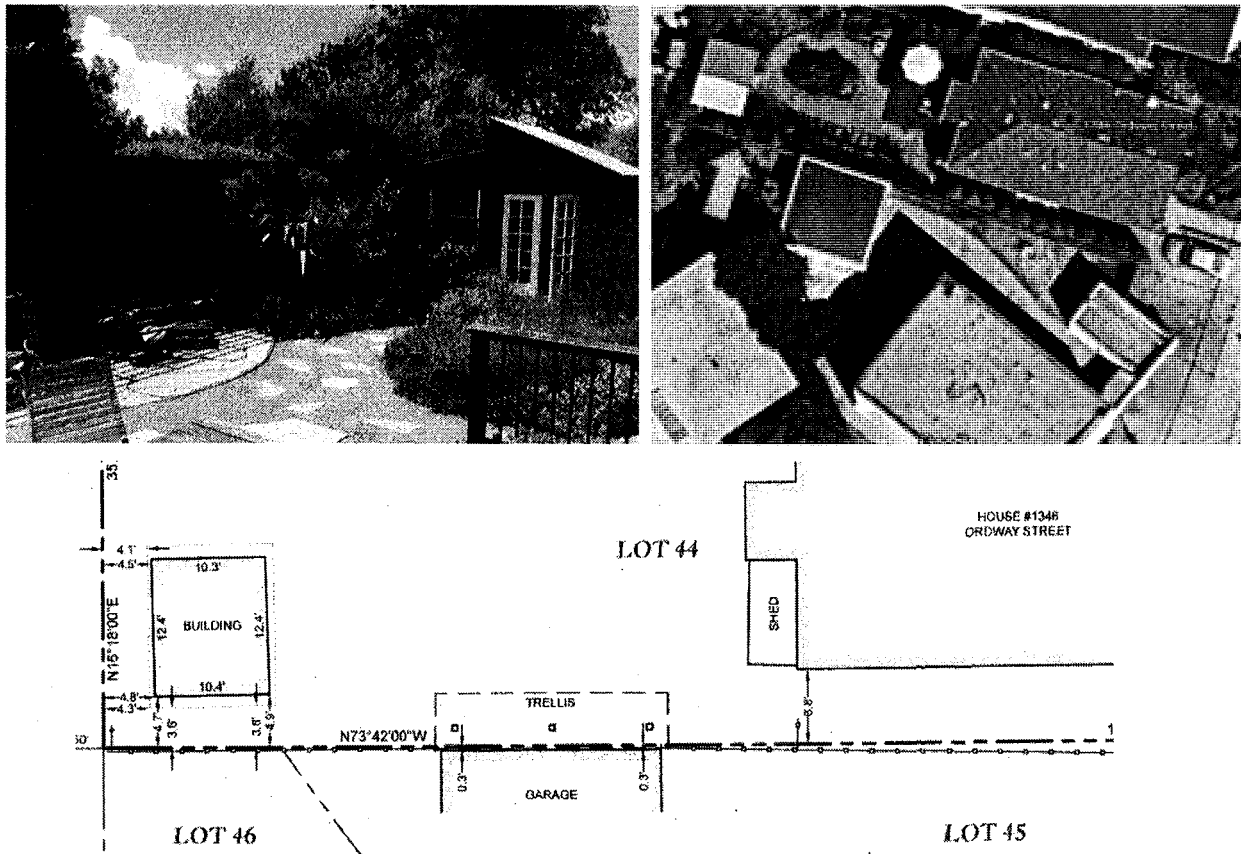


Figure 3. Upper left: Note the shadows cast by the Appellant's garage wall into our property. Upper right: Google map of the Appellant's property (bottom half of photo) and 1346 Ordway Street (yellow arrow notes approximate property line). Note how the shadows are cast towards our property, not the Appellant's as he has stated in his appeal. Bottom photo: Section of Plat Map showing that the Accessory Building is adjacent to Lot 46, and not the Appellant's property, Lot 45. A full Plat Map is available at the end of this letter and in our application.

Regarding Point III: The legalization of the 9' Trellis under BMC §23D.08.020.

1. As you can see from the photo of the Trellis below (Figure 4), we specifically constructed the Trellis in a way that allows the Appellant to access his garage for repairs if needed. Nothing prevents the Appellant from maintaining his garage wall.
2. That said, the Appellant's garage has been in a state of disrepair since we took ownership of the property in November 2015. The trellis was designed to improve the aesthetics of our property given that our neighbor's garage wall was on the property line and loomed over our property. We have included several photos below (Figure 5) of our neighbor's property to bring attention to the general state of disrepair that has frustrated not only us, but many members of our neighborhood for over a decade. We hope ZAB members will take into account this long history of dereliction when considering the Appellant's far-fetched point about wanting to maintain his property.

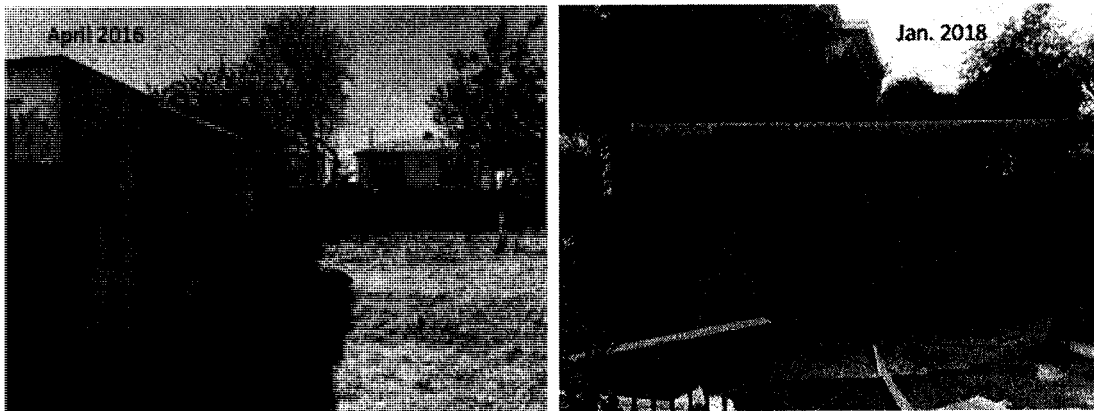


Figure 4. Left: Wall prior to painting and installation of trellis, April 2016. Right: Installed trellis, January 2018.

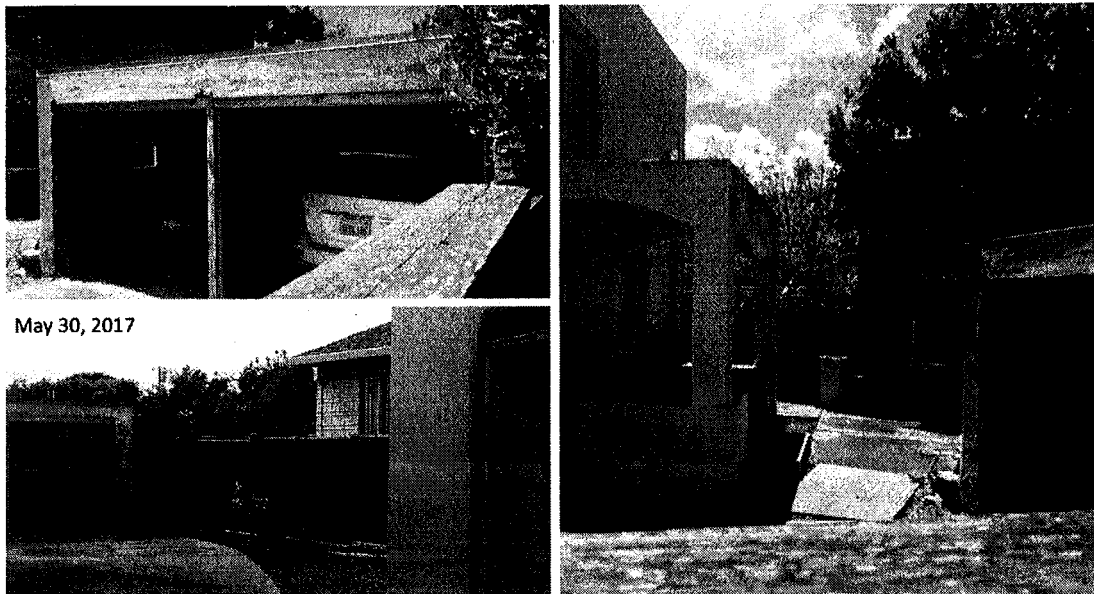


Figure 5. The upper left and right photo were taken May 18, 2020 and would be the views from our daughter's window if the hedge was not there. The lower left photo was taken May 30, 2017 (from the sidewalk), and demonstrate the disrepair of the Appellant's property that has existed since we moved in.

Regarding Point IV: Approval of AUP for construction of accessory structures, under BMC § 23D.08.060.A2

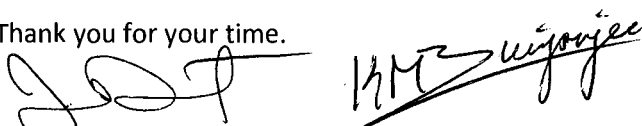
1. According to Berkeley Code, Title 23F.04¹ a hedge is defined as: Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier. Additionally, for permitting purposes, a hedge is subject to the same permit requirements as a fence, and thus subject to the same restrictions as a fence.
2. As ZAB knows, fences are not allowed to be over 6' according to this code, unless authorized by an AUP², which we have applied for through the Zoning Office.
3. Regarding the Appellant's point about the tree branches growing onto his property: Our gardeners have asked the Appellant for permission to prune the trees on his side of the property (or to pick up branches that fall during pruning). The Appellant has consistently refused. This has made it challenging to prune the parts of the trees facing his side of the property, though we have now found a pruner who can do so from our side. We will, of course, keep the trees below the 14' requirement, and have consistently done so since the beginning of this application process.

Finally, we would like to apologize for not obtaining the necessary zoning permits prior to construction of the hedge and trellis. We were first-time homeowners when we took possession of our home one month before our daughter's birth. We simply had no idea we needed permits for the work we did since they are small projects that we have seen on numerous properties in our neighborhood. Given the stress of that time and the demands of our personal and work lives, we were so overwhelmed that we did not do the research we clearly should have done. Once cited for our violation of the City's ordinances we began the approval process. This process was complicated by the removal of a dilapidated garage on the property prior to our taking ownership.

Regarding the accessory building mentioned in Point III of the Appellant's appeal letter, we researched the square footage, height, and setbacks needed to build an accessory building without a zoning permit and acted accordingly. Unfortunately, we were not aware that the required setbacks are with respect to eaves of the accessory building, not the outside walls.

We have spent \$1380 to bring the accessory building into compliance and over \$10,000 (in permit fees and fines, as well as survey and architectural fees) to bring the overall property into compliance. The additions we made improve the value of our home and the value of our neighbors' properties as well. We have good relationships with many of our neighbors, which we hope is reflected by their letters of support. Additionally, our improvements—two attractive xeriscaped, low-water pollinator gardens, an office we can use to work from home during this pandemic; and finally, more trees, which help support the city's commitment to carbon neutrality—are aligned with the values of the city (Figure 6). We hope ZAB will see that our improvements do not pose any real detriment to the Appellant.

Thank you for your time.



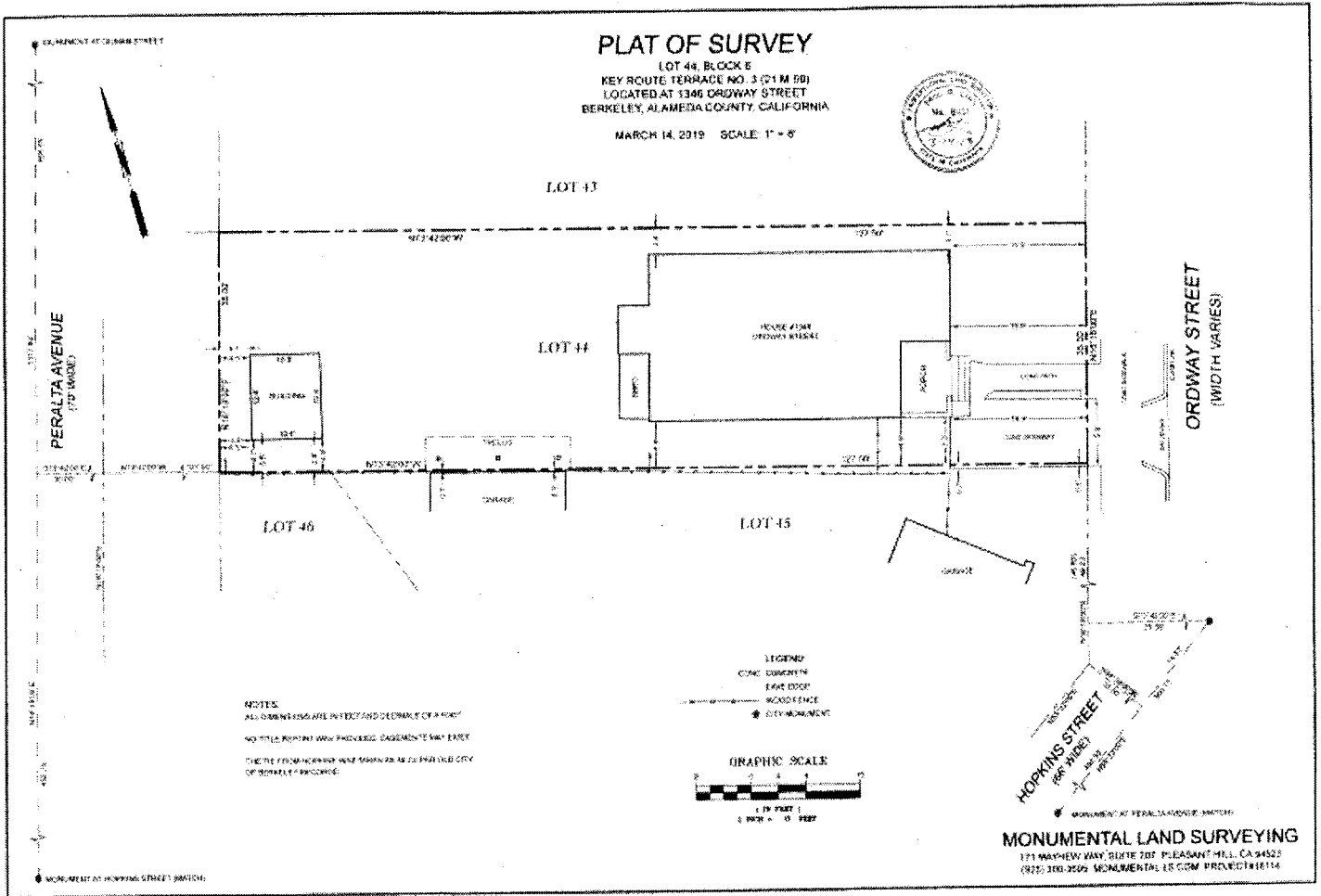
Jennie Durant and Keki Burjorjee

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_BMC/BMC-Part2--032508.pdf

² <https://www.codepublishing.com/CA/Berkeley/html/Berkeley23D/Berkeley23D08/Berkeley23D08060.html>



Figure 6. Improvements made in the backyard. Left: Photo of backyard upon purchase in November 2015. Right: Photo of backyard, taken May 15, 2020.





Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
JUNE 11, 2020

1346 Ordway Street

Appeal of Zoning Officer’s decision to approve Administrative Use Permit #ZP2018-0174 to legalize additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; and 4) locate front yard off-street parking space by modifying AUP and Variance requirements in order to provide reasonable accommodation for fair access to housing.

I. Background

A. Land Use Designations:

- General Plan: LMDR – Low Medium Density Residential
- Zoning: R-1A – Limited Two-Family Residential District

B. Zoning Permits Approved:

- Reasonable Accommodation for Fair Access to Housing, under Berkeley Municipal Code (BMC) Section 23B.52.010, for a front yard off-street parking space;
- Administrative Use Permit, under BMC Section 23D.08.005.A1, to legalize a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A, to legalize a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B, to legalize a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line;
- Administrative Use Permits, under BMC Section 23D.08.060.A2, to legalize hedge over 6 ft. in height; and
- Administrative Use Permit, under BMC Section 23D.08.060.B, to legalize an unenclosed accessory structure (trellis).

C. Zoning Permits Waived (Under BMC Section 23B.52.010 for Reasonable Accommodation):

- Variance under BMC 23B.44.030 to eliminate the 2 ft. landscaped strip that separates the paved parking area from the side lot line; and
- Administrative Use Permit, under BMC Section 23D.12.080.B, for locating an off-street parking space within the required front yard.

D. Zoning Permits Denied:

- Administrative Use Permits, under BMC Section 23D.08.060.A2, to legalize boundary fence over 6 ft. in height.

E. CEQA Determination: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

F. Parties Involved:

- Applicant/owner: Jennie Durant & Keki Burjorjee, 1346 Ordway Street, Berkeley, CA 94702
- Appellant: Lawrence Hickman, 1333 Hopkins Street, Berkeley, CA 94702

Figure 1: Aerial View

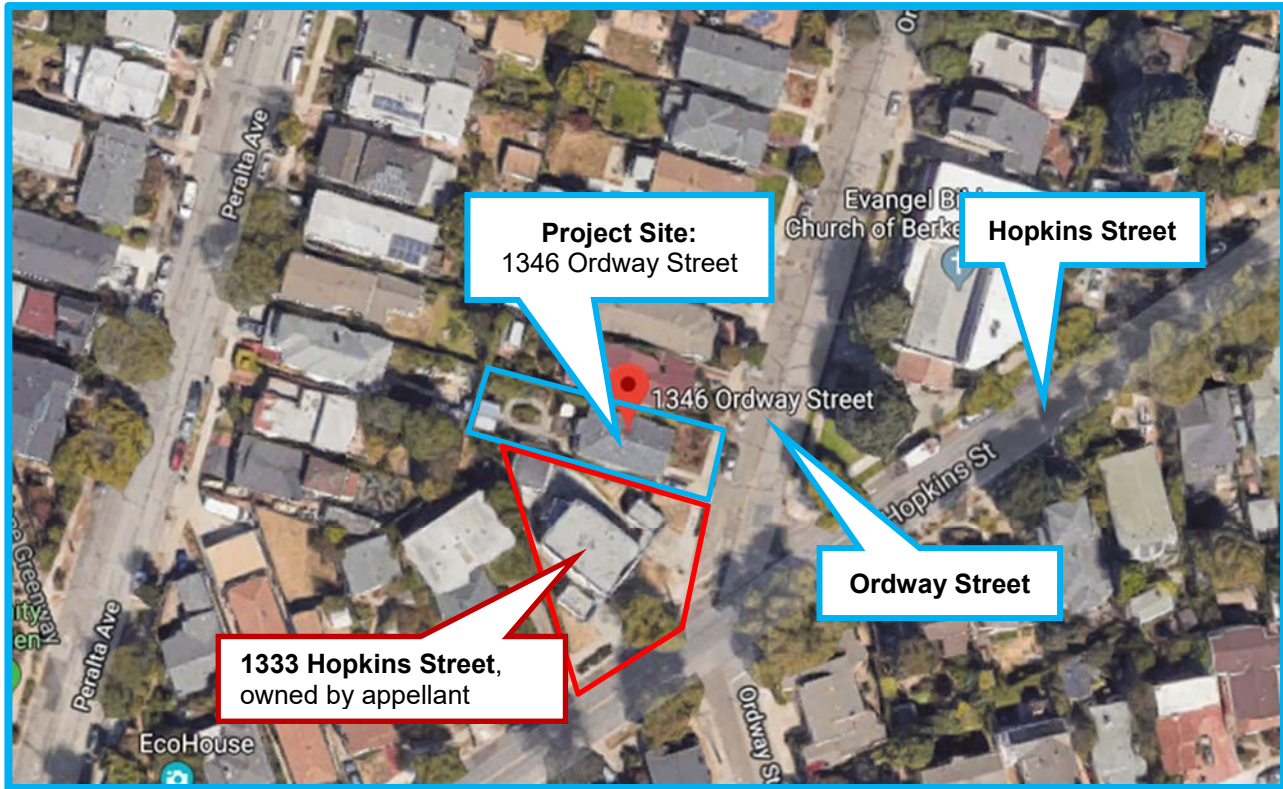


Figure 2: Birds-eye View

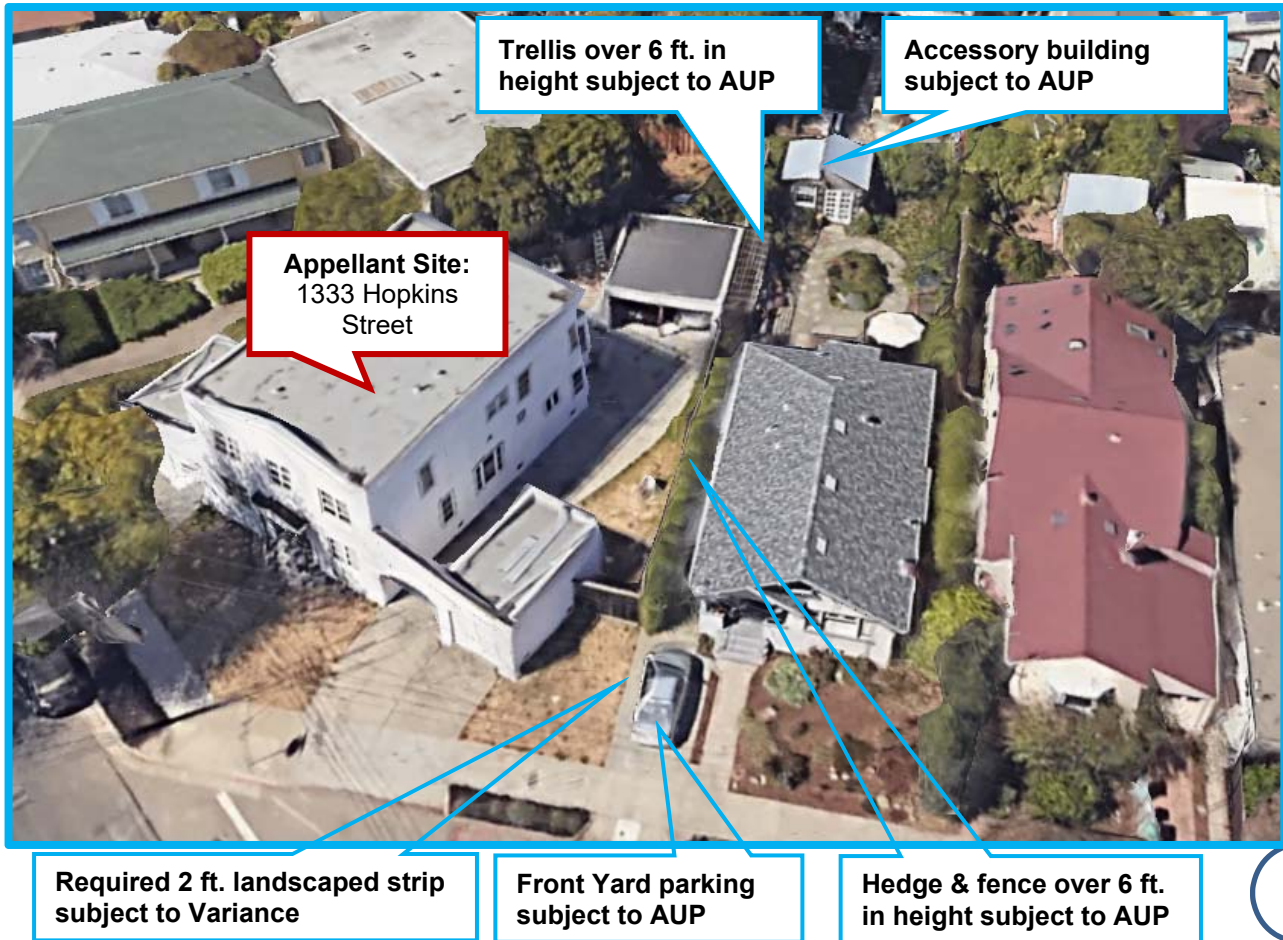


Figure 4: Site Survey

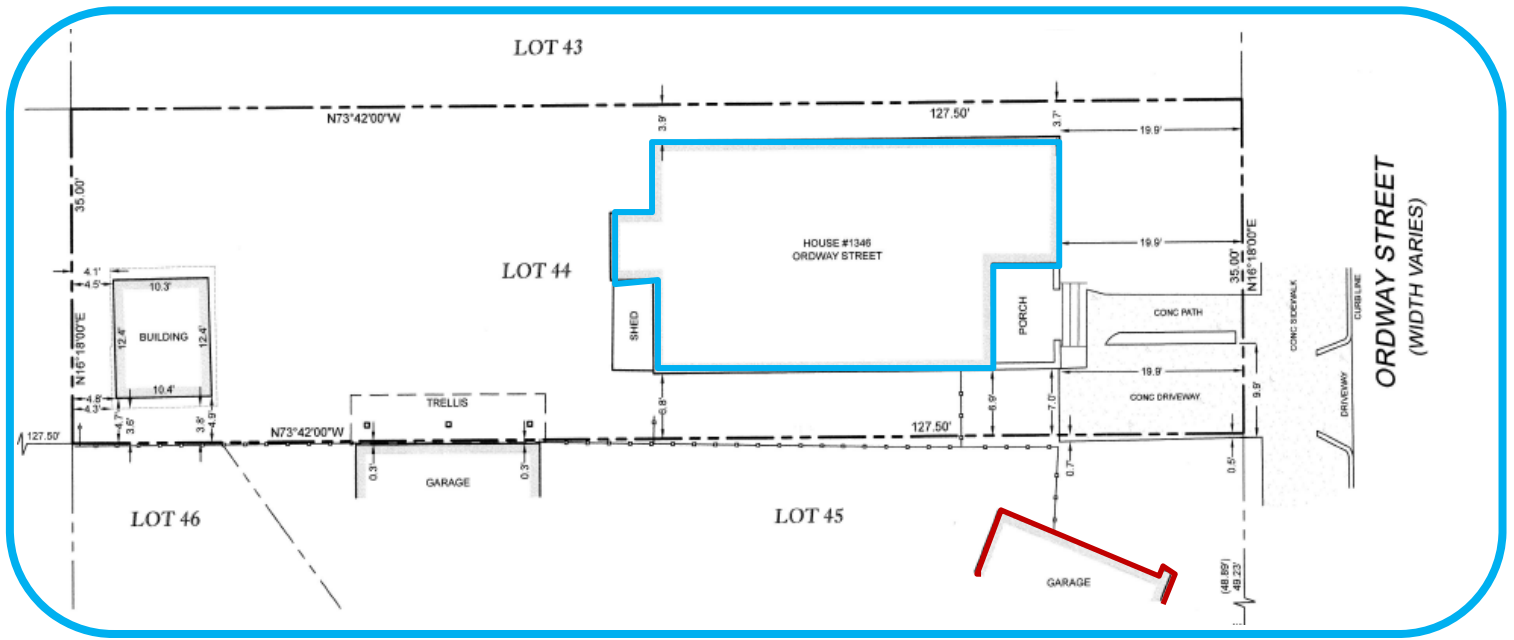


Figure 5: Site Plan

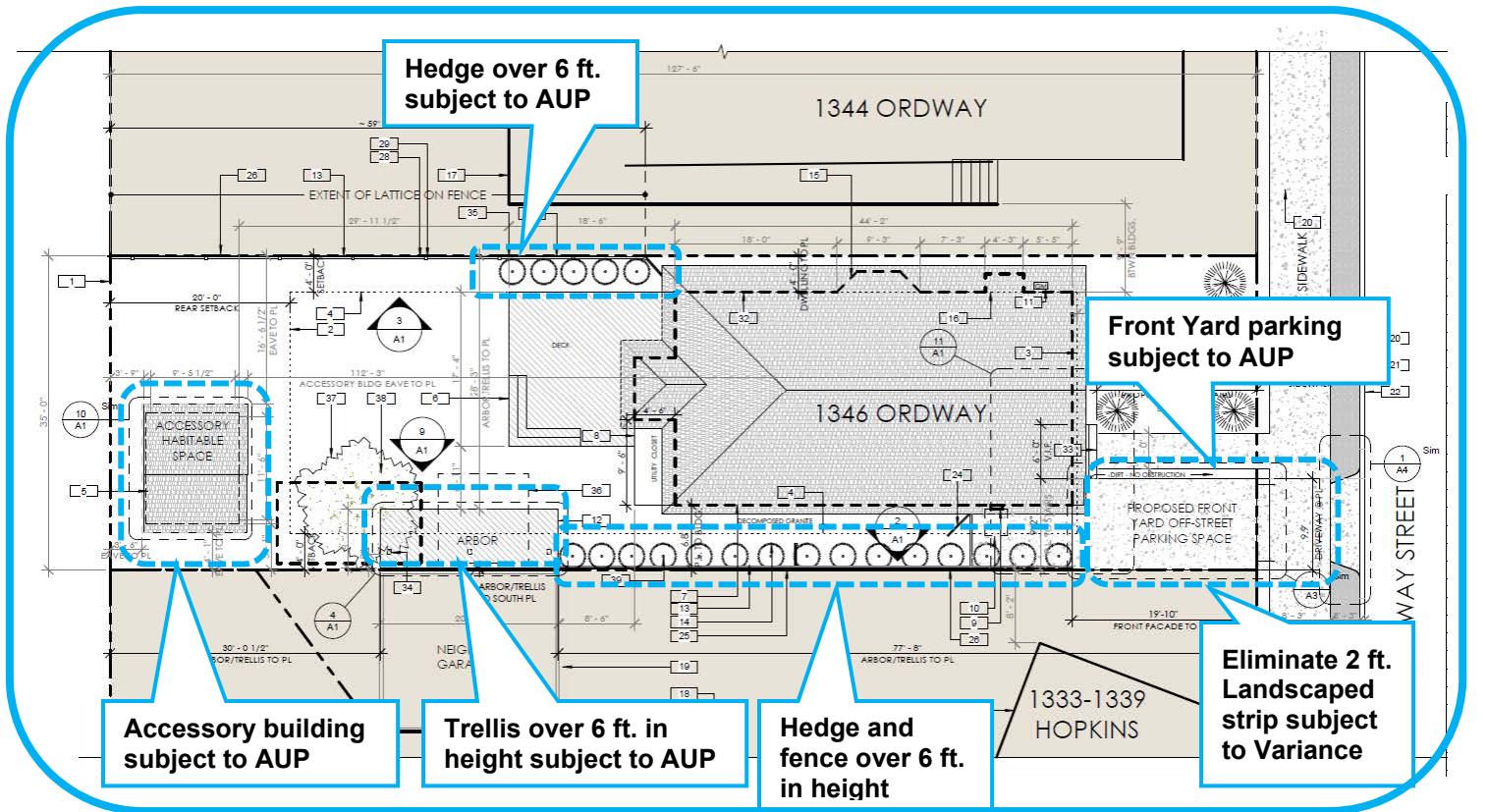


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		One-story single family residence	Limited Two-Family Residential District (R-1A)	Low Medium Density Residential (LMDR)
Surrounding Properties	North	One-story building with 1 dwelling units (1344 Ordway Street)	Limited Two-Family Residential District (R-1A)	
	South	Two-story multi-family dwelling (1333 Hopkins Street/Appellant) & two-story multi-family dwelling (1327 Hopkins Street)	Restricted Two-Family Residential (R-2) & Limited Two-Family Residential (R-1A)	
	East	Three-story Evangel Bible Church of Berkeley (1343 Hopkins Street)	Restricted Two-Family Residential (R-2)	
	West	Two-story single family residence (1341 Peralta Avenue)	Limited Two-Family Residential District (R-1A)	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	These fees apply to projects with more than 7,500 square feet of new non-residential gross floor area. This project is not subject to these resolutions because no new non-residential space is proposed.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	
Creeks	No	No open creek or culvert exists within 40 ft. of the site.
Housing Accountability Act (Gov't Code Section 65589.5)	No	The proposed project is not a "Housing Development Project" ¹ as defined by Government Code because it does not propose to add dwelling units.
Oak Trees	No	There are no oak trees on the site.
Rent Controlled Units	No	No rent controlled units are at this site.
Residential Preferred Parking (RPP)	No	The site is not within a Residential Preferred Parking Area.
Seismic Hazards Mapping Act (Liquefaction, Fault-rupture, Landslide)	No	The site is not located within an area susceptible to liquefaction, Fault-rupture or Landslide as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The site is not located on a hazardous waste site pursuant to Government Code Section 65962.5
Transit	No	There is a bus stop near the project site along Gilman Street that provides access to an AC Transit bus routes (12).

¹ Per Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) Residential units only; (B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses with at least two-thirds of the square footage designated for residential use; and (C) Transitional housing or supportive housing.

Table 3: Project Chronology

Date	Action
September 7, 2018	Application submitted
September 19, 2019	Application deemed complete
May 28 2020	Public hearing notices mailed/posted
June 11, 2020	ZAB hearing

Table 4: Development Standards

Standards per BMC Sections 23D.28.070		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		4,480	No Change	5,000 min.
Gross Floor Area (sq. ft.)		1,152	No Change	N/A
Bedrooms		2	No Change	4 max. (without AUP or UPPH)
Dwelling Units	Total	1	No Change	1 max (for a lot of this size)
Building Height	Average	13 ft. 2 in.	No Change	28 ft. max.
	Stories	1	No Change	3 max.
Building Setbacks	Front	19 ft. 9 in.	No Change	20 ft. min.
	Rear	58 ft. 4 in.	No Change	20 ft. min.
	Left Side (south)	6 ft. 9 in.	No Change	4 ft. min.
	Right Side (north)	3 ft. 8 in.	No Change	4 ft. min.
Lot Coverage (%)		30	32	40 max.
Usable Open Space (sq. ft.)		Greater than min. 400	Greater than min. 400	400 min.
Parking Automobile		0	1	1

II. Project Setting

A. Neighborhood/Area Description: The subject site is located in a generally flat residential neighborhood that consists primarily of one and two-story residential properties which range in density to include single-family dwellings, duplexes, and multi-family dwellings with conforming and non-conforming setbacks and densities. While the majority of the surrounding uses are residential, Evangel Bible Church of Berkeley confronts the subject site to the east.

B. Site Conditions:

The project site is located at north-west of Hopkins and Ordway Streets intersection (to the east of Peralta Avenue), confronting the Evangel Bible Church of Berkeley. The nearest abutting neighbor's residence at 1344 Ordway Street is located approximately 8 ft. to the north of the subject property. The appellant's property (at 1333 Hopkins Street) is located at the west corner of the noted intersection to the south of the subject property and its closest accessory structures (two of its garages) are separated from the main dwelling on the subject property by approximately 14 ft.

The subject lot is flat and the site is occupied by a single-story single family dwelling; an accessory building; twenty (15 on the south and 5 on the north), 14 ft. tall hedges; a 5' X 21', 9 ft. tall trellis; and a 9'-6" X 4'-6" storage shed. The existing non-conforming driveway located on the south side yard, ranges in width from approximately 6'-9" to 6'-10" in width and is over 90 ft. long. It previously led to a now-demolished 9'X16' single-space garage. The north side yard ranges from approximately 3'-8" to 3'-10" in

width. The rear setback is approximately 58 ft. and the front setback is 19'-9". The property complies with the R-1A District requirements for height, lot coverage and usable open space and is legal non-conforming for density and front setback. Furthermore, the project involves a request for a front yard off-street parking space under the City's Reasonable Accommodation provisions and permits to legalize an existing accessory building, trellis, hedge and fence.

An application was submitted on September 7, 2018 to legalize the unpermitted fence and hedge over 6 ft. in height within required setbacks. After the review of submitted application by staff, it was determined that the existing accessory building over 12 ft. in maximum height within required side and rear setbacks, the existing trellis over 6 ft. within the south side yard and the front off-street parking space requires additional Administrative Use Permits. Due to narrow width and length of the existing non-conforming driveway, staff initially determined that the subject property's legal off-street parking space can be abandoned (*No legal off-street parking status*) or a request for an AUP for a front yard off-street parking space and Variance to waive the required landscaped strip must be made. However due to applicant's medical condition, a front yard off-street parking space was requested under Reasonable Accommodations (BMC Section 23B.52.010).

Figure 6: Street View, looking west

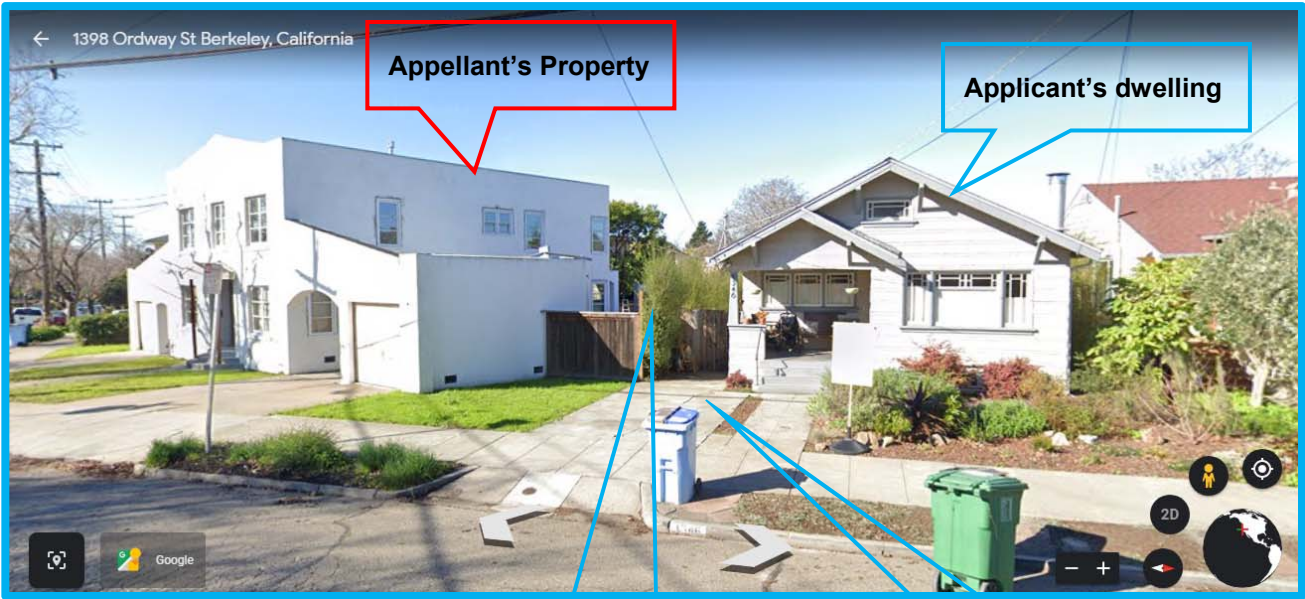


Figure 7: Looking west

Hedge & fence over 6 ft.
in height subject to AUP

Front Yard parking
subject to AUP



Figure 8: Looking south

Appellant's garage behind trellis



Figure 9: Looking southwest

Trellis subject to AUP

Trellis located within south setback

Appellant's garage



III. Approved Project

The project approved by the Zoning Officer would involve the legalization of an existing 128 sq. ft. accessory building in the southwest corner of the subject lot, an existing 5' x 21', 9 ft. tall trellis located in the south setback and existing 14 ft. tall hedge in north and south setbacks. Additionally, to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, it would allow for a front yard off-street parking space under BMC's Reasonable Accommodation Section. A recommendation for the approval of the fence over 6 ft. in height cannot be made by staff because the fence is located outside the subject property lot line and on the appellant's property at 1333 Hopkins Street.

IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City, a pre-application poster was erected by the applicant. Staff posted the Notice of Decision on February 25, 2020, at the site and 3 nearby locations and sent notices to abutting and confronting property owners and occupants and to interested neighborhood groups.
- B. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the non-detriment finding could be made because the site would continue to comply with the R-1A-district standards for density, height, maximum lot coverage and usable open space. The conditions of approval would ensure that the accessory building functions as an office, which is a quiet activity, and requires that a "Notice of Limitation of Use" be placed on the deed to the property. Additionally, The Conditions included in this permit requires that the maximum hedge height be limited to 14 ft. and side or rear yard parking space be restored in the case that the property is sold, the tenant with medical condition moves out or the disability no longer prevents accessible access.
- C. Public Notice:** On May 28, 2020 the City sent out public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site. Aside from what was submitted by the appellant (See Attachment 2), staff has received correspondence from neighbors at 1334 Ordway Street, 1340 Hopkins Street, 1336 Ordway Street, 1349 Ada Street, 1342 Hopkins Street, 1344 Ordway Street and Listing Agents Norman Gee and Priscilla Rice from Better Homes and Gardens in support of project and the applicants (See Attachment 5).

V. Appeal Issues and Analysis

1. **Appeal Issue 1 – Appellant appeals the Zoning Officer’s decision to modify the AUP (for front yard off-street parking space) and Variance (for not providing the 2 ft. landscaped strip) requirements under Reasonable Accommodations Section (23B.52.010) to allow for Fair Housing Access.**

Appellant notes that: “Appellant appeals the Findings and Approval on the grounds that legalizing off-street parking in the front yard setback:

- A. Creates a hazardous and unsafe condition.”

Staff Response: This is not a commercial district with high volumes of traffic and hence a front yard off-street parking space is not expected to create hazardous or unsafe conditions.

- B. “Is detrimental and injurious to the economic value of neighboring property.”

Staff Response: The BMC Section 23D.12.080.B allows for a front yard off-street parking space with an AUP and the BMC’s Section 23B.52.050.B (Factors considered in making a determination regarding the reasonableness of any application under Reasonable Accommodation Chapter) if applicable, allows for modifications to this requirement. Furthermore, front yard off-street parking space is a common practice in the subject property’s immediate neighborhood. Since the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in determining the reasonableness of this application to modify the AUP and Variance requirements for a front yard off-street parking space to comply with Fair Housing Access, staff recommends that the ZAB dismiss this appeal point.

- C. “The record is absent of sufficient proof to establish applicant qualifies as disabled pursuant to the provisions of the Americans with Disability and the California Fair Employment and Housing Acts.”

Staff Response: Proof of a medical condition including a copy of applicants' application for the placard, authorizing documentation signed by a qualifying medical professional and a copy of the placard have been submitted to staff but not disclosed to protect applicant’s privacy. Because the appellant’s claim regarding lack of evidence is not accurate, staff recommends that the ZAB dismiss this appeal point.

- D. “The claim of possessing a "temporary disability placard" is NOT dispositive proof of a need qualifying under the aforementioned Acts.”

Staff Response: The applicant has requested reasonable accommodation in the form of modification in the application of a zoning law due to a medical condition. The Zoning Officer has considered all factors required in making a determination regarding the reasonableness of this application under the Reasonable Accommodation Chapter (BMC 23B.52.050.B item 1 through 6). Since the appellant has not provided evidence to show that the Zoning Officer has failed to consider all factors required in making a determination, staff recommends that the ZAB dismiss this appeal point.

- E. “The Zoning and Transportation departments determined that applicants has no legal [off-street] parking space on the 1346 Ordway Street property.”

Staff Response: Considering the driveway’s narrow width, the property could be considered non-conforming and be recognized as having no required parking on site. However, the Applicant chose to pursue the AUP option for a front yard off-street parking space and Reasonable Accommodation.

- F. “Except for applicants’ claim of temporary disability placard, there is nothing more in the record to substantiate that claim.”

Staff Response: See response to item 1-C and 1-D above.

- G. “Allowing a front yard parking space inside the required setbacks, especially since there is a newly installed 6 ft. fence on the South property line, creates a public health hazard.”

Staff Response: Staff is aware of the recently-installed fence, which extends to the front property line of the appellant’s property and along the south side of the applicant’s driveway and front yard.

Figure 10: Looking west toward both properties



This fence is conforming to the zoning regulations and is similar to other commonly found conditions in the neighborhood and throughout the City. The driveway would continue to accommodate one personal vehicle, which would not create a hazard for pedestrians under normal operating conditions.

- H. “Parking along the street appears to be a safer option for all involved (view of pedestrians and on-coming vehicles is obscured. Proper setbacks allow time for persons to see what is going on around them)”

Staff Response: An on-street handicapped parking space is not an equivalent alternative to an off-street parking space for the residence as it does not guarantee a parking space for the applicants.

- I. “Detrimental/Injurious to Property and Improvements: Legalizing a parking space, with front yard setbacks, rewards applicants for long-standing history of non-compliance. It creates a potential economic injury to appellant, because his property would become situated next to property with non-conforming uses.”

Staff Response: Berkeley Zoning Ordinance allows for applicants to legalize unpermitted structures and buildings by going through the zoning application process. Furthermore, City Council Resolution No. 67, 985-N.S. requires applicants to pay a penalty for applications that are submitted as a result of a Notice of Violation. When a zoning application is submitted to legalize existing buildings and structures, staff reviews the application as if the unpermitted structures and buildings did not exist today. Staff evaluates the proposal to determine if the non-detriment findings can be made. Since the Zoning Ordinance has gone through several revisions, legal non-conforming conditions are very common for most properties in this neighborhood as well other neighborhoods in Berkeley. Because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in determining the reasonableness of this application, staff recommends that the ZAB dismiss this appeal point.

- J. “Making other findings: Here, the Zoning Officer appears to fail to make the finding that altering the BMC was not the only option for granting applicants' reasonable and fair access to the property. Applicants, if truly eligible under the American with Disabilities and California Fair Housing and Employment Acts, could easily apply for the privilege to have a handicap parking space directly in front of the house.”

Staff Response: Having an on-street handicapped parking space is not a guaranteed parking space for the applicant. Because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making a determination regarding the reasonableness of this application under the Reasonable Accommodation Chapter, and the appeal does not provide evidence to suggest that the non-detriment finding made by the Zoning Officer was in error, staff does not recommend relocating the parking space to an on-street space. Thus, staff suggests that the ZAB dismiss the appeal as to this point.

- K. “No Tenants (only owners) and Health Condition Unconfirmed: the applicants are not tenants and it is NOT clear that applicants' temporary health condition prevents accessible access.”

Staff Response: staff's use of the word "tenant" was a misstatement. This property is occupied by its owners. However, this does not affect the Zoning Officer's decision and as stated above, the request for reasonable accommodation is adequately supported.

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making a determination regarding the reasonableness of this application under the Reasonable Accommodation Chapter, or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

2. Appeal Issue 2: Appellant appeals the Zoning Officer's decision to approve the AUP to legalize habitable accessory building:

Appellant states that: "appellant appeal the Findings and Approval on the grounds that the City failed to act responsibly when approving this AUP, because authorizing construction of a building that projects into the setbacks, diminishes the use, quiet enjoyment and economical value of neighboring property". Appeal points regarding this item include:

- A. "Permitting an accessory structure to be constructed as planned ignores the fact that shadows will be created over the most usable area of the neighboring yard."

Staff Response: This one-story, approximately 12 ft. tall, 128 sq. ft. accessory building is situated at the southwest corner of the lot that abuts the neighbor at 1327 Hopkins Street and not the appellant's lot (1333 Hopkins Street). Since the accessory building is situated to the north of appellant's lot, it is unlikely that it cast shadows to the neighboring yards to the south. Furthermore, existing vegetation that separates the subject lot from the south abutting properties is taller than the accessory building, blocking any potential shadows caused by the accessory building. Since this appeal point does not provide evidence to suggest that the non-detriment finding made by the Zoning Officer was in error staff suggests that the ZAB dismiss the appeal as to this point.

- B. "The quiet enjoyment of the neighboring property will be interfered with and the neighbors (appellant and applicants) will complain about activity and noise when either of them do building and yard maintenance, office work, and/ or entertain."

Staff Response: The BMC regulates the construction of an accessory building, but does not regulate the activity and behavior of those using the accessory building. The accessory building is used as an office and is separated from the main building on the neighboring property at 1333 Hopkins Street by approximately 50 ft. and from its detached accessory structure (Garage) by approximately 17 ft. Because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making the non-detriment finding regarding the legalization of an accessory building, or that the conditions of approval were inadequate to make the non-detriment finding, staff recommends that the ZAB dismiss this appeal point.

- C. "There is no evidence any site visit was conducted on the subject, appellant disagrees with Zoning Officer's assumptions."

Staff Response: Adequate documentations were provided in plans, elevations and photographs to determine the conditions on the property and the neighborhood.

- D. “The prospective economic value of the neighboring property is likely to be diminished; because, having a non-conforming condition on the property next door will create limits upon what a new owner could get approved should the appellant choose to sell the Hopkins Street property.”

Staff Response: See response to item 1-I (Above).

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making non-detriment finding or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

3. Appeal Issue 3: Appellant appeals the Zoning Officer’s decision to approve the AUP to legalize unenclosed accessory structure (Trellis):

Appellant notes that: “Appellant Appeal the Finding and Approval on the grounds that the Zoning Officer ignored the needs of the neighboring property owner, by permitting an illegally constructed trellis to remain in place right up against the neighbor's garage.” Appeal points regarding this item include:

- A. “Appellant's garage has legally existed on the property line since 1948. Approving this illegally constructed – 9 ft. tall, 5' x 21' - trellis to exist, only 3 inches from side of a neighbor's garage, is obscured and negligence.”

Staff Response: Since this trellis is the same height and length as the appellant’s garage, it is not expected to create detrimental impacts for the appellant’s property. Furthermore, the BMC does not reward or penalize residents based on seniority of their buildings or structures. All residents are entitled to apply for building and structures according to zoning development standards of their district and Staff evaluates proposals to determine if the non-detriment findings can be made. Staff recommends that the ZAB dismiss this appeal point.

- B. “This approval interferes with neighbor's quiet enjoyment and denies access to the garage for painting, maintenance and other improvements.”

Staff Response: As mentioned earlier, City of Berkeley has a process in place to legalize unpermitted buildings and structures. A trellis adjacent to garage and with the same height and length is not expected to create detrimental sunlight, air and view impacts. Furthermore, Agreements for maintenance of adjacent buildings and structures are civil matters and not a zoning concern and cannot be a factor for the City to consider in making the non-detriment finding. Because the appeal does not provide evidence that the Zoning Officer made an error in making the non-detriment finding, staff recommends that the ZAB dismiss the appeal as to this point.

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making non-detriment finding or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

4. Appeal Issue 4: Appellant appeals the Zoning Officer's decision to approve the AUP to legalize accessory structure (Hedge):

Appellant states that: "Appellant Appeals the Finding and Approval on the grounds Zoning Officer misstate the non-conforming condition of applicants' application." Other appeal points regarding this item include:

- A. "What the Zoning Officer is calling "a 14 ft. tall hedge" is actually sixteen or more 14 ft. tall, illegally planted trees -NOT A HEDGE"

Staff Response: City of Berkeley Zoning Ordinance defines a hedge as "any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier which is designed to delineate, screen or enclose a lot" (BMC Section 23F.04.10).

- B. "This condition is tantamount to creating a much taller fence than the 6 ft. allowed."

Staff Response: The Zoning Ordinance allows for a fence, a tree or a hedge to be taller than 6 ft. with an AUP, if the necessary findings can be supported. The Zoning Officer made those findings subject to Condition of Approval and staff recommends that the ZAB dismiss the appeal point.

- C. "It's only a matter of time before the trees began to push against the fence, creating cost and an argument over maintenance - the disturbing the quiet enjoyment of the community."

Staff Response: A condition of approval on this permit, allows for a maximum height of 14 ft. for the proposed hedge. Maintenance of the fence must be handled by the Good Neighbor Law and is not a zoning matter.

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making non-detriment finding or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Administrative Use Permit #ZP2018-0174 pursuant to Section 23B.28.060.C.1 and subject to the attached Findings and Conditions (see Attachment 1) and **DISMISS** the Appeal.

Attachments:

1. Findings, Conditions and approved plans, February 25, 2020
2. Letter of Appeal, received March 17, 2020.
3. Notice of Public Hearing.
4. Applicant's Response to Appeal, received May 25, 2020.
5. Neighbors support letters, received May 23, 2020, May 22, 2020, May 21, 2020, November 22, 2019, November 2, 2019, December 1, 2018 (X2), and November 30, 2018.
6. Communications received from the appellant between Septembers 19, 2018 to June 1, 2020.

Staff Planner: Nilu Karimzadegan, nkarimzadegan@cityofberkeley.info, (510) 981-7419

Attachment 1

Findings and Conditions

FEBRUARY 25, 2019

1346 Ordway Street

Administrative Use Permit #ZP2018-0174 for additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; 4) locate the off-street parking space within the front yard; and 5) eliminate the required 2 ft. landscaped strip that separates the uncovered off-street parking space from the adjacent property line.

PERMITS APPROVED

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing;
- Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and
- Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.

PERMITS DENIED

- Administrative Use Permit, under BMC Section 23D.08.060.B legalize a boundary fence over 6 ft. in height.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Section 153301 of the CEQA Guidelines ("Existing Facilities").
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to

Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.28.050.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

A. The subject property is equal to or below the Single Family Residential District (R-1A) standards (BMC Section 23D.20.070) for density, height, setbacks, maximum lot coverage, usable open space (1 dwelling on a lot where 1 dwelling is allowed; 32% lot coverage where 40% maximum lot coverage is allowed; and the subject property preserves well beyond 400 sq. ft. of required usable open space). One off-street parking space within the front setback is allowed to comply with BMC Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing. The project would legalize construction of an accessory building in the rear and side yards which is consistent with the single-family use of the subject property, functions as an extension of the main dwelling, is accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scale. The project would also legalize a 14 ft. tall hedge within the north and south side yards in addition to a 9 ft. tall, 21 ft. X 5 ft. trellis, located 3 in. from the south property line and 30 ft. from the rear property line. The proposed, hedge and the trellis are small in scale and are not expected to create significant impact to sunlight, air and view for the surrounding neighborhood.

B. Privacy, sunlight, air & view:

- Accessory building: The 128 sq. ft. accessory building functions as an office, which is a quiet activity, and is subject to condition of approval #14 that requires that a "Notice of Limitation of Use" be placed on the deed to the property. This deed restriction prohibits the use or conversion of this habitable accessory building to a dwelling unit unless authorized by an applicable permit.

The accessory building preserves privacy for abutting residences because the entry point (located on the east elevation) faces the main dwelling and while windows are located on south and west elevations, they are small in size and the existing vegetation on the side and rear property lines screen the adjacent properties.

The accessory building is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood. It is separated from the main building on the neighboring property at 1333 Hopkins Street (to the south) by approximately 50 ft. and from its detached accessory structure

(Garage) by approximately 17 ft. This accessory building is separated from the building on neighboring property at 1327 Hopkins (also to the south) by approximately 33 ft.; from the building on the neighboring property at 1341 Peralta Avenue (to the west) by approximately 56 ft.; from the building at neighboring property at 1344 Ordway Street (to the north) by approximately 17 ft.; and from the main dwelling on the subject lot by more than 40 ft.

The accessory building is located at approximately 8 ft. 6 in. from the side property line to the north; about 56 ft. from front property line to the east; 3 ft. 7 in. to 3 ft. 9 in. from side property line to the south; and 4 ft. 1 in. to 4 ft. 3 in. from the rear property line to the west. The accessory building is one story in a district that permits three story main buildings. It is not taller than the main dwelling on the subject lot nor adjacent properties. Due to location and scale, this accessory building does not create significant changes to existing sunlight conditions in the vicinity of the project.

The accessory building's maximum height is 12 ft. 2 in. which is lower than the main dwelling and all abutting buildings. This low roof height and the generally flat topography of the area will ensure that this building would not obstruct or significantly reduce any prominent views that may exist for surrounding neighbors, such as a view of Golden Gate or Bay Bridge, the Downtown San Francisco skyline, the bay, or Treasure Island as defined in BMC Chapter 23F.04.

- Trellis:
While the 105 sq. ft. 9 ft. tall trellis is located at 3 in. from the south side property line, it matches the neighbor's abutting garage in height and length. Additionally, this structure is designed with well-spaced members (1 ft. 9 in. between wood members) which allows for passage of air and light and hence is not expected to create light and air impacts to the nearest property at 1333 Hopkins Street.
- Hedge:
Since the hedge is more than 8 ft. from the nearest abutting property to the south and are light penetrable, it is not expected to significantly obstruct sunlight, air, and views for this neighborhood.

2. BMC Section 23B.52.010 for Reasonable Accommodations, provides that it is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. Therefore, the City will allow the establishment of a front yard off-street parking space 1 ft. 4 in. from the front property line where 20 ft. is required, and 8 in. from the side property line where 2 ft. is required because:
 - A. The parking pad will provide fair access to the home of the applicant who has lived there for 4 years and needs an accessible off-street parking space due to a disability as defined by the Fair Employment and Housing Act of 1959, codified as Government Code §§12900 – 12996;
 - B. The Berkeley Zoning Ordinance allows a person to request a reasonable accommodation in the form of modification in the application of a zoning law that acts as a barrier to fair housing access. According to Section 23D.12.080.B, no portion of an off-street parking space may be located in a required front yard unless such location is authorized by an AUP and approved by the Traffic Engineer. Additionally, Section 23D.12.080.E requires that all paved areas for off-street parking spaces and driveways be separated from any adjacent interior side lot line by a landscaped strip at least two feet wide. In this case the modification will apply to: 1) Section 23D.12.080.B in order to allow a new off-street parking space to be created within the required front yard setback; and to 2) Section 23D.12.080.E in order to allow elimination of the required two feet wide landscaped strip. Therefore, allowing a front yard parking space without a two feet landscaped strip is considered a modification in zoning policy for reasonable accommodation for fair housing access; and
 - C. Due to the City's current practice of not permitting a front yard parking space without a two-foot wide landscaped strip, Condition #11 has been added to this permit requiring the restoration of the front yard and restoration of rear or side off-street parking space, if the property is sold, the tenant with medical condition moves out or the disability no longer prevents accessible access.

III. FINDINGS FOR DENIAL

As required by BMC Section 23D.08.060, no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building may exceed six feet in height at any point, unless so authorized by an AUP. The existing 6 ft. to 8 ft. tall wood fence (proposed to become a 8 ft. to 9 ft. tall. wood fence by adding a 2-3 ft. wood lattice above) separates the subject property from the neighbor's property to the south. Based on the property survey submitted by the applicant, it appears that the existing fence is located on the neighbor's property. Fences are usually a shared responsibility between neighbors. In this case, because the fence is located outside the subject property lot line and on the neighbor's property at 1333 Hopkins Street and the neighbor has objected, a recommendation for approval cannot be made by staff.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (BMC Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (BMC Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer.

5. Plans and Representations Become Conditions (BMC Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (BMC Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (BMC Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (BMC Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison

_____ Name

_____ Phone #

11. The parking pad must be removed, and the curb cut in filled if the property is sold, the tenant moves out or disability no longer prevents accessible access.
12. Hedge shall not exceed 14 ft. in height.
13. To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30-days after the AUP approval.

Prior to Issuance of Any Building Permit:

14. **Accessory Building:** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this Accessory Building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC Chapter 23F.04. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Standard Construction-related Conditions Applicable to all Projects:

15. **Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
 - Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

16. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

17. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
18. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
19. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
20. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
21. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
22. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
23. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
24. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
25. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
26. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
27. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines Section 15064.5(f), "provisions for historical or unique

archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

28. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

29. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the

1346 ORDWAY STREET
Page 10 of 10

NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions
Administrative Use Permit #ZP2018-0174

resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

Prior to Issuance of Occupancy Permit or Final Inspection:

30. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
31. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 3, 2019

At All Times (Operation):

32. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
33. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

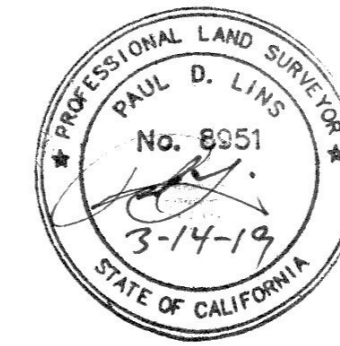


Prepared by: Nilu Karimzadegan, Assistant Planner
For Steven Buckley, Zoning Officer

PLAT OF SURVEY

LOT 44, BLOCK 6
KEY ROUTE TERRACE NO. 3 (21 M 59)
LOCATED AT 1346 ORDWAY STREET
BERKELEY, ALAMEDA COUNTY, CALIFORNIA

MARCH 14, 2019 SCALE: 1" = 8'

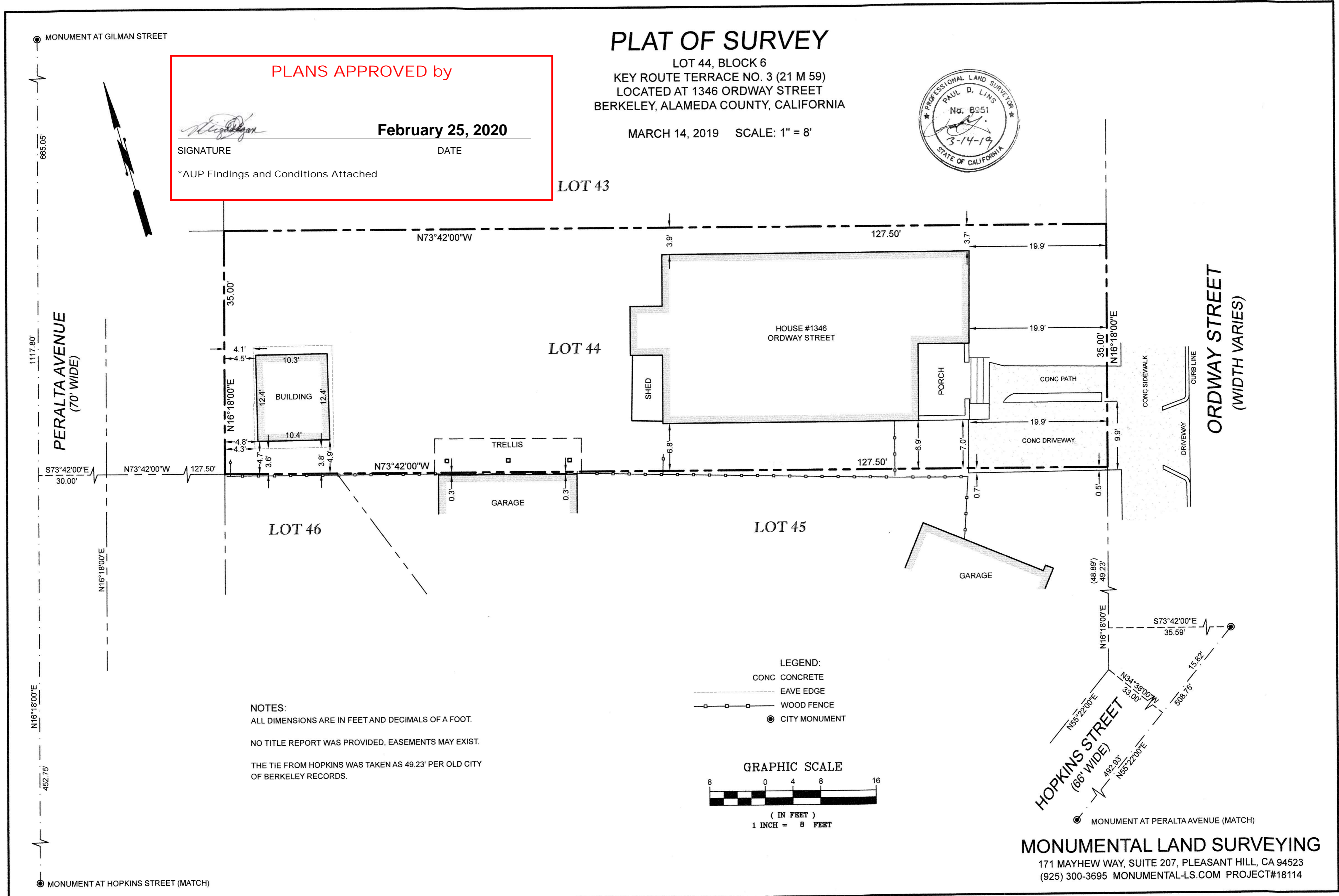


PLANS APPROVED by

Signature
SIGNATURE

February 25, 2020
DATE

*AUP Findings and Conditions Attached

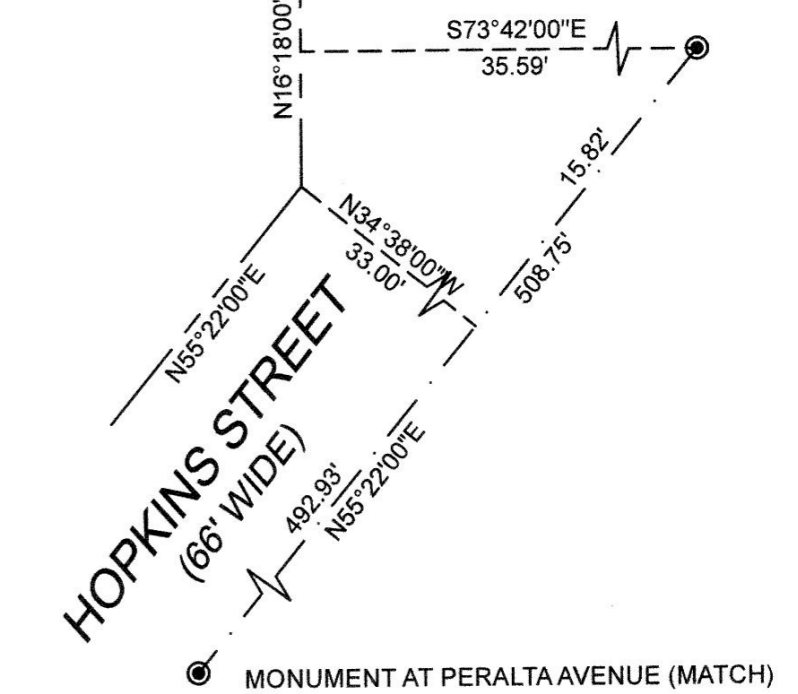
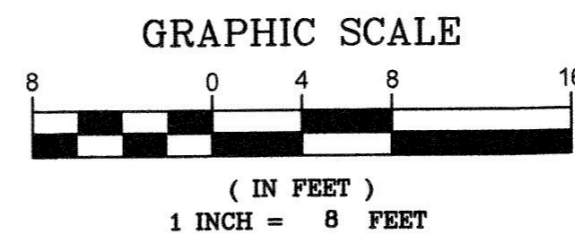


NOTES:
ALL DIMENSIONS ARE IN FEET AND DECIMALS OF A FOOT.

NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.

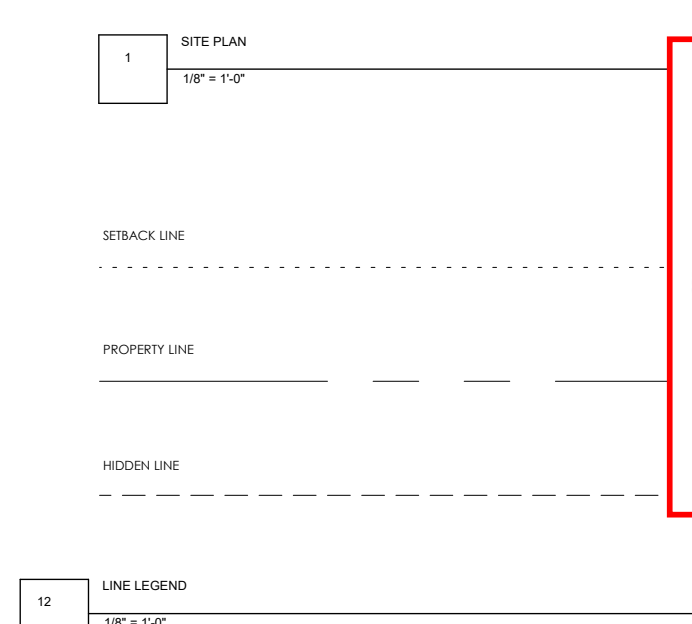
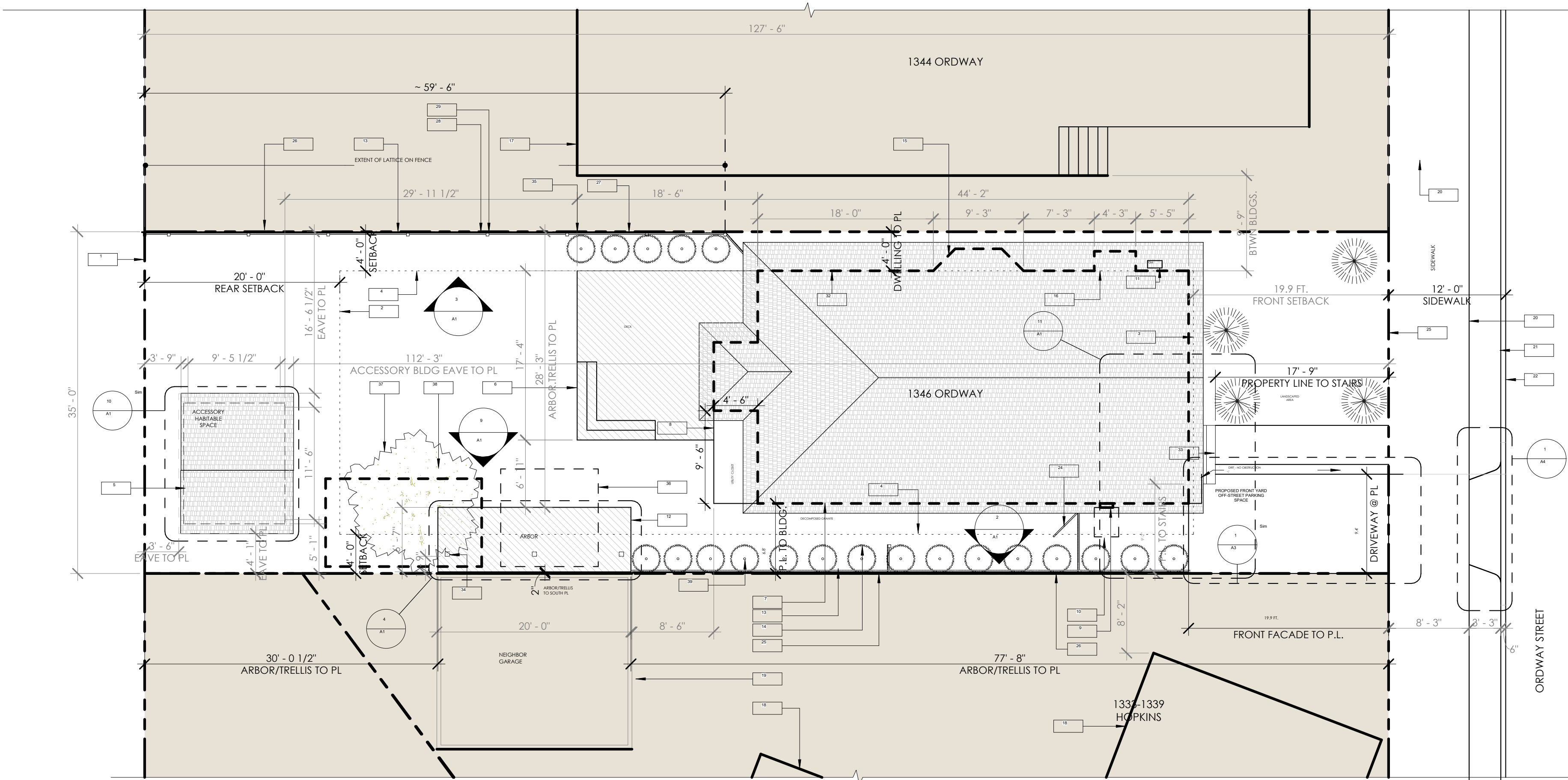
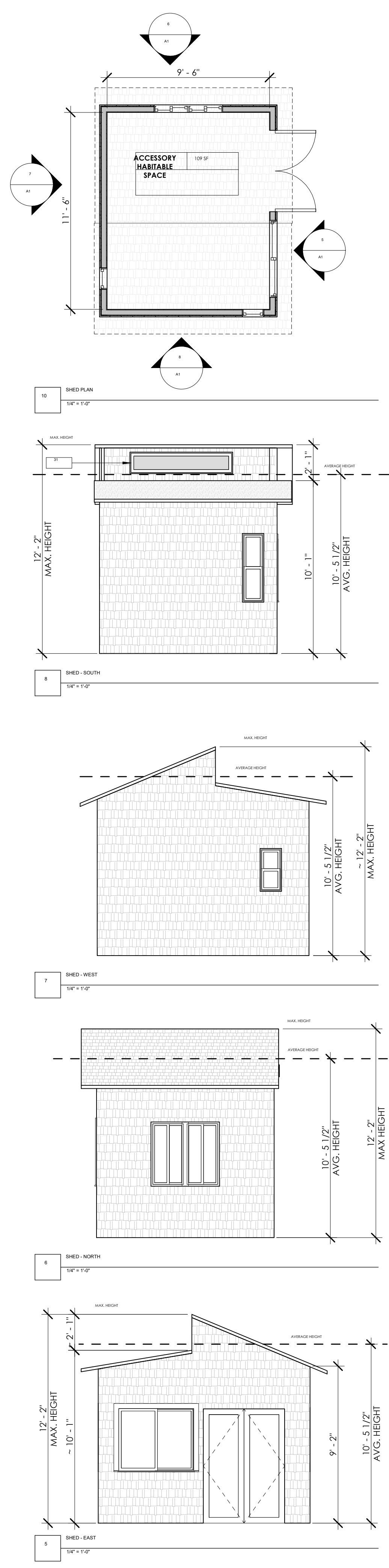
THE TIE FROM HOPKINS WAS TAKEN AS 49.23' PER OLD CITY OF BERKELEY RECORDS.

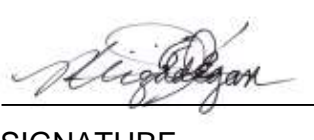
- LEGEND:**
- CONC CONCRETE
 - EAVE EDGE
 - WOOD FENCE
 - CITY MONUMENT

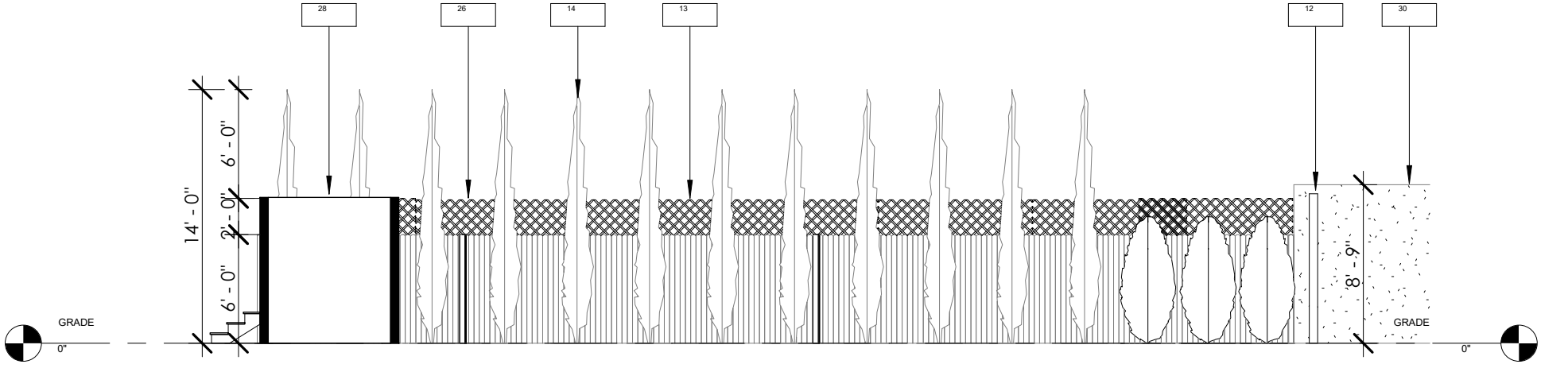
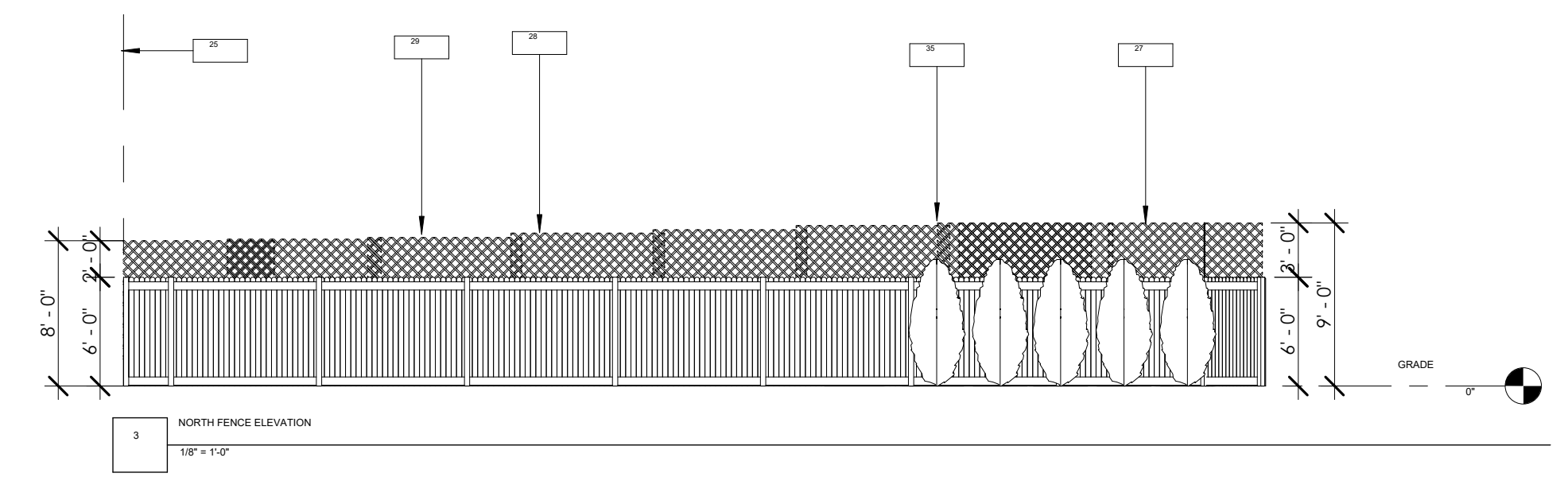
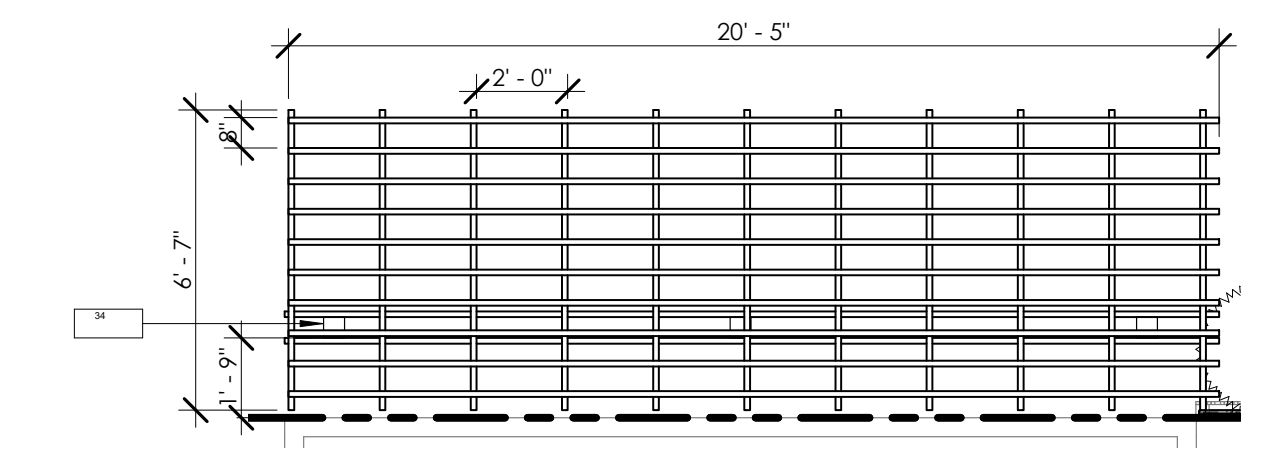
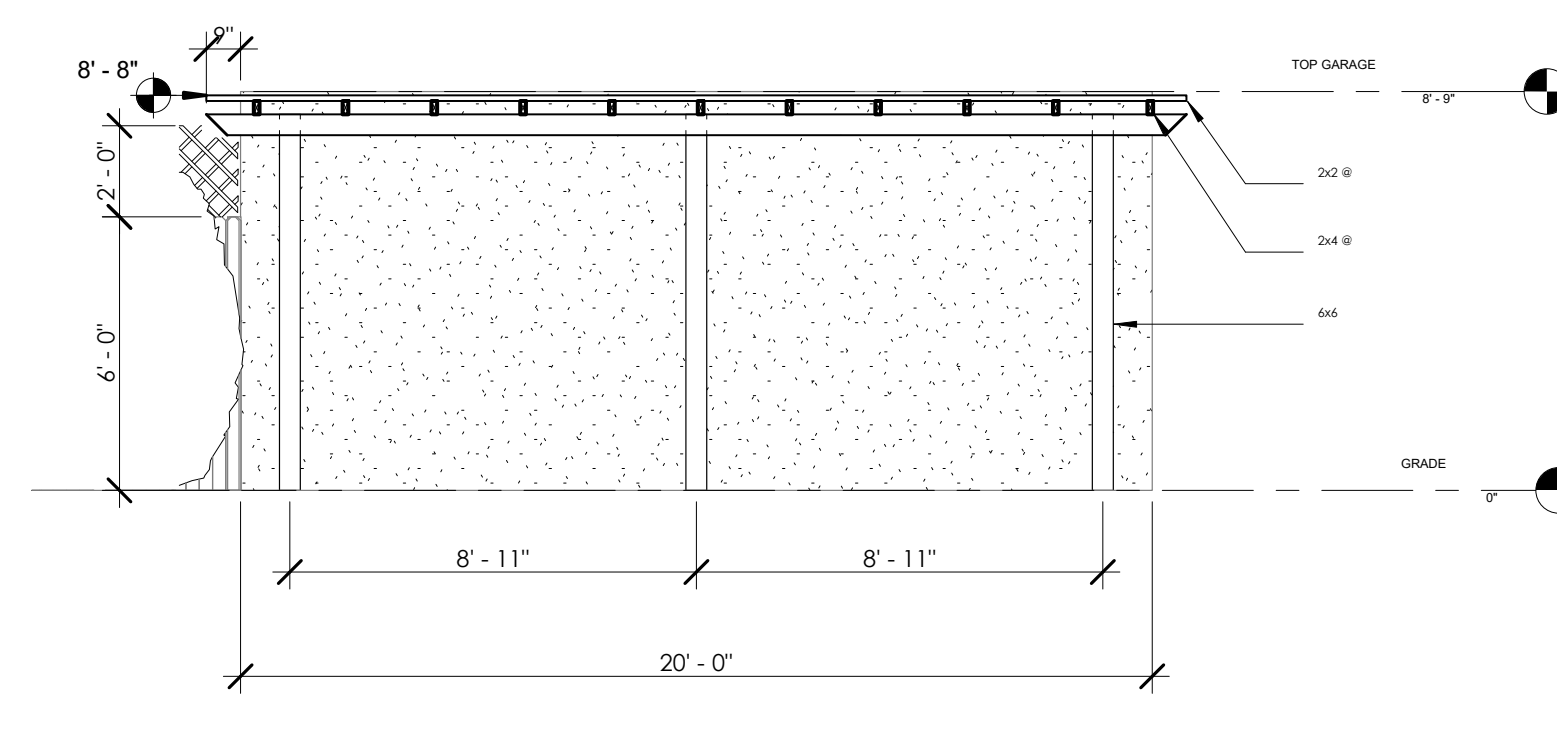
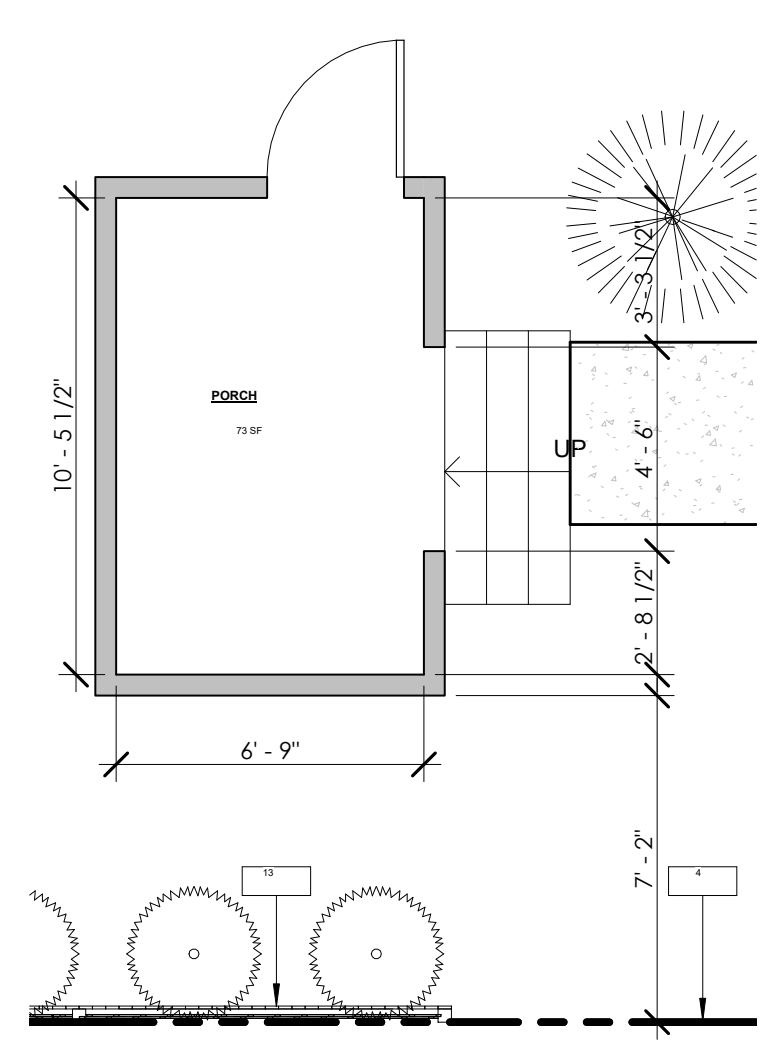
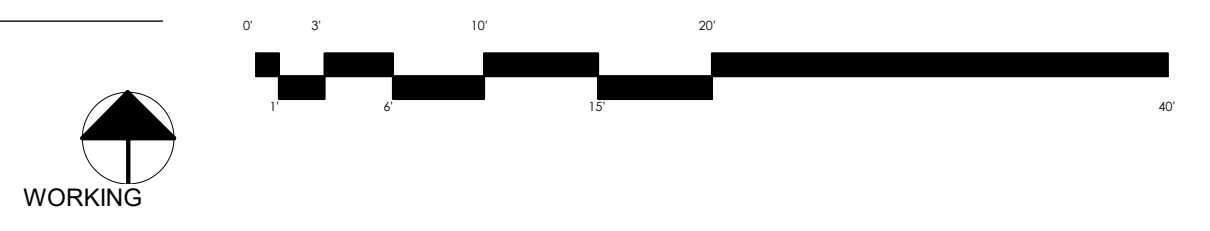


MONUMENTAL LAND SURVEYING
171 MAYHEW WAY, SUITE 207, PLEASANT HILL, CA 94523
(925) 300-3695 MONUMENTAL-LS.COM PROJECT#18114

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February 25, 2020
 SIGNATURE DATE
 *AUP Findings and Conditions Attached



SHEET INDEX

Sheet Number	Sheet Name	Sheet Issue Date
A1	SITE PLAN	12/03/2019
A3	ENLARGED PARKING PLAN	12/03/2019
A4	DETAILS & AREA CALCS	12/03/2019

SHEET NOTES

Key Value	Keynote Text
1	48" TALL BAMBOO FENCE @ REAR PROPERTY LINE
2	REAR SETBACK LINE
3	FRONT SETBACK LINE
4	SIDE SETBACK LINE
5	SHED
6	REAR DECK
7	BLDG. FOOTPRINT BELOW
8	UTILITY CLOSET
9	ELECTRICAL PANEL
10	MAINTAIN 30'w X 36'D FOR CLEAR WORKING SPACE - N.E.C. 110.26(A)(2) REQUIREMENT.
11	GAS METER
12	ARBOR STRUCTURE
13	6'-0" TALL FENCE AT PROPERTY LINE
14	14' TALL LANDSCAPING/TREES
15	BAY WINDOW
16	FIREPLACE
17	1344 ODWAY RESIDENCE
18	1333-1339 HOPKINS STREET, MAIN STRUCTURE.
19	1333-1339 HOPKINS STREET, GARAGE STRUCTURE.
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
24	GATE
25	PROPERTY LINE
26	24" LATTICE ATOP OF FENCE
27	36" LATTICE ATOP OF FENCE, INSTALLED TO REPLACE (E) 24" LATTICE AT THE TIME OF REMODEL/ADDITION AT 1344 ORDWAY. MUTUALLY AGREED UPON WITH NEIGHBOR OF 1344.
28	FENCE AND LATTICE PATTERNS ARE SHOWN CONCEPTUALLY.
29	LATTICE "STEPS-DOWN" APPROX 1.5" EVERY 8'-0" LF TO REFLECT GRADE.
30	NEIGHBOR'S GARAGE STRUCTURE
31	CELESTORY WINDOW
32	BLDG. FOOTPRINT IS AT SETBACK LINE
33	FRONT ENTRY STEPS
34	CLOSEST FACE OF ARBOR POST IS 1'09" FROM PROPERTY LINE. SEE PLAN VIEW.
35	36" LATTICE ATOP OF FENCE EAST OF THIS POINT. 24" LATTICE ATOP FENCE WEST OF THIS POINT
36	APPROX. LOCATION OF PREVIOUS TOOLSHED. APPROX 10'x10'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
37	TREE - REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
38	APPROX. LOCATION OF PREVIOUS TRED SHED. APPROX 9'x16'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
39	TREES ARE APPROX 18" FROM P.L. AND 5'-8" FROM BUILDING FOOTPRINT. CROWN OF TREE IS APPROX. 36" W. TRUNKS < 3" DIA.

TRADE CRAFT

225 VISTA GRANDE, GREENBRAE, CA

ARCHITECT PROJECT #: 18034
 ARCHITECT CONTACT INFORMATION:
 NICHOLAS LEONE
 415.272.2441
 NBL@TRADECRAFTARCH.COM

CONSULTANT:
 JENNIE DUNFORD & ASSOCIATES

CLIENT:
 JENNIE DUNFORD & ASSOCIATES

1346 ORDWAY STREET
 BERKELEY, CA 94702

REVISION HISTORY	REVISION DESCRIPTION	REVISION DATE
1	AUP PERMIT	11/19/18
2	AUP REVISION	3/15/19
1		

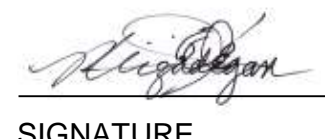
DRAWN BY: _____ CHECKED BY: _____
 SCALE: _____ SHEET SIZE: 24 x 36"
 PUBLISH DATE: 12/03/2019
 PRINT DATE/TIME: 12/3/2019 6:44:19 PM
 SHEET NAME: SITE PLAN

SHEET NUMBER:
A1

PAPER SCALE -> 1" = 12'-0"

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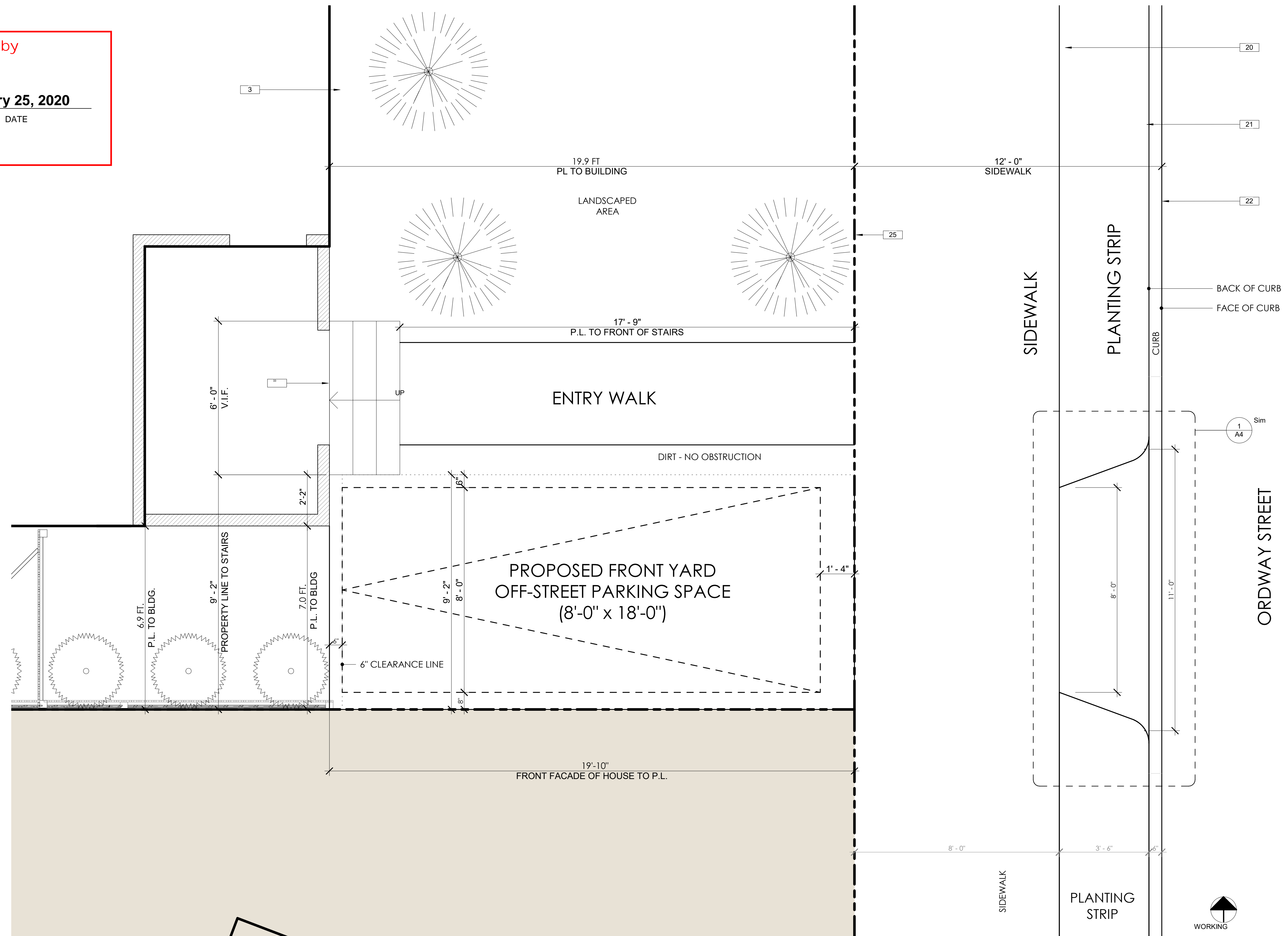
PLANS APPROVED by



February 25, 2020

SIGNATURE _____ DATE _____

*AUP Findings and Conditions Attached



1 PARKING PLAN
1/2" = 1'-0"

SHEET NOTES	
Key Value	Keynote Text
3	FRONT SETBACK LINE
16	FIREPLACE
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
25	PROPERTY LINE
33	FRONT ENTRY STEPS

TRADE CRAFT

TRADECRAFT
225 VISTA GRANDE, GREENBRAE, CA 94704
ARCHITECT PROJECT #: 18-009
ARCHITECT CONTACT INFORMATION:
NICHOLAS LEGORE
415.272.7441
NBL@TRADECRAFTARCH.COM

CONSULTANT:

CLIENT:
Jennie Durant & Keki Burjorjee

1346 ORDWAY
1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date
1	A4	Sim

STAMP:

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DRAWN BY: _____ CHECKED BY: _____
SCALE: 1/2" = 1'-0" SHEET SIZE: 24 x 36"
PUBLISH DATE: 12/03/2019
PRINT DATE/TIME: 12/3/2019 6:44:20 PM

SHEET NAME:
ENLARGED PARKING PLAN
SHEET NUMBER:
A3

PAPER SCALE -> 1" = 12'-0"

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BUILDING FOOTPRINT: SEE "COVERAGE AREA"

COVERAGE AREA: ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS ENCLOSED BY THE EXTERIOR WALLS OR BUILDINGS OR ENCLOSED BY CURBS OR COVERED BY DECKS, PORCHES, STAIRS AND/OR LANDINGS WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA. ALSO SEE SECTION 230.04.040.

230.04.040 LOT COVERAGE:

- THE CALCULATION OF AREA FOR LOT COVERAGE SHALL EXCLUDE UNCOVERED DECKS, PORCHES, LANDINGS AND STAIRS, EXCEPT THAT ANY DECK ON THE ROOF OF A BUILDING OR ACCESSORY STRUCTURE OR COVER BY THE COVERED SPACE OF A COVERED GROUND AREA SHALL BE INCLUDED IN SUCH CALCULATION.
- THE AREA OF THE ROOF OF A SUBSTANTIAL STRUCTURE WITH A FLAT OR GENTLY SLOPED ROOF THAT EXCEEDS THREE FEET ABOVE FINISH GRADE, SHALL BE EXCLUDED FROM THE CALCULATION OF AREA FOR LOT COVERAGE.
- STRUCTURED EQUIPMENT IN COMPLIANCE WITH THIS CHAPTER MAY EXCEED THE MAXIMUM COVERAGE AREA LIMIT.
- WHEELCHAIR RAMPS AND LIFTS IN COMPLIANCE WITH THIS CHAPTER MAY EXCEED THE MAXIMUM COVERAGE AREA LIMIT. (ORD. 447940 § 4 (PART), 1999)

ROOF AREA: GROSS: THE TOTAL GROSS HORIZONTAL AREA OF ALL FLOORS OF A BUILDING OR ENCLOSED STRUCTURE, INCLUDING BUT NOT LIMITED TO, USABLE BASEMENTS AND COLLARS, BELOW THE ROOF AND WHEN THE COVERED SPACE OF THE MAIN WALLS OF PRINCIPAL OR ACCESSORY BUILDINGS OR THE CENTER AREA OF PARTY WALLS SEPARATING SUCH BUILDINGS OR PORTION THEREOF OR WHEN LINES DRAWN PARALLEL TO AND TWO FEET FROM THE ROOF OF ANY BUILDING OR PORTION THEREOF ARE DRAWN PARALLEL TO AND TWO FEET FROM THE ROOF OF ANY BUILDING OR PORTION THEREOF. WHEN SUCH WALLS EXCEPT FROM THE CASE OF A MULTISTORY BUILDING WHICH HAS COVERED OR UNCOVERED SIDEWALKS, STAIRWAYS AND BEHAVIOR SHAPES, THE HORIZONTAL AREA OF SUCH PARTS SHALL BE COUNTED ONLY ONCE AS THE HORIZONTAL AREA OF THEIR GREATEST AREA OF PROJECTION. AREA THAT SHALL BE EXCLUDED FROM GROSS ROOF AREA INCLUDES COVERED UNCOVERED AREAS USED FOR OFF-STREET PARKING SPACES OR LOADING SPACES AND DRIVEWAYS, RAMPS BETWEEN FLOORS OF A MULTISTORY PARKING GARAGE AND HANDICAPPED ACCESSWAYS, TOILETS, MECHANICAL, ELECTRICAL, AND TELEPHONE EQUIPMENT ROOMS BELOW FINISH GRADE, AND AREAS WHICH QUALIFY AS USABLE OPEN SPACE FOR NONRESIDENTIAL USE. GROSS AREA INCLUDES PREFERRED ACCESS, INTERIOR WALKWAYS OR CORRIDORS, OR INTERIOR COURTYARDS, WALKWAYS, PATIOS OR CORRIDORS COVERED BY A ROOF OR STRUCTURE, BUT EXCLUDES ARCHES, PORTICOES AND SIMILAR OPEN AREAS WHICH ARE LOCATED AT OR NEAR STREET LEVEL, WHICH ARE ACCESSIBLE TO THE GENERAL PUBLIC, AND WHICH ARE NOT DESIGNED OR USED AS SALES, DISPLAY, STORAGE, SERVICE OR PRODUCTION AREAS.

ROOF AREA RATIO (RAR): THE QUOTIENT RESULTING FROM DIVISION OF THE GROSS FLOOR AREA OF ALL BUILDINGS ON A LOT BY THE AREA OF THE LOT. IN A SINGLE INTEGRATED DEVELOPMENT ON CONSECUTIVE CORN, THE PERMITTED FLOOR AREA RATIO SHALL BE COMPLIED UPON THE BASIS OF THE TOTAL AREA OF ALL SUCH LOTS.

USABLE OPEN SPACE: DEFINITION: THE AREA OF EACH LOT WHICH IS RESERVED FOR USABLE OPEN SPACE PURPOSES SHALL BE FOR ACTIVE OR PASSIVE RECREATION USE AND SHALL BE ACCESSIBLE TO THE OCCUPANTS OF THE BUILDING, UNLESS OTHERWISE SPECIFIED IN INDIVIDUAL DISTRICT STANDARDS. IN ADDITION, SUCH AREAS SHALL SATISFY THE FOLLOWING CONDITIONS:

- NO AREA SHALL QUALIFY AS USABLE OPEN SPACE UNLESS IT HAS A MINIMUM WIDTH AND LENGTH OF TEN FEET, EXCEPT FOR NON-RECTANGULAR AREAS WHICH MUST MEET A USABLE OPEN SPACE REQUIREMENT (SEE ITEM 2) WITH A MINIMUM WIDTH AND LENGTH OF SIX FEET AND HAS AT LEAST ONE EXTERIOR SIDE OPEN AND UNOBSTRUCTED EXCEPT FOR INTERFERENCES.
- NO MORE THAN ONE OF THE TOTAL USABLE OPEN SPACE REQUIREMENT MAY BE SATISFIED BY BALCONIES.
- NO AREA WHICH IS ACCESSIBLE AND/OR USABLE ONLY BY THE OCCUPANTS OF A PARTICULAR DWELLING UNIT SHALL BE USED TO SATISFY THE USABLE OPEN SPACE AREA REQUIREMENT OF ONLY THAT PARTICULAR DWELLING UNIT.
- EXCEPT IN THE CASE OF BALCONIES, USABLE OPEN SPACE SHALL BE OPEN TO THE SKY.
- NO AREA WHICH DOES NOT MEET THE ABOVE CRITERIA SHALL QUALIFY AS USABLE OPEN SPACE.
- AT LEAST ONE OF THE TOTAL AREA REQUIRED AS USABLE OPEN SPACE, EXCLUSIVE OF BALCONIES ABOVE THE FIRST FLOOR, SHALL BE A LANDSCAPED AREA FOR HABITAT OR OPEN SPACE. SUCH LANDSCAPED AREAS SHALL ACCORDINGLY PROVIDE APPROPRIATE IRRIGATION AND DRAINAGE FACILITIES ADEQUATE TO ASSURE HEALTHY GROWING CONDITIONS FOR PLANTS.
- ANY USABLE OPEN SPACE WHICH IS NOT PLANTED SHALL BE DESIGNED TO ENCOURAGE OUTDOOR ACTIVE OR PASSIVE RECREATION USE AND SHALL INCLUDE SUCH FEATURES AS: ARTISTICAL LIGHT FIXTURES, OUTDOOR BURNING DEVICES, PLAY AREAS, AND WALKWAYS WHICH DO NOT BECOME OBSTACLES TO WALKERS.
- AREAS OF THE LOT WHICH DO NOT QUALIFY AS USABLE OPEN SPACE AND WHICH ARE NOT DESIGNATED AS DRIVEWAYS, OFF-STREET PARKING SPACES OR LOADING AREAS, SHALL BE RETAINED AS LANDSCAPED AREAS.
- NO AREA DESIGNATED FOR OFF-STREET PARKING AND LOADING AREAS, SERVICE AREAS, DRIVEWAYS, REQUIRED WALKWAYS OR PORTICOES THEREOF OR ANY FEATURES THAT ARE USED FOR REQUIRED ACCESS TO DWELLING UNITS SHALL BE COVERED AS SATISFYING ANY USABLE OPEN SPACE AREA REQUIREMENT. (ORD. 447940 § 4 (PART), 1999)

SEMI-PRIVATE: ANY PORTION OF A BUILDING OR STRUCTURE WHICH IS DESIGNED TO BE OR CAN BE USED AS HABITABLE SPACE, WHICH HAS FINISHED WALLS (SHEATHING OR PLASTER) AND/OR IS HEATED OR HEATED WITH ANY FIXED FINISHES OF CONCRETE, BRICK, STUCCO, INCLUDING BRICKWORK, WALL, CEILING AND JANUARY ROOMS, STORAGE AREAS WITH OVER SIX (6) FEET OF VERTICAL SPACE SHALL ALSO BE CONSIDERED USABLE SPACE.

PLANS APPROVED by

[Signature]
February 25, 2020

SIGNATURE DATE

*AUP Findings and Conditions Attached

DRIVEWAY WITH SEPARATED SIDEWALK
W=DRIVEWAY WIDTH (SEPARATED SIDEWALK)

NOTES:

- REFER TO GENERAL NOTES FOR CONCRETE WORK.
- RESIDENTIAL DRIVEWAYS SHALL BE 6 INCHES THICK PORTLAND CEMENT CONCRETE (PCC). COMMERCIAL AND INDUSTRIAL DRIVEWAYS SHALL BE 6 INCHES THICK REINFORCED CONCRETE. REINFORCEMENT SHALL BE 6"x6" WELDED WIRE FABRIC, #10 GAUGE MESH OR #4 BARS AT 18 INCH O.C. EACH WAY. THE REQUIRED STRUCTURAL SECTION FOR ANY DRIVEWAY SHALL BE CONTINUOUS FROM THE CURB TO THE BACK OF SIDEWALK.
- DEPTH OF GUTTER FLOWS SHALL BE CALCULATED AND COMPARED TO PROPOSED SIDEWALK ELEVATIONS DURING DESIGN TO ENSURE GUTTER FLOWS ARE CONTAINED AND RUNOFF WITHIN THE PUBLIC RIGHT OF WAY DOES NOT DRAIN ONTO PRIVATE PROPERTY.
- RETAINING CURBS AND DRIVEWAY CONFORMS AS REQUIRED.
- FOR ADDITIONAL REQUIREMENTS, SEE PLAN B144, "CONCRETE WORK NOTES."

DRIVEWAY WITH MONOLITHIC SIDEWALK
W=DRIVEWAY WIDTH (MONOLITHIC SIDEWALK)

Dimension	Commercial & Industrial	Residential
Y	5' MIN	2' MIN
W	12' MIN	8' MIN

STANDARD DETAIL
DRIVEWAY

SUBMITTED: Don Z... DATE: 2/27/17

SUPERVISING CIVIL ENGINEER R.C.E. 64582

APPROVED: P-LO DATE: 2/28/17

MANAGER OF ENGINEERING R.C.E. 66014

CITY OF BERKELEY

DEPARTMENT OF PUBLIC WORKS

DESIGN: HEI DATE: 01/26/17 PLAN: 8151

DRAWN: HEI SCALE: N.T.S. FILE: 20B-163

CHECK: MS BOOK: SHEET: 1 OF 1

TRADE CRAFT

225 VISTA GRANDE, GREENBRAE, CA 94034

ARCHITECT PROJECT #: 18-071

ARCHITECT CONTACT INFORMATION:
NICHOLAS LIGONE
415.272.2441
NBL@TRADecraftARCH.COM

CONSULTANT:

CLIENT:
Aurora Dupont & Kell
Subject:

1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date

STAMP:

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED, OR DISCLOSED WITHOUT WRITTEN CONSENT OF THE ARCHITECT. A SIGNATURE ON THE STAMP ABOVE CONSTITUTES THE ARCHITECT'S CONSENT FOR SUBMISSION OF PLANS FOR THE STATED PROJECT.

DRAWN BY: _____ CHECKED BY: _____

SCALE: _____ SHEET SIZE: 24 x 36"

PUBLISH DATE: _____

PRINT DATE/TIME: 12/3/2019 6:44:21 PM

SHEET NAME: DETAILS & AREA CALC

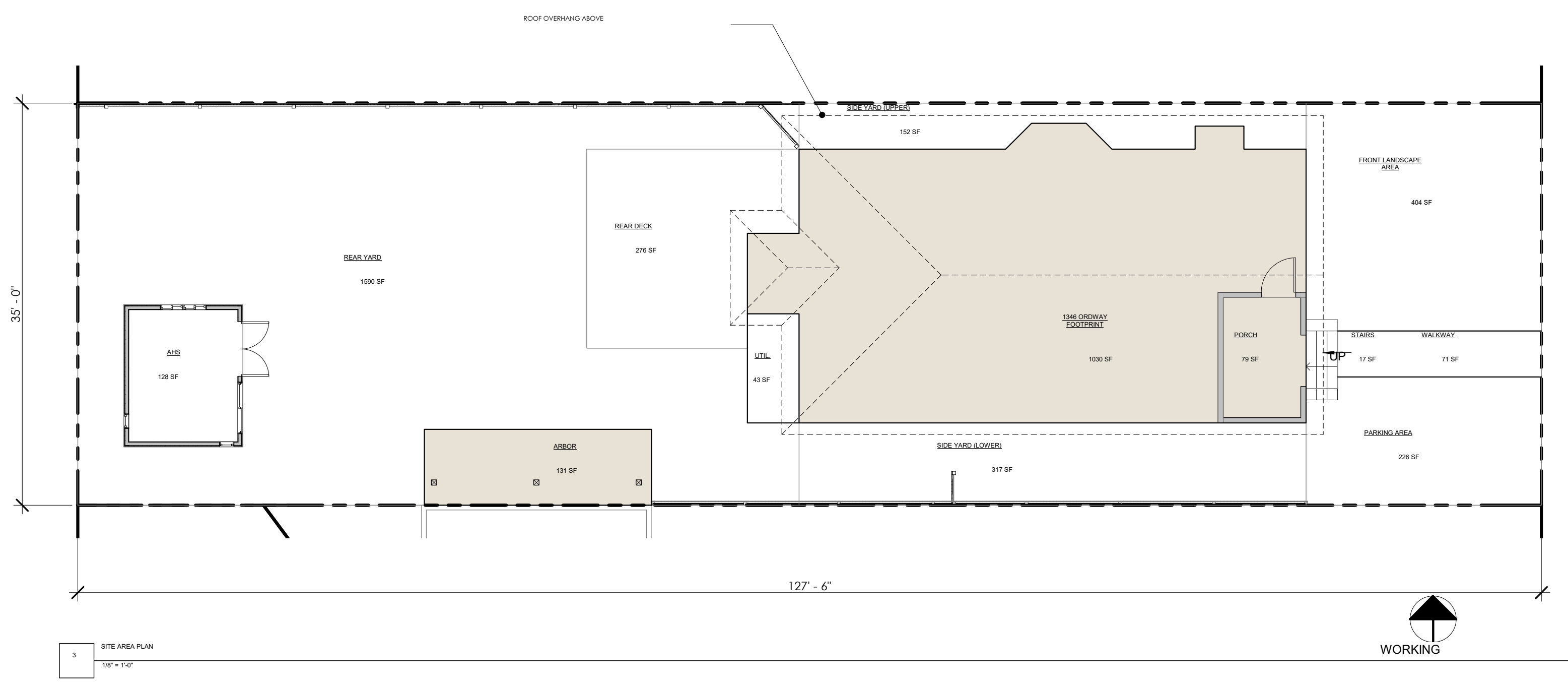
SHEET NUMBER: **A4**

1346 ORDWAY - AREA CALCULATIONS

11/27/2019

Area Description	Area	(E) Gross Floor Area (GFA)	(P) Gross Floor Area (GFA)	(E) Building Footprint	(P) Building Footprint	(E) Lot Coverage	(P) Lot Coverage	Useable Open Space (UOS)	Landscaped UOS	FAR (GFA/Lot Area)
Accessory Habitable Space (Sheel)	128				128		128			
Arbor/Trellis	131				131		131			
Rear Deck	276							276		
Home Footprint (Exclude Porch)	1,030	1,030	1,030	1,030	1,030	1,030	1,030			
Porch	79	79		79		79				
Utility Closet	43	43		43		43				
Side Yard (Upper)	152									
Front Landscape Area	404							404	404	
Lower Side Yard	317									
Walkway	71									
Stairs	17									
Parking Area	226									
Rear Yard (Less Arbor & Deck & AHS)	1,590							1,590	1,590	
SUBTOTAL*	4,464	1,152	1,280	1,152	1,411	1,152	1,411	2,270	1,994	29%
Percentage		26%	29%	26%	32%	26%	32%	51%	88%	

*May be subject to 1-2 SF discrepancy due to rounding.



Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

APPEAL LETTER

March 16, 2020

Igor Tregub, Chairperson
City of Berkeley
Land Use Planning Division
Attn: Zoning Adjustments Board Members
1947 Center Street
Berkeley, CA 94704

**RE: APPEAL- AUP #ZP2018-0174 FOR 1346 ORDWAY STREET; AND
REQUEST ZONING ADJUSTMENTS BOARD PUBLIC HEARING**

Dear Chair Tregub and Board Members:

I, Lawrence Hickman ("Appellant"), do hereby Appeal the City of Berkeley Zoning Officer's Findings and Approvals of the above referenced Administrative Use Permit (AUP); and, I request a Public Hearing before the Zoning Adjustments Board on this matter. This Appeal is filed on the grounds the Zoning Officer's Findings and Approvals are unsupported by evidence in the record and inconsistent with the administration of fair and equitable justice, as required by the City of Berkeley Municipal Code (BMC). Moreover, the Zoning Officer appears to ignore the need to recognize the importance of sustaining and maintaining harmony among longtime home owners. The proposed Conditions are inadequate to protect Appellant unreasonable diminution of property value.

INTRODUCTION

This matter arises out of a real property dispute between neighbors. For over twenty-nine years Appellant has owned the large parcel of real property located at the corners of Hopkins and Ordway Streets, also known as, 1333 Hopkins Street, Berkeley, California. For over twenty-five of those years, Appellant experienced quiet enjoyment of ownership with his previous neighbor, Ms. Taylor, owner of the smaller parcel next door at 1346 Ordway Street without incident. Shortly after Ms. Taylor's death, her property was sold to Jennie Durant and Keki Burjorjee ("Applicants") and they began engaging in illegal outdoor construction projects; projects that were unpermitted and non-conforming, all violations of the Berkeley Municipal Code (BMC). The illegal projects infringed upon Appellant's property rights. Moreover, the Applicants continued to initiate and maintain unpermitted conditions even after being notified and warned about some of their illegal construction.

So now, in the form of an application for an Administrative Use Permit, Applicants are seeking forgiveness, permissions, approvals and the legal right to keep and maintain all of the unpermitted, non-conforming and illegal construction projects. The forgiveness, permissions, approvals and legal rights being sought by these outlaws appear to be on the verge of being granted, despite Appellant's Notice of Opposition (NOO), City of Berkeley's Code Enforcement Notice of Violation (NOV), Administrative Citation Warning (ACW) and Order for non-compliance, and their continued infringement on the quiet enjoyment and health and safety of the community at large.

Based upon the foregoing, facts set forth herein, other documents and statements on file, and statements during oral arguments before the Board, Appellant ask this Board to uphold the BMC and affirm this Appeal.

STATEMENT OF FACTS

Since 1990 Appellant has peacefully owned the property located at 1333 and 1346 Hopkins Street. In 2005, the Appellant consulted the City of Berkeley, and with the consent of the prior owner of the 1346 Ordway Street property, legally constructed a 6' fence along the property line of 1333 Hopkins Street.

In 2015, Applicants purchased the subject property at 1346 Ordway Street, Berkeley, California.

In, or around, 2017, Applicants approached Appellant attempting to discuss their (Applicants') intent to add a 4' lattice of top of Appellant's fence. Appellant informed Applicants that he (Appellant) had no interest in adding anything to the top of the fence.

About 2018, Applicants planted a row of tall tree along the entire South border of Appellant's property line, except the area where the garage sits on the property line – approximately 3" from Appellant's property line.

Next, Applicant (Keki Burjorjee) came onto Appellant's property, using profanity and in a threatening tone and manner, attempting to discuss adding the 4' lattice to the fence, or adding lattice to the tall 4 x 4s that had been placed in the ground. Appellant told Applicant that he had no interest in discussing his property improvements; and, advised him to direct his concerns to the City of Berkeley's Planning and Land Use Division.

The next day, Appellant noticed and approached a workman (carpenter) in the Applicants' yard, setting tall post up against his fence. Appellant approached the workman and inquired "do you have a permit to build a fence over 6' tall?" Workman came over into Appellant driveway and began to argue for consent to continue building. Appellant told the workman only the City of Berkeley can grant you a permit to build the fence over 6' tall.

Appellant told Applicants' workman, "Let's call the City's Code Enforcement Unit right now." Appellant, in fact, called Code Enforcement shortly thereafter.

On May 10, 2018, the City of Berkeley's Code Enforcement Inspector, Tim Kittor, conducted a brief site visit at the 1346 Ordway Street property. As a result of Inspector Kittor's finding, he issued a Notice of Violation (NOV) Case #397755 – both noticing and warning Applicants of unpermitted and non-conforming conditions on their property. As a matter of fact, Inspector Kittor instructed Applicants to reduce the size of the trees to 6' tall. (See Exhibit A – NOV)

On September 7, 2018, Applicants submitted an application for an Administrative Use Permit (AUP) ZP2018-0174 to: 1) install a two foot (2') lattice on top of Appellant's six feet (6') fence; and, 2) plant fifteen (15), approximately 14' trees alongside – the full length – of the subject fence and property line; the application was for conditions they had already created and constructed.

On September 19, 2018, the City of Berkeley's Planning Dept. Technician, Nilu Karimzadegan, via letter, acknowledged receipt of the aforementioned AUP application, and advised Applicants she would be processing the application in due course.

On September 20, 2018, Appellant filed a letter serving Notice of Opposition (NOO) to Applicants' proposed plans, as set forth in the AUP application under consideration by the Planning Department. It should be noted that Appellant's Letter of Opposition was not included in Applicants' application package. Equally important, Appellant's NOO letter informed the Planning Department of the fact the AUP application omitted the fact that the trees Applicants requested to plant were already planted without permit, along with other non-conforming conditions, e.g., the trees were planted 3" from the subject fence - within 2' of the property line. In short, it was Appellant's complaint to Code Enforcement that spurred Applicants' impetus to apply for the AUP – otherwise, the subject non-conforming unpermitted conditions would have likely continued unabated. This conclusion is reasonable in view of the fact that the architectural drawing submitted with the original application failed to show certain non-conforming and unpermitted conditions; conditions that would have gone unnoticed but for Appellant's bringing omitted matters to the attention of the City Planner. (See Exhibit B – NOO) ,

On October 5, 2018, the City's Planning Department issued a letter requesting and setting forth requirements necessary to proceed with the AUP application. The letter speaks to permit requests that were not mentioned in the initial AUP application. For example, the letter addresses 1) proposed parking space on site plan, trellis, tree trunks crowns, and sheds. It appears another AUP application, or an updated version, was submitted after the September 7, 2018 AUP application. These aforementioned matters appear to have been intentionally omitted in the original application.

However, on December 3, 2018, Applicants completed and submitted the City's required Tabulation Form (showing the property's existing status and what conditions were non-conforming/unpermitted and requiring permits), was submitted back to the Planning Department, evidencing that the required Southside yard setback is 7'-2" and a parking space requires a permit.

On February 8, 2019, the City responded to Applicants' revised AUP application materials. Therein the City requested additional information to complete Applicants' application requests.

Specifically, the letter noted that "because the application is a result of NOV and it also includes an unpermitted accessory building and an unpermitted trellis. Moreover, the letter appears to request information and details on non-conforming and unpermitted conditions omitted in the initial AUP application. (See Exhibit C – Re-submittal/Revised Application)

July 2, 2019, the City informed Applicants "after reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel ... all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval of this permit." Hence, revised plans were required showing the changes regarding parking were to be submitted to continue processing the AUP application. Applicants were invoiced an additional \$1600.00 additional AUP permits (AUP080). (See Exhibit D – No off-street parking determination)

On July 16, 2019, 2:02 p.m. Applicant (Jennie Durant) emailed Peter Chun, at the City's Transportation – Public Works Department regarding off-street parking. Applicant was seeking an answer as to whether she could apply for an AUP for her front yard parking space, with only a 6'-9" wide driveway – from house to property line. It was previously determined that Applicant has no legal parking space on the 1346 Ordway Street property. At 3:02 p.m., Nilu, the Applicants' City Planner emailed Peter, with a CC to Jennie stating "to clarify, after the review of this application with the zoning officer, it is determined that this [1346 Ordway Street] property has no legal [off-street] parking." Further Nilu stated "Jennie ... there is a Zoning determination as well and a Traffic Engineer review of the application. The off-street parking space in the front setback will not accommodate the 2' landscaping strip which requires a variance."

On July 17, 2019, at 10:22 a.m., Traffic Engineer, Peter Chun emailed Nilu, with a CC to Jennie, stating "my recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended ... I generally support the setback requirements (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking. (See Exhibit E – Recommendation to remove driveway)

On July 17, 2019, at 12:09 p.m., Nilu emailed Applicant (Jennie), with CC to Peter Chun stating "I also discussed options regarding this project with the Zoning Officer this morning. It seems like you have three options: 1) Restore site to its original state – remove all unpermitted accessory building, shed, trellis, hedge and fence; 2) Staff will recommend approval of AUP application, with Conditions of Approval (COA) – remove curb cut and parking; or, 3) You can apply for (a) an AUP for a front yard off-street parking space; and (b) a Variance – there is not enough space to provide the 2' landscaping strip.

On August 27, 2019, at 11:11 a.m., Nilu emailed Applicants, with CC to Code Enforcement Office, Wanda Drouillard. Therein, Nilu set forth: 1) Required Fees for AUP and penalties; 2) Required revisions on Site Plan; 3) Variance statement requirements – **“staff can recommend a Variance only if there are no other option available on the site...”** in your case, **there is the option of relocating the stairs to create room for the 2' landscaping strip.”**; and, 4) Code Enforcement will follow up regarding deadlines.

September 10, 2019, the City’s Code Enforcement Unit issued an Administrative Citation Warning (ACW), wherein Applicants were reminded the NOV, issued May 10, 2018 – requiring correction of violation on the subject property; the Citation Warning for outstanding violations the Berkeley Municipal Code (BMC), issued August 30, 2018. Pursuant to NOV and ACW, Applicant was required to reduce the height of the hedges that exceed 6’, without a permit. Code Enforcement further reminded Applicant that their plans submitted on September 2018 for a Variance on the hedges were additionally unpermitted construction (accessory building and trellis – identified by the Planning Department and, as of Sept 9, 2019, the violations remain; and, Applicants have failed to comply with Planning Department’s deadlines for submitting corrections regarding plan check requested via letter and email. (See Exhibit F – AWC)

Since the project is associated with a Code Enforcement case, specified deadlines are enforced and take precedent over any timelines related to the permit process. In sum, Applicant were Ordered to comply with certain deadlines, and were put on Notice that, **“in light of the history of non-compliance on the property,”** further failures to timely comply would, as of September 25, 2019, result in Citation penalties.

On September 17, 2019, Applicants submitted a Variance Statement, because City had determined the 1346 Ordway Street property does not have a legal parking space. Applicants acknowledge they have an option to achieve off-street parking – in the setback area of their front yard - other than being granted the requested Variance. Nevertheless, Applicants persist in asking the City to take the extraordinary step of granting a special exception Variance, although to do so would violate the City’s rules - present policy, practice and procedure - **“staff can only recommend a Variance if there is no other option available on the site.”** Applicants’ argument the City should make a special exception for them and waive or reduce the 2’ landscaping requirement to accommodate their desire to save money - eliminate their cost/expense associated with adjusting their front steps and rebuilding the curb cut accordingly. Also, they claim Applicant (Jennie Durant) has a “temporary handicapped” placard, giving rise to the question of whether her temporary condition requires an exceptional Variance granting off-street parking on a property deemed to have no legal parking space.

In sum, Applicants responded to the City’s requirement for Variance follows: 1) the need for exceptional or extraordinary circumstance is met because Jennie Durant has a “temporary handicapped” placard; 2) necessary for preservation and enjoyment of substantial property rights: here Applicant assert a parking space is necessary for the enjoyment and full use of home; 3) does the use materially impact health, safety, public welfare, injurious to property or improvement – generally benefit the City: answer is non-responsive –

Applicants merely states, “we are simply requesting that our current parking space be allowed to remain where it is.” Granting the variance would reduce environmental waste associated with remodeling stairs and curb cuts.

On November 5, 2019, the Planning Departments Tabulation Form appears re-submitted, including sizes, dimension, existing and permitted required details, including: 1) Units, Parking spaces, and bedrooms; 2) yards, heights and setbacks; Areas – building, lot, usable space, etc.; 3) Arbor specifics – setbacks and area; 4) Accessory habitable space specifics; Area calculations; and, 5) Plat survey map.

On November 19, 2019, the City Planning Department communicated its need for clarity for the Zoning Office. Noted there is the fact that the application say 15 [trees] hedges, but the site plan only show twelve. Also, on November 19, 2020, Applicants submitted an update/revised Variance Request. Therein, Applicant set forth a quasi-promise, if the Variance is granted – “we would install/build a green, ecologically friendly and attractive parking spot.”

On November 20, 2020, Applicant sent email to Nilu, with updated Tabulation Form and Updated Variance Request.

On November 25, 2020, Nilu emailed Applicant (Jennie Durant) and advised that she needed certain corrections on the Tabulation Form A.S.A.P.

On November 26, 2019, Jennie forwarded Nilu’s email of November 25 to her architect, Nick Leone, regarding the Tabulation Form revisions/correction requested.

On November 27, 2019, at 10:59 a.m., Nick Leone emailed Nilu, requesting a telephone conversation to review her comments regarding the 1346 Ordway Street project. At 3:14 p.m., on November 27, 2019, Nick Leone emailed Nilu, sending her, in an attachment, the aforementioned revisions requested pursuant to their telephone conversation.

On December 3, 2019, Nilu emailed Nick, with CC to Applicant (Jennie Durant), advising that “Enlarged site plan submitted on 11-20-19 does not show accurate dimensions ... this needs to be corrected.” Nilu further advised that the “enlarged plan for parking is very confusing and busy. Please look at what I drew and draw something simple and clear ... the Variance Statement should reflect the correct dimension for the remaining landscape area as well (8”) ...”

On December 4, 2020, Applicant (Jennie Durant) sent another (3rd) Variance Statement. Again, restating their willingness to remove the existing concrete and install permeable paver parking strips, a dymondia lawn to act as a 1” landscaping barrier.

On December 19, 2019, the City provided a list of addresses of community members to which Notices of the 1346 Ordway Street project could be mailed – 126 names and addresses.

On February 13, 2020, Applicant submitted a request for fee adjustment or refund, claiming that a change of permit type qualifies Applicants for an adjustment and/or refund.

On February 25, 2020, the City Approved AUP #ZP-2018-0174 and sent post card Notice of Decision (NOD) to 1346 Ordway Street neighborhood residents – 36 names and addresses.

The NOD reads as follows:

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has **APROVED** the following permits pursuant to Berkeley Municipal Code (BMC) § 23B.28.050, and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- **Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52 010 for Reasonable Accommodation for Fair Access to Housing;**
- **Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;**
- **Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;**
- **Administrative Use Permit. under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and**
- **Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.**

BMC § 23B.52.010, in pertinent part, provides for reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing, pursuant to the American with Disabilities Act and California Fair Housing and Employment Act. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The finding for Issuance, Denial and/or Conditions follows:

- A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.
- C. The Zoning Officer shall deny an application for an AUP if he/she determines that he/she is unable to make any of the required findings, in which case he/she shall state the reasons for that determination.

D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

ISSUES ON APPEAL

I

APPROVAL OF AUP FOR REASONABLE ACCOMODATION FOR FAIR ACCESS TO HOUSING, UNDER, BMC § 23B.52.010

Finding 1: One off-street parking space, within setback, is allowed to comply with BMC § 23B.52.010 for Reasonable Accommodation for Fair Access to Housing.

Finding 2: The City also recognizes the importance of sustaining and enhancing neighborhoods.

Conditions: Pursuant to the above referenced AUP, Zoning Officer has attached the following conditions: The parking pad must be removed, and the curb cut in filled if: 1) the property is sold; 2) the tenant move moves out; or, 3) the disability no longer prevents accessible access.

Appellant Appeal the Findings and Approval on the grounds that legalizing off-street parking in the front yard setback creates a hazardous and unsafe condition and is detrimental and injurious to the economic value of neighboring property. Furthermore, the record is absent of sufficient proof to establish Applicants qualifies as disabled, pursuant to the provisions of the Americans with Disability and the California Fair Employment and Housing Acts.

Applicants' states "one of the owners, Jennie Durant, has a temporary handicapped placard for a spine condition and needs a parking [space] spot close to the front door." The claim of possessing a "temporary disability placard" is NOT dispositive proof of a need qualifying under the aforementioned Acts, such that a need for reasonable accommodation is necessary to access housing. Therefore, the need for off-street parking is not established.

In reviewing Applicants' application, the Zoning and Transportation departments determined that Applicants has no legal [off-street] parking space on the 1346 Ordway Street property. Furthermore, it was determined that the off-street parking space in the front setback will not accommodate the 2' landscaping strip required, which would require a Variance. Instead of applying for a Variance to circumvent the 2' landscaping requirement, here, it appears Applicants chose to apply for an AUP.

Except for Applicants claim of temporary disability placard, there is nothing more in the record to substantiate that claim, e.g., there is no copy of Applicants' application for the placard, nor is there any authorizing documentation signed by a qualifying medical professional, nor is there a copy of the placard.

Health and Safety

Allowing a front yard parking space inside the required setbacks, especially since there is a newly installed 6' fence on the South property line, creates a public health hazard. The view of pedestrians and on-coming vehicles is obscured. Proper setbacks allow time for persons to see what is going on around them. Parking along the street appears to be a safer option for all involved. Applicants' health and well being is NOT jeopardized and/or compromised should they have to walk from the curb to the front porch; the difference in distance in walking from the car to the porch and walking from the curb to the porch is approximately minimal - 8' to 10'. Accessing the house from the curb appears not be too difficult, as Applicant is frequently seen walking throughout the neighborhood, cleaning her car, pushing a stroller and carrying groceries.

Detrimental/Injurious to Property and Improvements

Legalizing a parking space, with front yard setbacks, rewards Applicants for long-standing history of non-compliance. It creates a potentially economic injury to Appellant, situating because his property become situated next property with non-conforming uses.

Making other Findings

Here, the Zoning Officer appears to fail to make the finding that altering the BMC was not the only option for granting Applicants' reasonable and fair access to the property. Applicants, if truly eligible under the American with Disabilities and California Fair Housing and Employment Acts, could easily apply for the privilege to have a handicap parking space directly in front of the house.

No Tenants (only owners) and Health Condition Unconfirmed

The Zoning Officer's requirement that the concrete parking pad be removed effectively represents the spirit of the Ordinance. Additionally, the Applicants are not tenants and it is NOT clear that Applicants' temporary health condition prevents accessible access.

For the foregoing reasons, this Appeal must be affirmed, the AUP must be rescinded, and the parking pad removed.

II

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING OVER 10' AV HT. W/I "4" FT OF PROPERTY LINE, UNDER BMC § 23D.08.020 and APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING UNDER, BMC § 23D.08.005.A1

Finding 1: The project would legalize construction building in the rear and side yards, which is consistent with the single-family use of the subject property function as an extension of the main dwelling is a accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scales, under BMC §§ 23D.08.005.A and 23D.08.005.A1 to Construct a Habitable Accessory Building.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Findings and Approval on the grounds that the City failed to act responsibly when approving this AUP, because authorizing construction of a building that projects into the setbacks, diminishing the use, quiet enjoyment and economical value of neighboring property?

BMC § 23D.08.005 Addresses Permitted Uses in Accessory Buildings and Structures; BMC § 23D.08.005.A1 provides that no Accessory Building may be constructed unless authorized by an AUP. A Zoning Certificate shall be required for alteration of an existing Accessory Building.

Appellant argues that permitting an Accessory Structure to be constructed as planned ignores the fact that shadows will be created over the most usable area of the neighboring yard. Furthermore, the quiet enjoyment of the neighboring property will be interfered with and the neighbors (Appellant and Applicants) will complain about activity and noise when either of them do building and yard maintenance, office work, and/or entertain. Additionally, Appellant does anticipate significant change in sunlight and lighting generally; and, since there is no evidence any site visit was conducted on the subject, Appellant disagrees with Zoning Officer's assumptions.

Moreover, the prospective economic value of the neighboring property is likely to be diminished; because, having a non-conforming condition on the property next door will create limits upon what a new owner could get approved should the Appellant choose to sell the Hopkins Street property.

For the foregoing reasons, the approval of this AUP must be rescinded and this Appeal affirmed.

III

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING THAT IS OVER 12 FT. IN AVERAGE HEIGHT, WITHIN 4 TO 10 FT. OF THE PROPERTY LINE, UNDER BMC 23D.08.020.B

Finding: AUP would legalize 9 ft. tall, 21 x 5 ft. trellis, located 3 inches from the South property line and 30 ft. from the rear property line.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Finding and Approval on the grounds that the Zoning Officer ignored the needs of the neighboring property owner, by permitting an illegally constructed trellis to remain in place right up against the neighbor's garage. Appellant's garage has legally existed on the property line since 1948. Approving this illegally constructed - 9' tall, 21' x 5' - trellis to exist, only 3 inches from side of a neighbor's garage, is obscured and negligence.

Furthermore, this approval interferes with neighbor's quiet enjoyment and denies access to the garage for painting, maintenance and other improvements. In fact, Applicants are presently growing vines over the top of the trellis, which are already growing onto roof of the garage and fence.

Moreover, the property value is diminished by virtue of having illegally constructed conditions so close to the neighboring structure; and, as it relates to the Condition, please note that the trellis is already constructed.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

IV

APPROVAL OF AUP FOR CONSTRUCTION OF ACCESSORY STRUCTURES, UNDER BMC § 23D.08.060.A2

Finding: AUP legalizes a 14 ft. tall hedge within the South and North side yards.

Appellant Appeals the Finding and Approval on the grounds Zoning Officer misstate the non-conforming condition of Applicants' application. What the Zoning Officer is calling "a 14' tall hedge" is actually sixteen or more 14' tall, illegally planted trees – **NOT A HEDGE**. These trees were illegally planted within 3" of the property line, up against the existing fence. This condition is tantamount to creating a much taller fence than the 6' allowed. The trees were illegally planted along the entire length of the property line from front to back, except the space where the illegally constructed trellis was built. Furthermore, the trees are presently growing over the fence and into the fence. It's only a matter of time before the trees began to push against the fence, creating cost and an argument over maintenance – the disturbing the quiet enjoyment of the community.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

V

CONCLUSION

WHEREFORE, Appellant LAWRENCE HICKMAN herein prays for a RULING affirming this Appeal.

Respectfully submitted

By: 
Lawrence Hickman

EXHIBITS

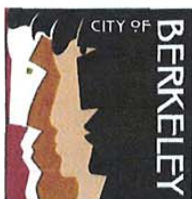
EXHIBITS

EXHIBITS

EXHIBIT A

EXHIBIT A

EXHIBIT A



**Office of the City Manager
Code Enforcement Unit**
2180 Milvia Street
Berkeley, California 94704
Tel 510.981.2489 Fax 510.981.2499

NOTICE OF VIOLATION

- First Notice
- Final Citation Warning

Date: 5/10/18 Time: 4:12 PM Re-inspection Date: 5/24/18

Name of Person Contacted: KEKI BORJORJEE / JENNIFER DURANT

The property at: 1346 ORDUAY ST. BERKELEY, CA
was inspected because of concerns expressed to this office. The following code violation(s) were identified during this site visit:

- | | | |
|--|-------------------------|-------------------------|
| <input type="checkbox"/> Illegal Dumping | Berkeley Municipal Code | Chapter 12.40.080 |
| <input type="checkbox"/> Accumulation of Trash & Debris | Berkeley Municipal Code | Chapter 12.32.020 |
| <input type="checkbox"/> Graffiti Nuisance | Berkeley Municipal Code | Chapter 13.98.030 |
| <input type="checkbox"/> Blight Nuisance | Berkeley Municipal Code | Chapter 12.92.030 |
| <input checked="" type="checkbox"/> Zoning | Berkeley Municipal Code | Title 22 & Sub-Title 23 |
| <input type="checkbox"/> Building & Safety | Berkeley Municipal Code | Chapter 19.28 |
| <input type="checkbox"/> Obstruction of Streets or Sidewalks | Berkeley Municipal Code | Chapter 14.48.020 |
| <input type="checkbox"/> Signage | Berkeley Municipal Code | Chapter 20.16.010 |

Other (Code/Section/Title): BMC 23D.08.060 FENCES

(The entire Berkeley Municipal Code may be viewed or printed from the City's web site at www.cityofberkeley.info/Home, specifically www.codepublishing.com/CA/Berkeley).

Attached brochure(s) will give you more code information: _____

Please perform the following corrections before the re-inspection date to avoid citations, fees, and/or fines starting at \$100-500 per violation/per day:

- NO FENCE ON PROPERTY LINE MAY EXCEED 6 FEET IN HEIGHT.

PLEASE SEE ATTACHED DEFINITIONS.

* HEDGE MUST BE TRIMMED TO 6' - THANK YOU

It is our intent to work with property owners to encourage voluntary compliance. Your cooperation in correcting the violation(s) is greatly appreciated. If you have any questions, please contact the Enforcement Officer at 510.981. 2481.

Issued by: Tim Vetter
Enforcement Officer

Case #: 397755

Notice of Violation
Revised: 12/01/17

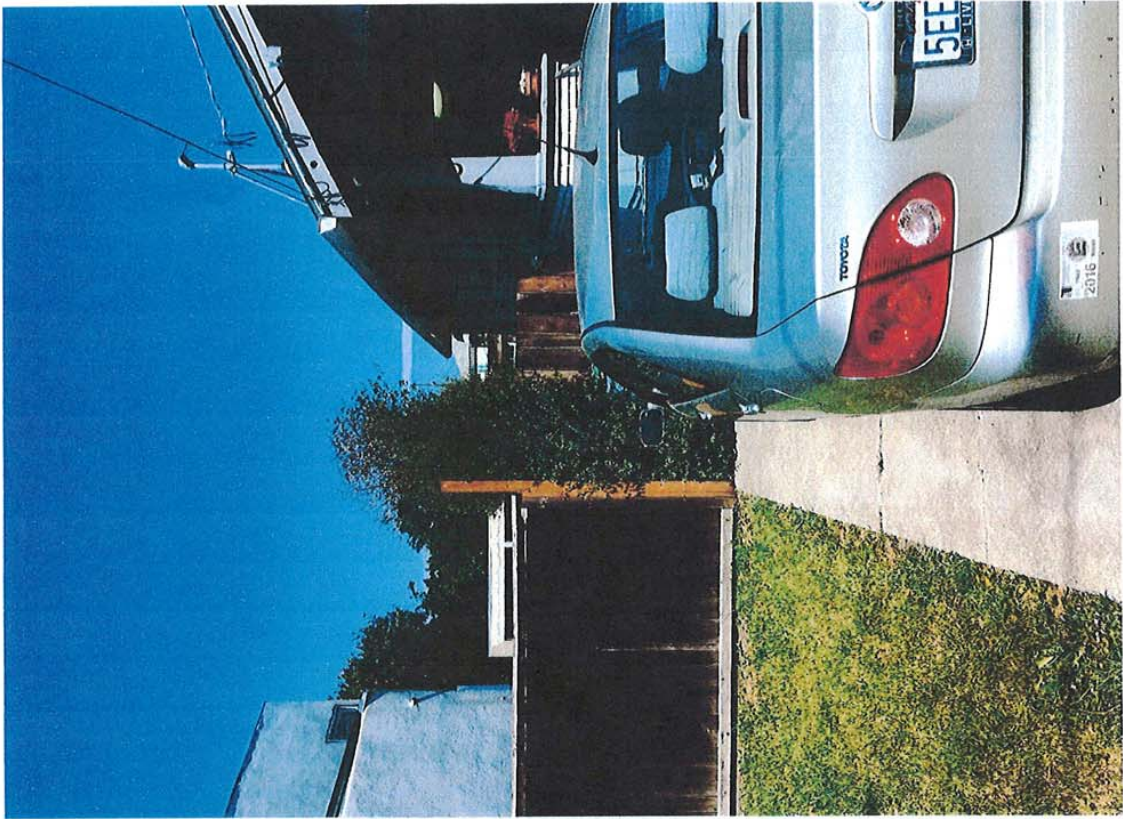


EXHIBIT B

EXHIBIT B

EXHIBIT B

Lawrence Hickman	1333 Hopkins Street Berkeley, CA 94702 Phone: (510) 467-4250 E-Mail: lpacificquest@aol.com
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RECEIVED

SEP 19 2018

LAND USE PLANNING

September 19, 2018

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether **BMC Ch. 23D.08.060 § A(2)** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following "***no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may not exceed six feet in height at any point ... unless so authorized by an AUP ...***"

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Allowing the existing nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** - prevents me from maintaining my property adequately.

I've owned my property at 1333 Hopkins Street for twenty-eight years, without incident. However, Resident Applicant recently approached me in my yard initiating an argument about the complaint I lodged with Code Enforcement. I believe Resident Applicant was attempting to intimidate me prior to filing this deceptive AUP application.

Furthermore, the subject application was only made after the aforementioned conditions were exposed, reported and cited. Moreover, the **Resident Applicant is seeking approval for conditions that already exists**, as if they are correctly planning to create a new condition.

On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



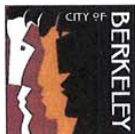
Lawrence Hickman

EXHIBIT C

EXHIBIT C

EXHIBIT C

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5/8/19 (5)



Planning and Development Department
Land Use Planning Division

5/8/2019 Response Letter III

February 8, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

This letter is in response to the resubmittal of revised application materials, submitted on January 09, 2019. To complete this application, please respond to the following:

1) A New invoice will be provided

1) **Additional AUPs & Fees:** At the time of project submittal, fees were assessed as \$970 for one Tier 3 AUP to construct an accessory structure over 6' within required setbacks. However, because the application is a result of a Notice of Violation and it also includes an unpermitted accessory building and an unpermitted trellis, additional AUPs will apply to the project resulting in a fee increase. We will issue an additional invoice upon the receipt of additional information (requested below).

- List of additional Fees
- 1) \$970 for fence + hedge NOV
 - 2) Establish an accessory building
 - 3) Accessory building in rear + side setback (x2)
 - 4) Trellis

2) Dimensions on site plan do not match dimensions on survey

2) **Survey:**

- A. Provide dimensions from the main dwelling and the front porch to the front and side property lines.
- B. Provide the width of driveway on the front property line.
- C. Include the accessory building's dimensions on the survey and exhibit the distance from its eave to the rear and side property lines.

5) Front yard parking (to be confirmed by the Traffic Eng. + zoning officer)

Survey	Site Plan
Driveway 7'-9"	Driveway 10'-2"
DU to Front PL 10'-9"	DU to Front PL 20'-6"
DU to side PL 6'-8"-7"	DU to side PL 7'-2" - 8'-2"

3) **Site Plan:**

- A. **Accessory building:** Please revise the accessory building's name to read as "Accessory Habitable Space" and not a "Shed" on Site Plan. Additionally, include the average and maximum height on the elevation.
- B. **Trellis:** include trellis's coverage in the overall lot coverage on Tabulation Form.
- C. Exhibit the front porch and its dimensions.
- D. Include the shed (and its dimensions) that is shown on survey and is attached to the rear of the dwelling.

3) Any hot tubs yet?

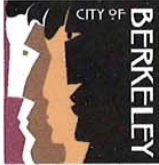
EXHIBIT D

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8 9

9



Planning and Development Department
Land Use Planning Division

July 2, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

Thank you for the electronic resubmittal of the revised Site Plan on June 5, 2019. After reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel. Note that all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval on this permit. (Additionally on Site Plan, remove the label "Existing Parking Space" within the front yard setback and include a note for the removal of parking related paved areas and curb cut.) To complete your application, submit revised plans that reflect these changes and submit the additional required payment (see attached invoice).

In your resubmittal, include a cover letter stating how you have addressed the incomplete items. **Any changes or corrections must be clouded, and accompanied by a number** to allow for easier identification. If new plans are submitted, please deliver two **(2) sets** of plans (at least one set to scale) and submit **both a paper and an electronic copy** of the resubmittals to the zoning counter during normal business hours (Monday thru Thursday 8:30 am – 4:00 pm). If you take no action to address the above items **within 30 days**, the application may be deemed withdrawn and returned to you. Please contact me if you have any questions at (510) 981-7419.

Sincerely,
Nilu Karimzadegan, Planning Technician
CC: Greg Powell, Principal Planner

EXHIBIT E

EXHIBIT E

EXHIBIT E

2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner;
3. The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole;
4. Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.

B. The Board shall deny an application for a Variance if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination. (Ord. 6478-NS § 4 (part), 1999)

Please consider your options and let me know which path you would like to take.

Thank you,

Nilu

From: Chun, Peter
Sent: Wednesday, July 17, 2019 10:22 AM
To: Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>
Cc: 'Jennie Durant' <jenniedurant@gmail.com>
Subject: RE: Parking spot AUP

Hi Jennie,

My recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended. I was not aware of the 7 ft. threshold and the Planning Dept. document you provided. I have reviewed and approved many projects with 7 ft. driveways, even 6' – 6" as applicants have indicated their driveway is existing and they squeeze through. I generally support the setback requirement (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking.

Sorry I am sure this is not what you were hoping to hear from our office.

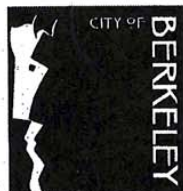
Sincerely,

Peter Chun, T.E.
Associate Traffic Engineer

EXHIBIT F

EXHIBIT F

EXHIBIT F



Office of the City Manager
Neighborhood Services-Enforcement Division

September 10, 2019

Jennie Durant/Keki Burjoree
1346 Ordway Street
Berkeley CA 94702-1124

Subject: **Administrative Citation Warning**

Dear Property Owner:

This letter is confirming that on May 10, 2018 the Code Enforcement Unit issued Notices of Violation requiring that you correct all violations at 1346 Ordway Street. On August 30, 2018 a Citation Warning for the outstanding violations of the Berkeley Municipal Code (BMC). Pursuant to the Notice of Violations and Administrative Citation Warning, you were required to reduce the height of your hedges that exceed 6 feet allowed without a permit.

On September 7, 2018, plans were submitted to the Planning Department for a variance on the hedges where additional unpermitted construction (accessory building & trellis) was identified by the planning department.

As of September 9, 2019, the violations remain and you have failed to comply with the Planning Department requirements and deadlines in submitting corrections to the plan check request by letters and email.

Since this project is associated with a Code Enforcement case specified deadlines are enforced and take precedence over any timelines specific to the permit process.

YOU ARE HEREBY ORDERED TO:

- Within fifteen (15) days of this Administrative Citation Warning respond to the Planning Department emails regarding the Plan check revisions;
- You must respond to any other plan checks comments issued by all reviewing agencies within fifteen (15) days of issuance of comments;
- Within thirty (30) days of the issuance of the required zoning permit, obtain all required building, electrical, plumbing and mechanical permits from the Building and Safety Division; and
- Upon issuance of building permits, complete all work within one hundred eighty (180) days.

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7000 TDD: 510.981.6903 Fax: 510.981-2499
E-mail: codeenforcement@cityofberkeley.info

Keki Borjorjee/Jennie Durant
1346 Ordway Street
Berkeley, CA 94702

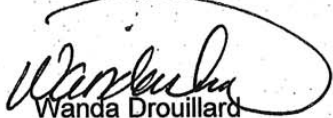
Administrative Citation Warning
September 10, 2019
Page 2 of 2

Please note: Given the history on non-compliance on the property as described above, the City is putting you on notice that any future failure to comply completely will all City laws and regulations will result in daily administrative citations without further notice to you, which will increase as time passes until all violations are corrected. Part compliance or correction of any violation will be regarded as non-compliance.

Commencing September 25, 2019, if you have failed to comply in full with the May 10, 2018 Notice of Violation and the Plan Check corrections request by planning you may be issued administrative citations on a daily basis for each of the above violations without further notice to you. **Citation penalties will begin at a rate of one hundred dollars (\$100.00) per violation, per day and may increase with subsequent citations to two hundred dollars (\$200.00) per violation, per day and five hundred dollars (\$500.00) per violation, per day.**

If you have any questions regarding this Citation Warning Letter, you may contact me at (510) 981-2482 or e-mail me at wdrouillard@cityofberkeley.info.

Sincerely,



Wanda Drouillard
Code Enforcement Officer

cc: Planning Department
David Lopez, Deputy Building Official
Erin Steffen, Assistant to the City Manager



Z O N I N G A D J U S T M E N T S B O A R D

NOTICE OF PUBLIC HEARING

1346 Ordway Street

Appeal of Zoning Officer's decision to approve Administrative Use Permit #ZP2018-0174 to legalize additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; and 4) Reasonable Accommodation for Fair Access to Housing to modify AUP and Variance requirements to allow for a front yard off-street parking space.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on **June 11, 2020, conducted via Zoom, see the Agenda for details, which can be found here: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2020-06-11%20Draft_ZAB_Agenda.pdf**. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: LMDR – Low Medium Density Residential
- Zoning: R-1A – Limited Two-Family Residential District

B. Zoning Permits Required:

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23D.08.005.A1, to legalize a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A, to legalize a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B, to legalize a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line;
- Administrative Use Permits, under BMC Section 23D.08.060.A2, to legalize a boundary fence and hedge over 6 ft. in height;

- Administrative Use Permit, under BMC Section 23D.08.060.B, to legalize an unenclosed accessory structure; and
- Administrative Use Permit, under BMC Section 23D.12.080.B, for locating an off-street parking space within the required front yard.
- Variance under BMC 23B.44.030 to eliminate the 2 ft. landscaped strip that separates the paved parking area from the side lot line.
- Accommodation for Fair Access to Housing, under BMC Section 23B.52.010, for Administrative Use Permit and Variance for the front yard parking and waiver of the landscape strip requirement.

C. Preliminary CEQA Determination: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant/Owner : Jennie Durant & Keki Burjorjee, 1346 Ordway Street, Berkeley, CA 94702
- Appellant: Lawrence Hickman, 1333 Hopkins Street, Berkeley, CA 94702

Further Information:

All application materials are available online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Niloufar Karimzadegan, at (510) 981-7419 or NKarimzadegan@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

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.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board 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, the following requirements apply:
 - 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.
-

May 25, 2020

Dear Members of the Zoning Adjustment Board,

Thank you for taking the time to read our materials for this appeal hearing. We would like to respond to the points made in the "Issues on Appeal" section starting on page 8 of the Appellant's (Lawrence Hickman's) appeal letter to ZAB. To keep this rejoinder letter to the point, we choose not to respond to the many falsehoods about our personal interactions with the Appellant in the "Statement of Facts" section and instead focus on the Appellant's "Issues on Appeal."

Regarding Point 1 of the "Issues on Appeal" section of the Appellant's letter: Approval of AUP for reasonable accommodation for Fair Access to Housing under §23B.52.010:

1. The Appellant is not aware of the full nature of the Applicant's handicap. This is by design, as the Applicant wishes to preserve her privacy on this matter. We have submitted documentation to the City Zoning office, including doctor's forms, photocopies of the placard application, and the final placard, all of which informed the Zoning Office's determination.
2. Regarding the "Health and Safety section": The newly installed 6' fence mentioned by the Appellant was installed *after* the Zoning Office's findings were posted (during the window of appeal). It's hard not to surmise that this fence was installed by the Appellant for the express purpose of making the argument that our "view of pedestrians and oncoming traffic is obscured." That said, oncoming traffic approaches us from the direction opposite to the location of the fence, so we can see it just fine. Secondly, we have not had any problems spotting pedestrians as we slowly pull out of our lot. Additionally, we have noted that several garages on Ordway street extend out to the sidewalk. The view of the street and sidewalk from inside these garages is more obscured than ours, but this does not seem to make them non-conforming.
3. As to the point that the "Applicant's health and well-being is NOT jeopardized and/or compromised should they have to walk from the curb": Again, the Appellant is unaware of the Applicant's physical condition. The Applicant's prognosis is degenerative and currently under evaluation. Carrying heavy items can cause excruciating pain. Having to walk from a parking space (whether from the curb, or from down the street) carrying heavy bags of groceries, our child, or an infant car seat should we expand our family, would be an untenable situation. This is why we have requested an AUP be granted for our front parking space.
4. Numerous residents on our street park in front of their houses. We have included several photos of this in our immediate neighborhood (Figure 1), so approving the AUP would not undermine the aesthetic of our neighborhood.



Figure 1. Cars parked in front parking spaces on the 1300 block of Ordway Street (our block), on our side of the street (right photo) and across the street (left photo). Orange arrows indicate parked cars.

5. Finally, we would like to point out that the Appellant and his tenant consistently park in a manner that blocks the sidewalk in front of the Appellant’s property, forcing people with strollers or wheelchairs out into the street. Our neighbors frequently express their frustration with this to us. We have included examples below (Figure 2).



Figure 2. The upper left photo shows the Appellant’s van blocking the sidewalk, a frequent occurrence. The other three photos are of a tenant or frequent visitor, who consistently parks in the sidewalk. These three photos were taken on May 18, 19, and 20, 2020.

Regarding Point II: Approval of AUP to construct a habitable accessory building over 10' AV HT. W/I "4" FT of Property Line, under BMC §23D.08.020 and Approval of AUP to construct a habitable accessory building under BMC § 23D.08.005.A1

1. The accessory building casts no shadows on the Appellant's property because it is A) NOT adjacent to the Appellant's property (it is adjacent to Lot 46 on the Survey Plat Map in Fig. 3) and B) It is north-east of the Appellant's property and is therefore physically unable to cast shadows on the Appellant's property.
2. In fact, it is the Appellant's garage ("Garage" on Lot 45 in section of Survey Plat Map, Fig. 3), on our southern property line that casts a shadow onto *our* property from late morning onwards (Figure 3). A full Survey Plat Map with a compass is at the end of the letter and in our application.



Figure 3. Upper left: Note the shadows cast by the Appellant's garage wall into our property. Upper right: Google map of the Appellant's property (bottom half of photo) and 1346 Ordway Street (yellow arrow notes approximate property line). Note how the shadows are cast towards our property, not the Appellant's as he has stated in his appeal. Bottom photo: Section of Plat Map showing that the Accessory Building is adjacent to Lot 46, and not the Appellant's property, Lot 45. A full Plat Map is available at the end of this letter and in our application.

Regarding Point III: The legalization of the 9' Trellis under BMC §23D.08.020.

1. As you can see from the photo of the Trellis below (Figure 4), we specifically constructed the Trellis in a way that allows the Appellant to access his garage for repairs if needed. Nothing prevents the Appellant from maintaining his garage wall.
2. That said, the Appellant's garage has been in a state of disrepair since we took ownership of the property in November 2015. The trellis was designed to improve the aesthetics of our property given that our neighbor's garage wall was on the property line and loomed over our property. We have included several photos below (Figure 5) of our neighbor's property to bring attention to the general state of disrepair that has frustrated not only us, but many members of our neighborhood for over a decade. We hope ZAB members will take into account this long history of dereliction when considering the Appellant's far-fetched point about wanting to maintain his property.



Figure 4. Left: Wall prior to painting and installation of trellis, April 2016. Right: Installed trellis, January 2018.



Figure 5. The upper left and right photo were taken May 18, 2020 and would be the views from our daughter's window if the hedge was not there. The lower left photo was taken May 30, 2017 (from the sidewalk), and demonstrate the disrepair of the Appellant's property that has existed since we moved in.

Regarding Point IV: Approval of AUP for construction of accessory structures, under BMC § 23D.08.060.A2

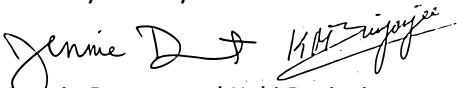
1. According to Berkeley Code, Title 23F.04¹ a hedge is defined as: Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier. Additionally, for permitting purposes, a hedge is subject to the same permit requirements as a fence, and thus subject to the same restrictions as a fence.
2. As ZAB knows, fences are not allowed to be over 6' according to this code, unless authorized by an AUP², which we have applied for through the Zoning Office.
3. Regarding the Appellant's point about the tree branches growing onto his property: Our gardeners have asked the Appellant for permission to prune the trees on his side of the property (or to pick up branches that fall during pruning). The Appellant has consistently refused. This has made it challenging to prune the parts of the trees facing his side of the property, though we have now found a pruner who can do so from our side. We will, of course, keep the trees below the 14' requirement, and have consistently done so since the beginning of this application process.

Finally, we would like to apologize for not obtaining the necessary zoning permits prior to construction of the hedge and trellis. We were first-time homeowners when we took possession of our home one month before our daughter's birth. We simply had no idea we needed permits for the work we did since they are small projects that we have seen on numerous properties in our neighborhood. Given the stress of that time and the demands of our personal and work lives, we were so overwhelmed that we did not do the research we clearly should have done. Once cited for our violation of the City's ordinances we began the approval process. This process was complicated by the removal of a dilapidated garage on the property prior to our taking ownership.

Regarding the accessory building mentioned in Point III of the Appellant's appeal letter, we researched the square footage, height, and setbacks needed to build an accessory building without a zoning permit and acted accordingly. Unfortunately, we were not aware that the required setbacks are with respect to eaves of the accessory building, not the outside walls.

We have spent \$1380 to bring the accessory building into compliance and over \$10,000 (in permit fees and fines, as well as survey and architectural fees) to bring the overall property into compliance. The additions we made improve the value of our home and the value of our neighbors' properties as well. We have good relationships with many of our neighbors, which we hope is reflected by their letters of support. Additionally, our improvements—two attractive xeriscaped, low-water pollinator gardens, an office we can use to work from home during this pandemic; and finally, more trees, which help support the city's commitment to carbon neutrality—are aligned with the values of the city (Figure 6). We hope ZAB will see that our improvements do not pose any real detriment to the Appellant.

Thank you for your time.

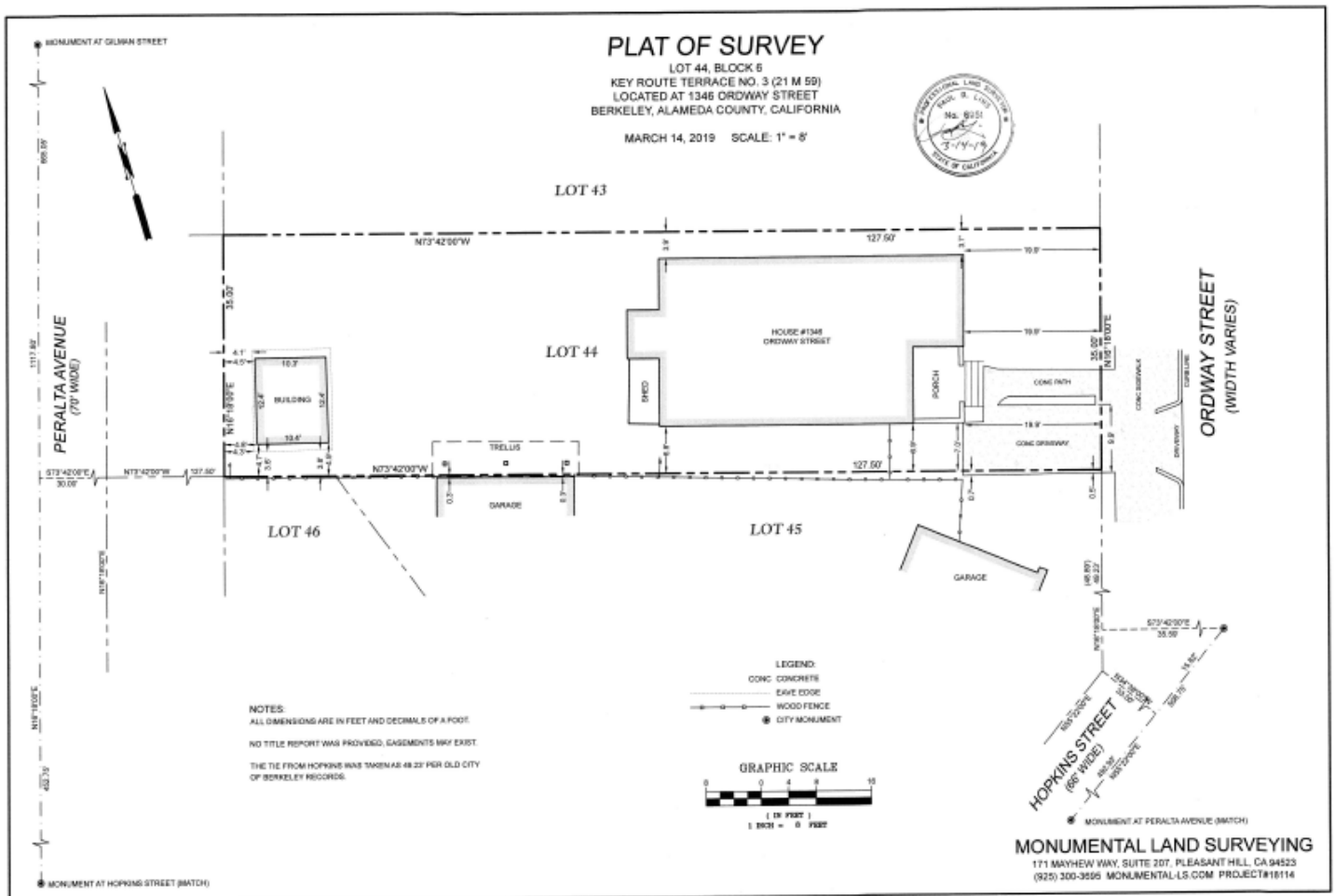

Jennie Durant and Keki Burjorjee

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_BMC/BMC-Part2--032508.pdf

² <https://www.codepublishing.com/CA/Berkeley/html/Berkeley23D/Berkeley23D08/Berkeley23D08060.html>



Figure 6. Improvements made in the backyard. Left: Photo of backyard upon purchase in November 2015. Right: Photo of backyard, taken May 15, 2020.



Karimzadegan, Niloufar

From: John Whaley <johnw@goodwinsimon.com>
Sent: Saturday, May 23, 2020 11:31 AM
To: Karimzadegan, Niloufar
Cc: jmlw@me.com
Subject: RE: 1346 Ordway St. zoning requests
Attachments: IMG_2117.jpg; IMG_2118.jpg; IMG_2121.jpg; IMG_2122.jpg; IMG_2123.jpg; IMG_2124.jpg; IMG_2125.jpg; IMG_2126.jpg

Attached please find pictures of 1333 Hopkins related to the email below.

Thank you,
John Whaley

From: John Whaley <johnw@goodwinsimon.com>
Sent: Saturday, May 23, 2020 11:28 AM
To: 'nkarimzadegan@cityofberkeley.info' <nkarimzadegan@cityofberkeley.info>
Cc: 'jmlw@me.com' <jmlw@me.com>
Subject: 1346 Ordway St. zoning requests

Good day Ms. Karimzadegan,

My name is John Whaley and I live at 1334 Ordway Street along with my wife, Jennifer Lynn-Whaley. We moved into this house in January 2007, and have raised both of our children here (one is @ King Middle and the other @ BAM).

I'm am writing in support of our neighbors Jennie Durant and Keki Burjorjee and their zoning efforts related to erecting a hedge and parking at 1346 Ordway St. Jennie and Keki have been a fantastic addition to our neighborhood, and we especially love visiting with them during their nightly post-dinner walks with their young daughter Asha. Their property is beautifully landscaped and maintained, and at only 5 houses away, we pass it frequently.

In contrast, the property next door to them at 1333 Hopkins has been a continual detriment to the neighborhood. For the 13 years we've lived here, that building has been under sporadic construction and has remained an eyesore. It has never been clear to me if anyone resides there, nor what the owner intends to do with the property in the long term. For example, Berkeley Fire Department was recently deployed to remove a squatter from the property due to its apparent vacancy and neglect.

I am not surprised in the least that our neighbors Jennie and Keki would want to construct a hedge between their property and 1333 Hopkins in order to shield themselves from that poorly-maintained building (and yard). I will email you separately pictures taken on May 1, 2020 depicting the building's poor condition, including a broken rain gutter lying against the side of the house as well as the dense, prickly weeds that fill the yard. Another picture also depicts how car is frequently parked in the driveway in such a way that blocks the sidewalk. In short, if we were in their shoes, we would make the same request to block from view as much of the property as possible.

Please feel free to contact me with any questions or concerns.

Sincerely,
John Whaley

John D. Whaley, PhD
Senior Research Director
Goodwin Simon Strategic Research
m: 510-393-2673
o: 510-428-9995

















Karimzadegan, Niloufar

From: andrea.traber@gmail.com
Sent: Friday, May 22, 2020 3:37 PM
To: Karimzadegan, Niloufar
Subject: 1346 Ordway AUP Hearing 5/25
Attachments: view from corner.jpg; looking toward corner from 1346.jpg; xxxx Hopkins.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Karimzadegan,

I am writing you today in reference to the upcoming Administrative Use Permit hearing regarding 1346 Ordway Street submitted by Jennie Durant and Keki Burjorjee. My name is Andrea Traber, I am a neighbor residing in the duplex at 1340 Hopkins Street, and I have lived here for two years.

As I understand it, the AUP seeks approval of the following:

- An existing 8'8" tall x 20' wide arbor
- An existing 24" x 36" lattice along the north fence
- A proposed 24" lattice along the southern fence
- An existing row of 15 silver sheen trees of maximum 14' in height along the southern fence
- An existing shed of under 120 sq. ft. and 12 feet in height

I understand that the neighbor, Larry Hickman at xxxx Hopkins St (no address is visible on his structure) has raised complaints.

As a neighbor in have no concerns or complaints about the existing or proposed uses as described above. In fact, I think they will improve and have improved this corner given the disrepair and unsightly nature of Mr. Hickman's property. They will certainly improve Jennie and Keki's experience of their home and yard. Please see attached for current photos of the properties.

Specifically:

- I support all of the permit approvals in the AUP
- I have no reservation about using the driveway as a parking spot. This is common in Berkeley and in fact helps the neighborhood experience as a respite from on street parking. In my opinion it does not ruin the esthetic of the block or the neighborhood.
- I fully support the hedge between the properties. If I owned 1346 Ordway, I would not want to look at the adjacent property given it's state of disrepair and generally unappealing architectural style. It also seems out of scale in this neighborhood, so shielding its view from multiple vantage points is a benefit. The hedge most certainly does not impact my enjoyment of the neighborhood, in fact it improves it as a lush bit of green and a visual screen.

This neighborhood is well cared for by almost all residents, with the exception of Larry's property. As you can see in pictures the exterior is unfinished, there is a constant stream of construction and "repairs" at the structure, the windows are papered over or covered and it is generally unsightly. It is an eyesore in this neighborhood.

I have no reservations whatsoever about the approval of this AUP. Jennie and Keki's plans do no do anything that would detract from my enjoyment of the neighborhood, in fact, it would improve the visual quality of this corner and our neighborhood. I support the City approving this AUP in its entirety as submitted.

Sincerely,

Andrea Traber
1340 Hopkins Street
Berkeley, CA 94702

Karimzadegan, Niloufar

From: Huiying Jin <jinhy1007@gmail.com>
Sent: Thursday, May 21, 2020 11:53 AM
To: Karimzadegan, Niloufar
Subject: Writing in support of 1346 Ordway's permit request - from 1336 Ordway

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Karimzadegan,

My name is Huiying Jin, I'm writing to share my support for our 1346 Ordway neighbor - Jennie Durant's multiple permit approvals. My husband Orion Richardson and I have lived at 1336 Ordway since 2017.

Jennie Durant and her family has always been a super considerate and caring neighbor. Jennie also maintains one of the most beautiful front yards in our neighborhood, which greatly increases the property value of the block.

After reading the content of her permit application, I have no doubt that the projects will further beautify the neighborhood and make it a more family-friendly environment.

We're shocked to see the appeal letter against such reasonable development from her next-door neighbor Larry, whose property has always been the eyesore on the block, and he's occasionally mean to some other neighbors kids. We've seen his tenants using recreational drugs in front of his property and making lots of noise and smoke. I think Jennie's idea of planting a beautiful hedge to protect the young family's privacy is very reasonable considering the presence of such not-so-kids-friendly neighbor.

We also fully support the various other permit requests Jennie has made. We'd be happy to answer any questions by phone or in-person if necessary for making her case. Please feel free to reach out. Thank you very much for your consideration. =)

Warm regards,
Huiying Jin and Orion Richardson
Residents of 1336 Ordway Street
Tel: 224-619-2186

November 22, 2019

Dear Nilu,

My name is Elizabeth Hubbell and I live at 1349 Ada Street - I am the neighbor of Jennie Durant & Keki Burjorjee at 1346 Ordway. I am writing in support of Jennie & Keki - case number: 1346 Ordway/ZP2018-0174

1.
to have a front parking spot (authorized use permit).

AND

2.
to create privacy/visual barrier and beautify their yard by planting a pittosporum hedge between their home and their next-door neighbor, Larry Hickman (1333 Hopkins Street).

I've lived here for 23 years and love our neighborhood -- a real community. For much of the time I've lived here, the building at 1333 Hopkins Street has been in a state of "construction" - with windows installed and removed countless times, "construction" vans coming and going at all hours of the day/night. In the course of the past 15 years I've seen the door & window trim sanded & painted I don't know how many times. Simply put, the building is an eyesore. Apparently it's a duplex, though I'm not sure who's actually living there. I don't understand why Larry would have issues with a pittosporum hedge planted between the properties - as added screen/privacy - his property is in a seeming constant state of upheaval.

Thank you for considering my support.

Elizabeth Hubbell

Karimzadegan, Niloufar

From: Susie Wallenstein <berkeleysusie@gmail.com>
Sent: Saturday, November 2, 2019 3:28 PM
To: Karimzadegan, Niloufar
Cc: Susie Wallenstein
Subject: 1346 Ordway neighbor support

Dear Nilu,

My name is Susie Wallenstein and I am the across-the-street neighbor of Jennie Durant and Keki Burjorjee at 1346 Ordway. I live at 1342 Hopkins, just across the street. My husband, Eduardo Pineda and I built our home on a vacant lot in 1986 and have lived there since, raising our children there and actively participating in the neighborhood activities. We love our neighborhood and our very friendly neighbors.

We are writing with a couple of issues in mind:

First, we want to support Jennie and Keki in their request for a use permit for a front parking spot. Theirs is an older house, as most in our neighborhood are, and has a curb cut with a parking pad in the front of their house. They use the parking pad to park their only car. The curb cut and parking pad have been there as long as we can remember. They have informed us of their city case number which is 1346 Ordway/ZP2018-0174

Most of our neighbors park their cars either on the street or in the driveway parking pad in front of their homes. In our neighborhood of smaller homes, most of those who have enclosed garages seem to use them for purposes other than storing their cars. The authorization of a parking spot for Jennie and Keki is completely in line with the rest of the neighborhood.

Secondly, we want to express both our support for them having a tall hedge between their house and their next-door neighbor, at the corner of Hopkins and Ordway, and to register our concern regarding that property. That building has been vacant and a neighborhood eyesore for about 15 years. The well maintained hedge provides visual screening between their home and the hulking eyesore next door..

The current owner of the nextdoor building, Larry Hickman, got rid of the tenants in the previously 4-unit building, took down all the interior walls, and has left it vacant since he purchased it about 15 years ago. He has installed and REMOVED windows on all sides of the building REPEATEDLY; I would estimate at least 5 times in the last 15 years, although there has been no other visible work or improvement on the property. There is no landscaping, although he does keep the weeds down. The windows are covered with paper or crooked blinds and there are no lights. Cars park there overnight, and others come and go, but there are no inhabitants. There seems to be an open building permit for the property,(we have met with the inspector, by chance) but there has been no visible progress made on whatever project they are doing, other than constant window replacement.

No one appears to live there, although I have personally witnessed a fist fight and shouting matches in front of the building. Just a few weeks ago, there was a lot of shouting and police come and took someone away in handcuffs.

Visual screening between Jennie and Keki's home and Mr. Hickman's building is important for Jennie and Keki's feeling of safety and security in our otherwise delightful neighborhood.

Thank you for considering my support for Jennie and Keki's parking space and hedge.

Susie Wallenstein and Eduardo Pineda

December 1, 2018

Dear Nilu Karimzadegan and Greg Powell,

This is a letter of support for Jennie Durant and Keki Burjorjee's AUP for the lattice on the northern fence of 1346 Ordway Street, as well as to support them as my neighbors more broadly.

The home was previously occupied by a 99-year-old woman, Coesther Taylor, who passed away before her family trust put the home on the market. When Jennie and Keki moved in, they expended a lot of effort to landscape the yard from weeds and grass to the lovely garden it is now. My kitchen window looks out onto their yard, and so I could see all the changes they were making.

In 2017, Jennie and Keki asked if they could replace the lattice between our properties with one slightly higher since the lattice had degraded from some vines and then they could also have more privacy in their yard since our kitchen and dining room looked right onto their back yard. We agreed, and they had a custom-built lattice installed which we think looks nice, and which gives us greater privacy as well.

In addition, I just want to attest that Jennie and Keki are good neighbors. We watch their daughter (a toddler) from time to time; we have shared meals, traded home ideas, and regularly chat and help each other out. In short, we have a great relationship with them and are so happy to have them next door.

We just wanted to share our perspective and hope it is helpful. Feel free to reach out to me at tamarg08@yahoo.com with any questions.

Best,



Tamar Gershon
1344 Ordway Street,
Berkeley CA 94702

PRISCILLA RICE
Realtor Associate



MASON-McDUFFIE

priscilla@priscillarice.com

510.304.5124 Cell
510.868.1550 Office
510.540.9957 Fax
2095 Rose Street
Berkeley, California 94709
www.priscillarice.com
BRE #01816796

December 1, 2018

Dear Nilu Karimzadegan and Greg Powell,

I am writing on behalf of Jennie Durant and Keki Burjorjee, my clients who purchased 1346 Ordway Street on November 9th, 2015. I am writing to address two points. The first is to support the statement that the listing agent, Norman Gee, made in his letter, which is that the garage was removed before Jennie and Keki moved in because it was structurally unsound and unsafe. The structure had been removed entirely by the time Jennie and Keki closed on the property.

Secondly, I want to affirm the efforts they have made to improve the beauty of the property, the first home they have owned. The house was previously owned by a 99-year-old woman who passed away while living there. The place had not been updated since she purchased the unit in the 1970's and Keki and Jennie have improved the beauty and value of the home tremendously since they took ownership. The yard and office are lovely and not only increase the value of their property, but the value of their neighbors' properties by extension. I just wanted to add my perspective as a real estate agent that they are good neighbors and kind people. I do hope that you'll consider granting them the permit they are asking for to have extra privacy and an added safety measure from the vacant property next door.

Please feel free to contact me with any questions.

Best,

Priscilla Rice
Realtor at Better Homes and Gardens
2095 Rose Street #101
Berkeley, CA 94709



MASON-McDUFFIE

November 30, 2018

Dear Sir / Madame,

I represented the Taylor Family trust in 2015 for the sale of 1346 Ordway St. in Berkeley following the passing of their long time family matriarch. Prior to the sale of the property the remnants of the detached garage were removed from the premises. The garage itself had essentially collapsed and had a large tree growing through the center of it which held up what little remained of the slumping dilapidated structure.

Best Regards,

Norman Gee

Better Homes & Gardens | Reliance Partners
2095 Rose St. Suite 100
Berkeley CA 94709
Ph: 510-868-1400
Dir: 510-552-0878

Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Monday, June 1, 2020 8:25 PM
To: Karimzadegan, Niloufar
Subject: Tree within Required Setback

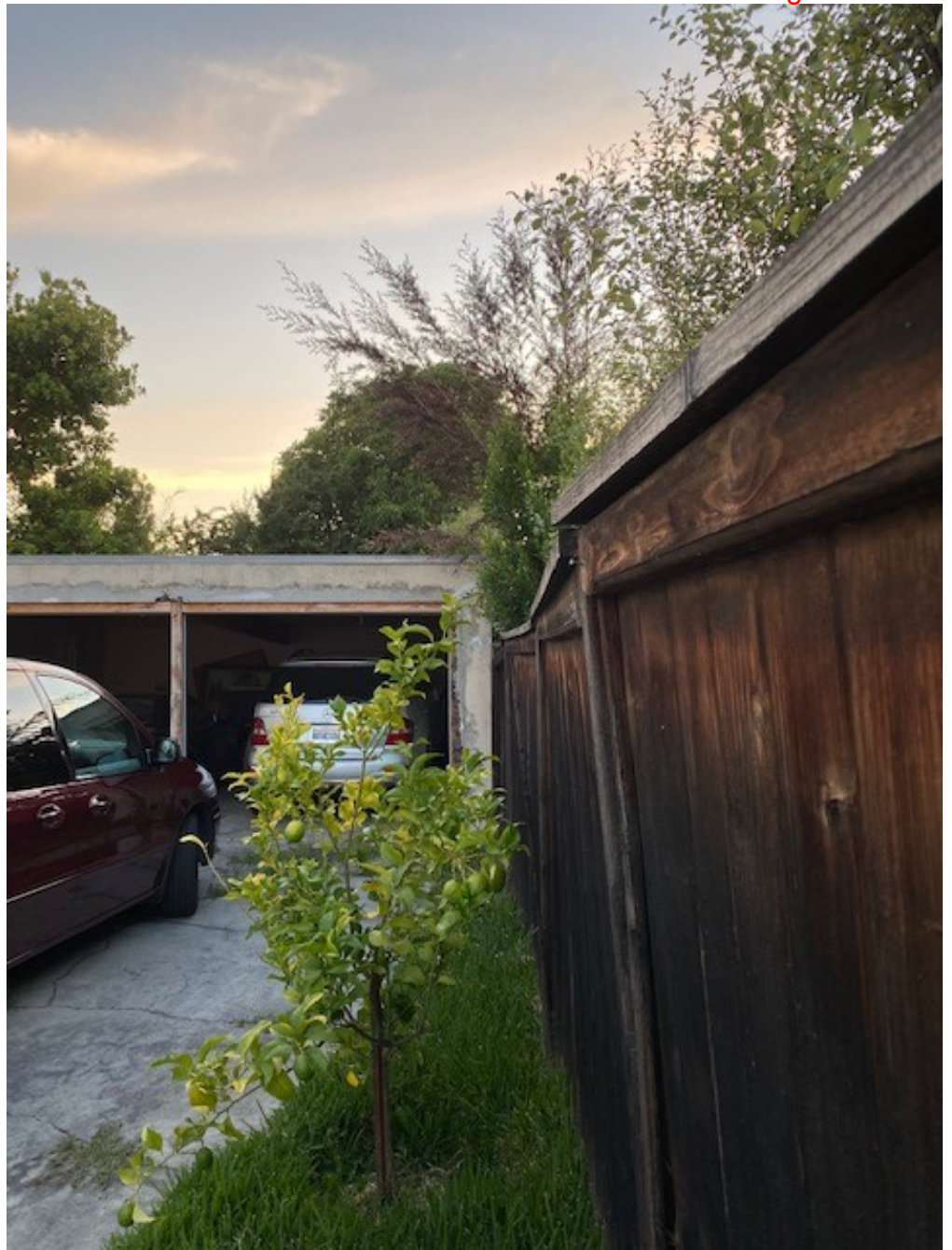
Nilu,

Attached are two better pictures illustrating how the trees planted within the required setback are growing over the property line and invading my space. Please include these pictures and email as part of my appeal regarding 1346 Ordway Street. To permit these trees, planted without a permit, creates an ongoing issue for me and and future owners of my property.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250





Sent from my iPhone

Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Tuesday, April 7, 2020 8:58 AM
To: Karimzadegan, Niloufar
Subject: 1346 Ordway Street

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Good morning Nilu,

Please include these additional photos with my appeal. The trees will soon smother my Lemon Tree and are a nuisance. I think any reasonable person will agree.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250









Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Saturday, April 4, 2020 5:49 PM
To: Karimzadegan, Niloufar
Subject: Appeal 1346 Ordway

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hello Nilu,

Please add this photo to my appeal. As you can see the neighbors 14-15ft tall trees are growing into my yard and will eventually cover up my Lemon tree and fence; pushing the fence over. This is an inappropriate condition.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250



Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Wednesday, June 12, 2019 10:29 AM
To: Karimzadegan, Niloufar
Subject: 1346 Ordway
Attachments: IMG_0508.jpg; ATT00001.txt

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning Nilou,

I'm curious about the status of my neighbors application. The non permitted fence is continuing to grow taller, despite the citation already issued by the City of Berkeley. Please see the attached photo. I'm just wondering if the City intends to enforce the citation(s) related to my neighbors growing a fence greater than 6' tall.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250



Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Thursday, January 10, 2019 11:18 AM
To: Karimzadegan, Niloufar
Subject: No Sign
Attachments: IMG_0371.jpg; ATT00001.txt

Thanks Nilu,

There's no sign in front of 1346 Ordway and there has been for a approximately 2 months. The applicants letter stated they would place a sign in from of their property in early December, however, that has not yet occurred.

Thanks again,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
510 467-4250



Lawrence Hickman	1333 Hopkins Street Berkeley, CA 94702 Phone: (510) 467-4250 E-Mail: lpacificquest@aol.com
------------------	---

RECEIVED

SEP 20 2018

LAND USE PLANNING S.G.

September 20, 2018

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE
REVISED

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether **BMC Ch. 23D.08.060 § A(2)** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following **"no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may exceed six feet in height at any point ... unless so authorized by an AUP"**

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Even the proposed **two (2) feet in height lattice** that Resident Applicant wants to install, creating an eight (8) feet in height fence, is nonconforming and negatively impacts my site line and air space. Allowing these nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** -, and proposed lattice prevents me from maintaining my property adequately.

I've owned my property at 1333 Hopkins Street for twenty-eight years, without incident. However, Resident Applicant recently approached me in my yard initiating an argument about the complaint I lodged with Code Enforcement. I believe Resident Applicant was attempting to intimidate me prior to filing this deceptive AUP application.

Furthermore, the subject application was only made after the aforementioned conditions were exposed, reported and cited. Moreover, the **Resident Applicant is seeking approval for conditions that already exists**, as if they are correctly planning to create a new condition.

On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



Lawrence Hickman

Lawrence Hickman	1333 Hopkins Street Berkeley, CA 94702 Phone: (510) 467-4250 E-Mail: lpacificquest@aol.com
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September 19, 2018

RECEIVED

SEP 19 2018

LAND USE PLANNING

ZP2018-0174 (LN)

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether **BMC Ch. 23D.08.060 § A(2)** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

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Respectfully Submitted,



Lawrence Hickman

ROUGHLY EDITED COPY

BERKELEY ZAB MEETING
REMOTE BROADCAST CAPTIONING
THURSDAY, JUNE 11, 2020

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order to facilitate communication accessibility and **may not be
totally verbatim record of the proceedings.**

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>> S. O'KEEFE: MEMBERS OF THE PUBLIC WHO ARE HERE, WE'LL START, I PROMISE. BUT WE ONLY HAVE THREE -- IS THAT RIGHT? FOUR NOW. SO WE ALMOST HAVE A QUORUM, BUT I'M TOLD THAT WE HAVE A BIT OF AN AUDIO PROBLEM. UNTIL JOE TELLS ME IT'S RESOLVED, WE CAN'T START. WE'LL START SOON WE GET THE GREEN LIGHT AND WE HAVE A QUORUM. IT'S COMING UP, YOU'RE GOOD.

>> S. O'KEEFE: SO THE AUDIO IS WORKING?

>> I GUESS MY VOICE DID IT.

>> IT WAS WEIRD AND NOW IT'S NORMAL. GREAT. SO WE GOT THE GREEN LIGHT FROM TECH TO GO. HOW MANY BOARD MEMBERS ARE HERE? WE HAVE PATRICK, ME, CHARLES, JOHN, IGOR, DOHEE, TERESA, THAT'S A QUORUM. WHO ARE WE MISSING? DENISE AND CAREY --

>> THAT WOULD BE EVERYBODY.

>> S. O'KEEFE: SO I DON'T KNOW -- LET'S WAIT ANOTHER MINUTE. IT'S SUMMER, I DON'T DO THE MATH. STEVE BUCKLEY WILL BE OUR ZAB SECRETARY THIS WEEK.

>> WELCOME! WELCOME!

>> GOOD TO BE WITH YOU.

>> S. O'KEEFE: STEVE OR STEVEN?

>> S. BUCKLEY: STEVE IS GOOD. SHANNON AND I ARE CO-SECRETARIES TO THE ZAB. GIVEN THE PANDEMIC SHUT DOWN, IT'S BEEN ON HOLD BUT I'LL BE PICKING UP EVERY OTHER MEETING FROM NOW ON.

>> WELCOME.

>> S. BUCKLEY: THANK YOU.

>> S. O'KEEFE: I THINK WE SHOULD GET STARTED. THEY CAN BE LATE OR -- BUT WE HAVE A QUORUM. WE CAN BRING THE MEETING TO ORDER. I HAVE A THING I'M SUPPOSED TO READ. GIVE ME A MINUTE TO FIND THE SCRIPT. HOLD ON. SORRY. OKAY PURSUANT TO SECTION 3 OF EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR NEWSOM ON MARCH 17, 2020, THIS MEETING OF THE ZONING ADJUSTMENTS BOARD WILL BE CONDUCTED EXCLUSIVELY THROUGH TELECONFERENCE AND ZOOM VIDEOCONFERENCE. PLEASE BE ADVISED THAT PURSUANT TO THE EXECUTIVE ORDER AND THE SHELTER-IN-PLACE ORDER AND EXECUTIVE ORDER AND TO ENSURE THE HEALTH AND SAFETY OF THE PUBLIC BY LIMITING HUMAN CONTACT BY LIMITING HUMAN CONTACT THAT COULD SPREAD THE COVID-19 VIRUS, THERE WILL NOT BE A PHYSICAL MEETING AVAILABLE. PEOPLE IN THIS MEETING WILL HAVE DISPLAYED NAMES. IF YOU WISH TO BE ANONYMOUS, PLEASE CLICK ON THE DROPDOWN BUTTON AND HIT "RENAME." I BELIEVE THERE ARE THREE DOTS NEXT TO YOUR NAME. FOR COMMISSIONERS WISHING TO SPEAK DURING DELIBERATIONS, PLEASE USE THE RAISED HAND ICON AND WAIT TO BE CALLED UPON BY THE CHAIR. MEMBERS OF THE PUBLIC ON ITEMS SHOULD USE THE RAISED HAND ICON AT THE BOTTOM OF THE SCREEN. IF YOU'RE PARTICIPATING BY PHONE AND WISH TO COMMENT PRESS STAR 9 AND WAIT TO BE RECOGNIZED BY THE CHAIR PLEASE BE MINDFUL ALL RULES OF PROCEDURE AND DECORUM APPLY. FOR VIDEO MEETINGS, IT IS PARTICULARLY IMPORTANT TO GIVE EACH SPEAKER THE CHANCE TO COMPLETE THEIR

REMARKS BEFORE THE NEXT SPEAKER STARTS. ALL RIGHT AND WITH THAT, WE WILL BEGIN. SO CAN WE DO A ROLL CALL AND EX-PARTE DISCLOSURES.

>> GOOD EVENING. ROLL CALL. COMMISSIONER TREGUB.

>> PRESENT, NO EX-PARTE.

>> COMMISSIONER CLARKE.

>> PRESENT NO EX PARTE.

>> COMMISSIONER SHEAHAN.

>> PRESENT NO EX-PARTE.

>> COMMISSIONER SELAWSKY.

>> PRESENT NO EX PARTE.

>> COMMISSIONER OLSON -- NOT PRESENT. COMMISSIONER KAHN.

>> C. KAHN: PRESENT, I'LL BE RECUSING MYSELF FROM THE CONSENT CALENDAR FOR 2338 TELEGRAPH AVENUE AS I'M THE ARCHITECT.

>> S. BUCKLEY: OKAY. COMMISSIONER KIM.

>> PRESENT NO EX-PARTE.

>> COMMISSIONER PINKSTON.

>> SHE'S NOT HERE.

>> S. BUCKLEY: NOT HERE. CHAIR O'KEEFE.

>> S. O'KEEFE: PRESENT NO EX-PARTE. GREAT, WE HAVE A QUORUM. THANK YOU FOR THAT. WE'RE NOW GOING TO HAVE PUBLIC COMMENT FOR ANY ITEM THAT IS NOT ON THE AGENDA. SO ONCE AGAIN, IF YOU ARE A MEMBER OF THE PUBLIC, I CAN SEE THE LIST, IF YOU WOULD LIKE TO SPEAK ON ANY ONE OF THE ITEMS LISTED, PLEASE RAISE

YOUR HAND RIGHT NOW. IF YOU'RE JOINING US BY PHONE PRESS STAR 9 AND THAT WILL DO THE SAME AS RAISING YOUR HAND. I'LL GIVE YOU A MOMENT IN CASE ANYONE IS HAVING TECHNICAL ISSUES. THE RAISED HAND BUTTON CAN BE FOUND WHERE? REMIND US.

>> IF YOU CONTROL YOUR MOUSE ACROSS BOTTOM OF THE SCREEN, HE'LL SEE AN ICON FOR RAISING YOUR HAND.

>> OKAY. I HOPE EVERYONE IS ABLE TO DO THAT.

>> IF YOU'RE USING AN IPAD, THE MENU IS AT THE TOP OF THE SCREEN. SOME DEVICES SEEM TO BE BACKWARDS.

>> THANK YOU, JOHN. SOMEWHERE ON YOUR SCREEN IS A RAISED HAND ICON. THIS IS YOUR MOMENT TO LET US KNOW IF YOU HAVE ANYTHING TO TALK ABOUT THAT IS NOT ON THE AGENDA. SEEING NONE, I SEE NO HANDED. WE'LL MOVE ON TO THE AGENDA CHANGES. SO WE CURRENTLY HAVE THREE ITEMS ON CONSENT. THREE HEARING ITEMS ON CONSENT AND THE MINUTES. AND WE HAVE ONE ITEM ON ACTION. ARE THERE ANY COMMENTS BILLION THE AGENDA -- ABOUT THE AGENDA? I'LL SWITCH OVER TO PANELISTS. PATRICK.

>> P. SHEAHAN: I WOULD LIKE TO TAKE 2023 SHATTUCK OFF CONSENT.

>> S. O'KEEFE: OKAY. WE HAVE MOVE THAT TO ACTION. ANYONE ELSE? OKAY. SO WE HAVE -- OUR CURRENT SITUATION IS WE HAVE THE MINUTES, 1635 TACOMA AND 1728 TELEGRAPH REMAIN ON CONSENT. ANY MOTIONS? IGOR.

>> I. TREGUB: BEFORE I MAKE A MOTION, I WANTED TO ASK, DID

WE RECEIVE ANY COMMENTS FROM THE PUBLIC?

>> S. O'KEEFE: THANK YOU. I'M SORRY, NORMALLY WE DON'T HAVE TO DO THIS, BUT WE ABSOLUTELY DO. I'M GOING TO DO A LITTLE THING WHERE I FIND OUT IF ANYONE FROM THE PUBLIC WANT TO SPEAK ON ANY OF THAT. I'M GOING THROUGH THE ITEMS, THERE ARE ONLY TWO REMAINING ON THE CONSENT CALENDAR. IF YOU'RE HERE TO SPEAK ABOUT SHATTUCK, I'LL HAVE A CHANCE TO SPEAK WHEN WE HEAR IT. IF YOU ARE HERE, MEMBERS OF THE PUBLIC TO SPEAK ABOUT 1635 TACOMA, PLEASE RAISE YOUR HAND AND I'LL GIVE ABOUT 30 SECONDS IN CASE ANYONE IS HAVING ANY TECHNICAL PROBLEMS. AND IT'S STAR 9 IF YOU'RE JOINING US BY PHONE. RAISE YOUR HAND IF YOU'RE SPEAKING ABOUT 1635 TACOMA WHICH IS CURRENTLY ON CONSENT. AND IT WILL BE VOTED ON SOON UNLESS SOMEONE IS HERE TO SPEAK IN OPPOSITION TO IT. OKAY. I SEE THE APPLICANT IS HERE. I'M ASSUMING YOU DON'T WANT TO SPEAK AGAINST IT. THANKS FOR RAISING YOUR HAND THOUGH. OKAY. SEEING NONE, SO TACOMA APPLICANT, PUT YOUR HAND DOWN BECAUSE WE'RE GOING TO VOTE ON IT IN A MOMENT. 2338 TELEGRAPH IS. IS ANYONE HERE TO SPEAK ABOUT 2338 TELEGRAPH? PRESS STAR 9 IF JOINING US BY PHONE OTHERWISE PRESS THE RAISED HAND ICON AND LET US KNOW. OKAY. SEEING NONE. SO IT APPEARS THAT NOBODY FROM THE PUBLIC IS HERE TO SPEAK AGAINST EITHER OF THE ITEMS. THANK YOU. JOHN, YOUR HAND IS UP.

>> J. SELAWSKY: I WAS GOING TO SECOND IGOR'S MOTION BUT HE DIDN'T MAKE A MOTION. I'LL MAKE THE MOTION TO APPROVE CONSENT

CALENDAR WHICH INCLUDES THE ACTION MINUTES FROM MAY 28TH, 2020,
AND NUMBER THREE, 1635 TACOMA AVENUE AND NUMBER 4, 2338
TELEGRAPH AVENUE. THOSE ARE ALL ON CONSENT.

>> S. O'KEEFE: THERE IS A MOTION. IS THERE A SECOND TO THE
MOTION?

>> I. TREGUB: SECOND.

>> S. O'KEEFE: MOTION AND A SECOND. IS THERE ANY FURTHER
DISCUSSION CHARLES, COVER YOUR EARS. YOU'RE NOT PART OF THIS.
SEEING NONE, CAN WE TAKE A ROLL CALL VOTE. STEVE.

>> S. BUCKLEY: THE MOTION FOR APPROVING THE MINUTES AS WELL
AS ITEMS 3 AND 4 MOTION BY COMMISSIONER -- BOARD MEMBER SELAWSKY
SECONDED BY BOARD MEMBER TREGUB. BOARD MEMBER TREGUB.

>> I. TREGUB: YES.

>> CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> YES.

>> S. BUCKLEY: BOARD MEMBER SELAWSKY.

>> YES.

>> BOARD MEMBER OLSON IS ABSENT. BOARD MEMBER KAHN
ABSTAINS.

>> C. KAHN: I'LL SAY YES ON THE ITEMS IN WHICH I CAN VOTE.

>> S. BUCKLEY: YOU'RE ABSTAINING TO 2338 TELEGRAPH.

>> C. KAHN: CORRECT.

>> S. BUCKLEY: BOARD MEMBER KIM.

>> YES.

>> S. BUCKLEY: BOARD MEMBER PINKSTON IS ABSENT. AND CHAIR O'KEEFE.

>> S. O'KEEFE: YES. SO CONSENT CALENDAR MOTION PASSES. THE MINUTES ARE APPROVED AND 1635 TACOMA AND 2338 TELEGRAPH, YOU ARE YOUR USE PERMIT. THEY ARE APPEALABLE TO THE CITY COUNCIL. THANK YOU FOR COMING. WE'LL MOVE ON TO 2023 THROUGH 2025 SHATTUCK AVENUE. WE'LL BEGIN WITH A STAFF REPORT.

>> STAFF: AM I ABLE TO -- WE'LL SAVE THE PRESENTATION FOR THE APPLICANT. GOOD EVENING, MEMBERS OF THE ZAB. THE PROJECT BEFORE YOU IS AS NOTED 2023 THROUGH 2025 SHATTUCK AVENUE. THIS PROJECT IS LOCATED IN THE C-DMU CORE AREA. PREVIOUSLY THE ZAB HAD SEEN THIS PROJECT AT A PREVIEW IN OCTOBER OF 2019. AND JUST TO REVIEW THE PROJECT DESCRIPTION, IT IS A REQUEST TO CONSTRUCT AN 7-STOREY 73 FEET 5 INCHES TALL MIXED USE BUILDING WITH 48 DWELLING UNITS AND FOUR UNITS AVAILABLE TO LOW-INCOME HOUSEHOLDS. THAT IS A DENSITY BONUS PROJECT AND CONSISTS OF -- THERE IS NO VEHICLE PARKING AS THIS IS A REQUEST OF A CONCESSION. IT WOULD PROVIDE STORAGE FOR 34 BICYCLES. THAT IS A DENSITY BONUS PROJECT AND THE WAIVERS AND CONCESSIONS INCLUDE A WAIVER FOR A HEIGHT MODIFICATION TO EXCEED THE 60-FOOT HEIGHT LIMIT TO PERMIT A 73-FOOT HIGH BUILDING. THERE ARE SETBACKS FROM WHAT WOULD NORMALLY REQUIRED OF 5 FEET TO ZERO FEET TO

ACCOMMODATE THE DENSITY BONUS UNITS. A CONCESSION TO REDUCE THE OFF-STREET PARKING AND A CONCESSION TO REDUCE THE HEIGHT REQUIREMENT TO 1300 SQUARE FEET. AS NOTED, THIS PROJECT IS LOCATED IN THE DOWNTOWN AREA AND INCLUDES GROUND FLOOR COMMERCIAL. THE GROUND FLOOR ALSO INCLUDES A BOBBY AND CIRCULATION AREA. THERE WOULD BE 48 STUDIO APARTMENTS ON FLOORS TWO THROUGH SEVEN AND THERE WOULD BE A ROOF DECK FOR OPEN SPACE. FOLLOWING THE ZAB PREVIEW IN OCTOBER, THERE WAS ALSO A DESIGN REVIEW COMMITTEE PREVIEW AND PROJECT FOR DESIGN REVIEW IN MAY. THERE WERE RECOMMENDATIONS GIVEN BY THE DRC WHICH INCLUDED FOR THE APPLICANT TO CONSIDER MORE PLACE MAKING IN THE LOBBY AND PROVIDE SEATING TO LOOK AT SIDE ELEVATIONS AND CONSIDER EXTENDING THE MATERIAL FROM THE FRONT ELEVATION OR PROVIDE FURTHER ARTICULATION WHEN POSSIBLE AND IF POSSIBLE INCREASE THE GREEN BUILDING MEASURES. THEREIN CONDITIONS INCLUDING COLOR, ELEVATIONS AND AWNING DETAILS AS WELL AS DETAILS FOR RAILING, LIGHTING AND ROOF DECKS. AS NOTED, THIS PROJECT IS A DENSITY BONUS PROJECT AND HAS FOUR QUALIFYING UNITS. SO THE BASE PROJECT -- ADDITION TO THE BASE PROJECT, THE DENSITY BONUS UNITS ALLOW FOR THE PROJECT ARE 13. TO BE A TOTAL OF 48. THE APPLICANT IS AVAILABLE WITH A PRESENTATION AND TO ANSWER ANY OTHER QUESTIONS. STAFF RECOMMENDS APPROVAL. THIS CONCLUDES MY PRESENTATION.

>> S. O'KEEFE: ARE THERE ANY QUESTIONS FOR STAFF? PATRICK.

>> P. SHEAHAN: YES. HELLO. REGARDING THE BASE CALCULATION, I NOTICE THERE ARE 7 UNITS PER FLOOR AND THE PROPOSED IS 8 UNITS. I FAIL TO SEE WHY 8 UNITS PER FLOOR COULD NOT BE DEVELOPED IN A SIMILAR FASHION.

>> STAFF: THE AVERAGE UNIT SIZE THAT IS PROPOSED IS PRETTY MUCH EQUAL BETWEEN THE BASE PROJECT AND THE DENSITY BONUS PROJECT THAT IS PROPOSED. HOWEVER, I BELIEVE THE ARCHITECT CAN PROVIDE MORE INFORMATION REGARDING YOUR QUESTION.

>> P. SHEAHAN: THAT WOULD BE GOOD. WHAT ARE THE REQUIREMENTS FOR NUMBER OF ACCESSIBLE UNITS IN THIS PROJECT?

>> STAFF: ACCESSIBLE UNITS ARE REQUIRED THROUGH THE BUILDING CODE AND THE PLAN CHECK PROCESS. THERE ARE NO UNITS ON THE GROUND FLOOR, SO THE ARCHITECT CAN ALSO PROVIDE INFORMATION REGARDING HOW MANY WE REQUIRED AS A PERCENTAGE OF THE TOTAL.

>> P. SHEAHAN: THAT MAKES ME CURIOUS BECAUSE THERE IS AN ELEVATOR. THERE IS NO INDICATION OF ANY ACCESSIBLE UNITS ON ANY OF THE PLANS. SO WHY WOULDN'T STAFF BE CONCERNED ABOUT PROVIDING THE ACCESSIBLE UNITS?

>> STAFF: STAFF WOULD REVIEW FOR OTHER UNITS WHEN THE BUILDING IS APPROVED. THERE ARE NO IN THE ZONING CODE. THAT'S PRIMARILY IN THE BUILDING CODE. IT'S IN THE BUILDING CODE, I'M SORRY FOR THAT.

>> P. SHEAHAN: I FIND THAT RATHER -- I FIND THAT BORESOME. THE ISSUE OF ACCESSIBILITY IS NOT ADDRESSED IN PLANNING REVIEW

DOCUMENTS. BUT PERHAPS THE ARCHITECT COMPANY FURTHER ELUCIDATE ON THAT. THAT'S ALL. THANK YOU.

>> S. O'KEEFE: I THINK WE HAVE A HAND UP. TERESA HAS HER HAND UP.

>> S. O'KEEFE: SOMEBODY ELSE HAD THEIR HAND UP AS WELL FROM THE BOARD. I'M NOT SURE WHAT HAPPENED. TERESA ARE YOU USING AN IPAD OR MAC OR PC?

>> I'M USING THE SAME AS USUAL. I'M SHOWING AS A PARTICIPATE. SOMEONE WHOEVER IS IN CHARGE.

>> S. O'KEEFE: NO YOU'RE AT THE RIGHT LEVEL.

>> I DON'T SEE A RAISED HAND.

>> CLICK ON PARTICIPANTS AND THEN PANELISTS. AND DO YOU SEE YOUR NAME?

>> OKAY.

>> S. O'KEEFE: SO WE ARE A GOOD.

>> DO I CLICK UNDER PANELIST AND THEN MORE?

>> ON YOUR NAME, YOU CAN CLICK RAISED HAND.

>> I DON'T HAVE THAT. THAT IS FUNNY, IT'S NOT WORKING. LAST TIME IT WAS DOING FINE.

>> I. TREGUB: IT WILL BE BELOW --

>> THERE IT IS. GREAT.

>> S. O'KEEFE: TERESA, WHAT DO YOU WANT TO SAY?

>> YEAH, IN TERMS OF ACCESSIBLE UNITS, ALL THE UNITS ARE REQUIRED TO BE ADAPTABLE BY CODE. AND I THINK THAT WAS WITH -- I

THINK THAT'S WHAT PATRICK WAS QUESTIONING. EVERY UNIT HAS TO BE ADAPTABLE MEANING THE DOORWAYS AND EVERYTHING LIKE THAT HAS TO BE WIDE ENOUGH AND SIMPLE TOOLS CAN ONLY BE USED TO CREATE ADAPTABILITY. THAT'S IN THE BUILDING CODE. ANY OF THE UNITS COULD BE MODIFIED. WITH SIMPLE TOOLS TO BE ACCESSIBLE AND GRAB BARS COULD BE ADDED TO THE BATHROOM TO MAKE THAT ACCESSIBLE AS WELL BECAUSE THERE IS BACKING THAT IS REQUIRED AT THE TOILETS AND AT THE SHOWER ENCLOSURES.

>> S. O'KEEFE: THANK YOU. CHARLES.

>> C. KAHN: WHEN THERE ARE IS NO ELEVATOR, AND THERE IS A GROUND FLOOR UNIT, THAT GROUND FLOOR UNIT HAS TO BE ADAPTABLE AS AN ACCESSIBLE UNIT. BUT WHEN THERE IS AN ELEVATOR PROVIDED AS IN THIS PROJECT, ALL OF THE UNITS HAVE TO BE ADAPTABLE. THAT IS EXPERIENTIALLY, WE DID A RECENT CODE REVIEW, THAT'S HOW IT WORKS.

>> S. O'KEEFE: THANK YOU. ARE THERE ANY MORE QUESTIONS FOR STAFF? IGOR.

>> I. TREGUB: YEAH. I DON'T KNOW IF THIS IS FOR STAFF OR THE APPLICANT, BUT I WAS CURIOUS, I KNOW IT HAS GROUND FLOOR COMMERCIAL. HAS IT BEEN PROGRAMMED YET? THE REASON I ASKED IS BECAUSE I DIDN'T SAY CONDITIONS FOR FOOD OR ALCOHOL SERVICE.

>> STAFF: I DON'T BELIEVE IT'S BEEN PROGRAM YET. THEY DID NOT APPLY FOR ANY SORT OF FOOD OR BEVERAGE THAT WOULD BE REQUIRED. THAT WOULD BE DONE AT A LATER DATE UNLESS THEY WERE

GOING FOR SOMETHING THAT WILL NOT FOOD-RELATED. THE APPLICANT CAN PROVIDE MORE INFORMATION OWN THAT.

>> I. TREGUB: THANK YOU.

>> S. O'KEEFE: FURTHER QUESTIONS FOR STAFF. PATRICK.

>> P. SHEAHAN: THANKS TO CHARLES AND TERESA FOR THE INFORMATION ABOUT ACCESSIBLE UNITS. HOWEVER, ON THE PLANS, BATHTUBS ARE INDICATED. THAT OBVIOUSLY IS NOT -- NOT AN EASILY ADAPTABLE ITEM FOR AN ACCESSIBLE SHOWER. DOES STAFF HAVE ANY INFORMATION ON HOW THAT IS ADDRESSED?

>> STAFF: I WOULD DEFER TO THE APPLICANT ON THAT MATTER.

>> P. SHEAHAN: THANK YOU.

>> S. O'KEEFE: PATRICK YOUR HAND IS STILL UP.

>> P. SHEAHAN: I LOWERED IT.

>> S. O'KEEFE: OKAY. LET'S HAVE THE PROTOCOL BE I'LL LOWER YOUR HAND AFTER YOU'RE RECOGNIZED AND YOU DON'T HAVE TO WORRY ABOUT IT. PATRICK, YOUR HAND IS UP.

>> P. SHEAHAN: IT SHOWS LOWER, NOW RAISED, NOW LOWER. I'M TRYING TO LOWER IT. OKAY. DID THAT WORK?

>> S. O'KEEFE: NO, I'LL LOWER IT FOR YOU. IF ALL FAILS, I CAN SEE YOU. LET'S MOVE ON. THE APPLICANT IS WAIT BEING PATIENTLY. MR. TRACHTENBERG, ARE YOU SPEAKING FOR THE APPLICANT?

>> I AM.

>> S. O'KEEFE: YOU'RE ON. YOU HAVE FIVE MINUTES.

>> NICE TO SEE EVERYBODY. THANKS FOR COMING OUT OF YOUR

CAGE TONIGHT. I'M GOING TO SHOW MY SCREEN, IF I CAN. YOU SEE THE SCREEN?

>> S. O'KEEFE: YES, WE'RE GOOD.

>> GOOD. SO THIS IS THE SITE. YOU GUYS ARE FAMILIAR WITH THE SITE. THIS IS THE BASE OF THE BUILDING. I WANT TO START BY ADDRESS PATRICK'S QUESTION ON WHY THE BASE BUILDING ISN'T SHOW WAIT IDENTICAL UNITS BECAUSE WE HAVE A REAR SETBACK WHICH WOULD HAVE BEEN TAKEN A WAIVER TO REDUCE THAT. DOES THAT ANSWER YOUR QUESTION, PATRICK?

>> P. SHEAHAN: WELL, UNDER THE CONCESSIONS WAIVERS, I DO NOT SEE A SETBACK MODIFICATION FOR THE REAR SETBACK.

>> S. O'KEEFE: LET'S SAVE THIS DISCUSSION UNTIL AFTER AND LET MR. TRACHTENBERG FINISH.

>> THIS IS THE CONTEXT AS WAS LAID OUT. I'LL GET TO THE HIGH POINT HERE. THIS IS THE STATE DENSITY BONUS PROJECT. I THOUGHT THIS WAS A GOOD CONTEXT SHOT WHICH SHOWS HOW IT'S GOING TO BE RESTRIPE WITH THIS BACK DIAGONAL PARKING. THIS IS THE EXISTING SITE. A SITE WITH A BURNED OUT RESTAURANT AND WHAT IS PROPOSED. IT'S A COMPACT BUILDING. 45 IDENTICAL UNITS. THE SECTION IS AS SHOWN HERE. AND WE HAVE ADDRESSED THE QUESTION THAT CAME UP LAST WEEK AND SHOWED THE FURNITURE IN THE LOBBY AND I THINK IT'S PRETTY CONVINCING. WITH RESPECT TO THE QUESTION THAT WE MAKE AN EXIT TO LINK UP TO THE [INDISCERNIBLE] PLACE. IN THE FUTURE IF THAT BECOMES A LIVELY PLACE, WE WILL HAVE IS TO

ADDRESS IT. BUT IT'S NOT GOING TO BE EASY GIVEN HOW -- THIS IS 4200 SQUARE FEET. THESE UNITS ARE ACCESSIBLE. WE BUILT THE UNITS EXACTLY AS THE SAME UNITS IN SAN FRANCISCO AND THEY ARE ALL ACCESSIBLE. HERE IS THE ROOF DECK. IT HAS SEPARATE BUT EQUAL SPACES WITH THE GREEN SPACES IN BETWEEN. MECHANICAL TOWARDS THE REAR. THE UNITS ARE INDEED COMPACT BUT IT'S LIVABLE. YOU MENTIONED BATHTUBS. THERE SHOULD BE SHOWERS. WE COULD DO BATHTUBS -- SOME BATHTUBS ON THE LOWER FLOOR TWO AND THREE WHERE WE HAVE THE CONCRETE SLAB BUT IN THE UPPER FLOORS, WE'LL HAVE SHOWERS. SO LET'S LOOK AT HOW THE UNITS WORK. THIS IS A PROJECT TO BE BUILT -- IT'S A FIRST PREFAB PROJECT. WE HAVES THEY BENCHES WHICH BECOME TABLES. WE HAVE PULL DOWN TABLES WHICH FLIP UP AND THE BEDS FLIP DOWN. THIS IS WELL THOUGHT OUT. IN TERMS OF THE EXTERIOR OF THE BUILDING. THERE ARE HIGH QUALITY MATERIALS. WE TRIED TO CREATE A CIVIC SCALE AT THE GROUND FLOOR. LOOKING CLOSER AT THAT, THE LOBBY ENTRANCE IS HERE. AND THE RESTAURANT ENTRANCE IS HERE. HOPEFULLY A RESTAURANT WITH SLIDING WINDOWS THAT ALLOW FOR CONNECTIVITY TO THE STREET AND POTENTIALLY IF WE'RE STILL IN THE AGE OF COVID, PASS-THROUGH WINDOWS. WE HAVE WOOD ON THE OUTSIDE AND STEEL DETAILING. WE'LL MOVE UP THE BUILDING. GOING TO THE TOP, THERE WILL IS THE ROOF DECK. THIS IS INTERESTING BECAUSE IT STEPS BACK AND GETS HIGHER AS IT MOVES FORWARD. THE TOP HELPS TO SHED THE RAIN. THERE IS THE ROOF GARDEN AND ROOF OF THE WHOLE BUILDING IN TEXT. I LOOK FORWARD TO

YOUR QUESTIONS.

>> S. O'KEEFE: GREAT. THANK YOU. OKAY, SO ARE THERE QUESTIONS FOR THE APPLICANT. PATRICK, I'LL GET YOU GO FIRST IF YOU WANT TO CONTINUE YOUR CONVERSATION ON ACCESSIBILITY.

>> P. SHEAHAN: THANK YOU. HELLO, DAVID. GOOD TO SEE YOU AND GOOD-LOOKING PROJECT.

>> THANK YOU.

>> P. SHEAHAN: COULD THAT BE DONE THROUGH BIKE STORAGE, IF I WERE RIDING A BIKE, I WOULD PROBABLY COME BY WAY OF TERMINAL.

>> I THINK IT WOULD BE. I THINK THAT WHAT STEVE WAS SUGGESTING THIS COULD BECOME A BELT IN PLACE. IN WHICH CASE THERE WOULD BE SOME CONNECTION. I THINK IF YOU HAVE A BIKE ROUTE, YOU'LL NOT HAVE THE PUBLIC GOING THROUGH THE BIKE ROOM. THE OTHER ISSUE IS THAT THE CITY DOESN'T LIKE US TO HAVE EXTERIOR DOORS FROM THE OUTSIDE DIRECTLY INTO BIKE ROOMS BECAUSE THAT IS AN EASY PATH TO STEAL BIKES. I WOULDN'T ENDORSE THAT IDEA AND I DON'T THINK THE CITY WOULD EITHER.

>> P. SHEAHAN: OKAY. SO THE BASE UNIT QUESTION BECAUSE I DID NOTICE THAT THE BASE PROJECT PLAN SHOWED A REAR SETBACK, HOWEVER, THERE IS NO CONCESSION WAIVER FOR ADDRESSING THE REAR SETBACK.

>> STAFF: IF YOU DON'T MIND. DAVID, I WOULD LIKE TO NOTE BECAUSE OF TERMINAL PLACE, THERE IS ACTUALLY NO REAR SETBACK, THERE ARE TWO FRONTS. BEING THERE ARE TWO FRONTS THEY ARE

ALLOWED TO HAVE A ZERO SETBACK LONG TERMINAL PLACE. IT'S A THROUGH LOT. THE LOT IS A THROUGH LOT.

>> S. O'KEEFE: OKAY. ALL RIGHT. ARE THERE ANY OTHER QUESTIONS FOR THE APPLICANT?

>> P. SHEAHAN: YES.

>> S. O'KEEFE: PATRICK.

>> P. SHEAHAN: I WASN'T --

>> S. O'KEEFE: GO AHEAD.

>> P. SHEAHAN: BASED ON THAT INFORMATION, IT APPEARS TO ME THAT EIGHT UNITS PER FLOOR CAN BE ACCOMMODATED IN THE BASE PROJECT THAT WOULD CHANGE THE DENSITY BONUS CALCULATION. BUT I'LL CARRY ON WITH THE OTHER COMMENTS. I ASSUME THE ARCHITECTURAL ELEMENTS ABOVE HIGH LIMIT ARE PRINCIPALLY THE CANOPY OVER THE ROOF DECK AREA?

>> ASK THAT AGAIN, PLEASE.

>> I ASSUME THE ARCHITECTURAL ELEMENTS ABOVE HEIGHT LIMIT IS THE CANOPY OVER THE ROOF DECK AREA.

>> YES. WELL, IT'S ALL THESE FEATURES. IT'S ELEVATOR OVERRUN AND EVERYTHING ON THIS FLOOR. IT'S A STAIR ELEVATOR OVERRUNS. THAT LITTLE ROOF THAT IS DONE OVER THAT SECTION.

>> P. SHEAHAN: OKAY. AND ALONG WITH THE ACCESSIBLE BATHS ISSUE, I WOULD LIKE SOME ADDRESSED OVER THAT. YOU MENTIONED THE TUB SHOULD BE SHOWERS. IF ALL UNITS ARE REQUIRED TO BE -- WHAT IS THE TERM THERE --

>> S. O'KEEFE: ADAPTABLE.

>> P. SHEAHAN: WOULDN'T THAT DICTATE THAT ALL SHOULD BE SHOWERED?

>> STAFF: NO,S THAT -- BATHS ARE ADAPTABLE. YOU HAVE A HAND-HELD SHOWER AND A SEAT. SOME PEOPLE DON'T WANT THE SHOWER AND SOME WANT THE BATHTUB BECAUSE THEY NEED TO SOAK. IT'S GOOD TO HAVE BOTH IN MY EXPERIENCE, ESPECIALLY -- YEAH.

>> DOES THE APPLICANT WANT TO RESPOND TO THAT?

>> I'M GETTING TEXTED FROM MY OFFICE MY COLLEAGUES SAYING ALL OPPORTUNITIES MAY HAVE BATHTUBS AND STILL BE ACCESSIBLE. WE HAVE A MIX -- THE LOWER FLOORS HAVE BATHTUBS AND UPPER FLOORS HAVE SHOWERS. I'M BACKWARDS ON THAT.

>> IT'S THE OPPOSITE. YOU WANT THE SHOWERS ON THE CONCRETE.

>> S. O'KEEFE: MR. TRACHTENBERG, IS THAT REFLECTED IN THE PLANS?

>> THIS WILL SHOWS THE BATHTUBS ARE ADAPTABLE. FOR THE NEED FOR ADA. ALL OF OUR UNITS WE BUILT HAVE ALL BATHTUBS IN THEM AND THEY ARE ACCESSIBLE. TO DATE, I DON'T THINK WE BUILT THE UNIT OF THE 500 WE'VE DONE IN THE LAST THREE YEARS THAT HAS A SHOWER. THEY'RE ALL CONSIDERED TO BE ADAPTABLE FOR ACCESSIBILITY. WITH GRAB BARS AND SO ON.

>> S. O'KEEFE: OKAY, THANK YOU. I SEE CHARLES HAS HIS HAND UP. PATRICK, ARE YOU FINISHED?

>> P. SHEAHAN: NO, I HAVE SEVERAL ITEMS. SO THE SLIDING

DOOR IN THE BATHROOM, IS THAT -- I'M NOT FAMILIAR, IS THAT ALLOWED IN AN ACCESSIBLE UNIT?

>> IT IS. AND, AGAIN, IF YOU LOOK AT OUR WEBSITE IN THIS PROJECT IN SAN FRANCISCO BUILT FIVE YEARS AGO, IT HAS THE SLIDING DOORS. SLIDING DOORS, THEY'RE TRICKY BECAUSE YOU HAVE TO HAVE PART OF THAT DOOR BE OUTSIDE OF THE POCKET. IN ORDER TO GRAB IT.

>> P. SHEAHAN: RIGHT. OKAY. AND THE PROPERTY LINE WINDOWS, THIS MAY BE A QUESTION FOR STAFF. I NOTICE THEY'RE PROVIDED ON ALL PLAN LEVELS. IT APPEARS THAT IN SOME OF THOSE UNITS ARE UP AGAINST ADJACENT BUILDINGS.

>> NO. NO UNITS ARE UP AGAINST ADJACENT BUILDINGS. THERE ARE NO BUILDINGS ADJACENT -- YOU'RE TALKING ABOUT ON THE SECOND FLOOR. THAT IS CORRECT. THESE WINDOWS ON THESE SECOND FLOOR THEY WOULD NOT OCCUR. THEY WOULD SURVIVE WITHOUT THEM. THEY'RE THERE FOR ESTHETIC REASONS. THEY'RE NOT REQUIRED.

>> P. SHEAHAN: IF THE BUILDING IS BUILT ADJACENT IN THE FUTURE --

>> THEY GET COVERED.

>> P. SHEAHAN: OR THEY SEE YOU FROM THE ADJACENT BUILDING. ARE THERE ANY REQUIREMENTS FOR THE CONSTRUCTION TO ADDRESS THAT?

>> THEY'RE FIRE RATE -- THEY'RE SEALED AND INOPERABLE. THEY'RE NOT INEXPENSIVE BUT THEY ADD RICHNESS TO THE BUILDING. THE OLD STUDIO BUILDING DOWN THE STREET HAS NO PROPERTY LINE

WINDOWS. THAT'S TYPICAL IN THE LOT LINE CONSTRUCTION.

>> P. SHEAHAN: YES. OKAY. AND REGARDING THE ROOF DECK, I REALIZE THAT'S NOT REQUIRED, BUT A COUPLE OF THINGS. IT WOULD BE A TERRIFIC IDEA TO PROVIDE A TOILET ON THE ROOF DECK.

>> WE CAN'T DO THAT IN THIS CASE. I THINK THIS WAS MENTIONED IN THE PAST. UNFORTUNATELY WE'D LIKE TO PUT A TOILET UP THERE, BUT IF WE DO THAT, THAT BECOMES A HABITABLE FLOOR AND WE EXCEED THE 75 FEET RULE.

>> P. SHEAHAN: HABITABLE BY PLANNING? OR BY --

>> BUILDING CODE.

>> P. SHEAHAN: SO IT'S A BUILDING CODE ISSUE. IT SOUNDS LIKE YOU'RE FAMILIAR WITH THE ISSUE. HOW WOULD YOU ADDRESS THAT IN THE BUILDING CODE?

>> ON LARGER BUILDINGS, VERY OFTEN ON THESE BUILDINGS WHICH GO THIS HEIGHT WHERE WE HAVE A DECK UNDER 75 FEET, WE HAVE OTHER UNITS ON THAT FLOOR WHERE YOU CAN PUT A COMMON BATHROOM ON THAT FLOOR WITH OTHER UNITS. FOR THIS, THERE ARE OTHER UNITS ON THE FLOOR BECAUSE WE CAN'T HAVE HABITABLE [INDISCERNIBLE] THOSE ROOF DECKS -- THIS IS THE WAY THAT I'M AWARE OF THAT YOU CAN DO A BATHROOM UP ON THIS LEVEL AND HAVE TO MEET THE BUILDING CODE.

>> P. SHEAHAN: THAT LEADS ME TO ANOTHER COMMENT TO SUGGEST THAT, AGAIN, I UNDERSTAND THERE IS NO REQUIREMENT, BUT A SUGGESTION THAT YOU EXTEND THE PLANTERS ALONG SHATTUCK FULL LENGTH. THEY'RE SHOWN DIFFERENTLY IN DIFFERENT RENDERINGS.

>> NUMBER 2 PLANTER ACROSS THE FRONT?

>> P. SHEAHAN: YES, THAT WAY SOMEBODY WHO IS GOING TO TAKE A PEE CAN PEE IN THE PLANTER INSTEAD OF OVER THE EDGE OF THE BUILDING.

>> THAT IS THOUGHTFUL OF YOU.

>> P. SHEAHAN: IT HAPPENS.

>> WE COULD DO THAT.

>> I THINK THERE WAS SOMETHING ABOUT PEOPLE SEEING THE VIEW FROM THERE. I THOUGHT YOU BROUGHT THAT UP.

>> THERE WERE CONCERNS OF HAVING MORE OF A VIEW. YEAH.

>> P. SHEAHAN: AND ONE MORE ITEM. THIS IS ONLY A SUGGESTION FOR THOUGHT. CERTAINLY THE WEST IS CONSIDERED THE PRIME VIEW. BUT HOWEVER HAVING LIVED IN A THIRD-FLOOR UNIT AND WEST BERKELEY WITH A WEST DECK, I FOUND BY EXPERIENCE THAT IT WAS OFTEN UNUSABLE DUE TO INTENSE SUN OR FOG, WIND, ET CETERA. AND THAT I CAME TO THE CONCLUSION THAT AN EASTWARD FACING DECK COULD BE MORE AGREEABLE AS A PLACE TO ACTUALLY HANG OUT. AND ANYWAY, JUST A SUGGESTION FOR THOUGHT. TRADING LIVABILITY FOR VIEW MIGHT BE WORTH CONSIDERING.

>> THAT IS AN INTERESTING POINT. THIS IS ONE FACTOR IN THAT DECISION. THIS IS IN THE CORRIDOR.

>> P. SHEAHAN: THAT'S ALL OF MY COMMENTS.

>> S. O'KEEFE: THANK YOU PATRICK. CHARLES.

>> C. KAHN: SO IT WILL MAY NOT BE INTUITIVELY OBVIOUS, BUT

PEOPLE WHO HAVE DISABILITIES ALSO LIKE TO TAKE BATHS. BUT THERE ARE RESTRICTIONS. FOR EXAMPLE, THEY HAVE TO HAVE ACCESS TO THE TAPS. WHICH IN THIS DESIGN THEY DO. YOU CAN'T HAVE A TOILET NEXT TO THE TAPS AND THEN THERE HAS TO BE REINFORCEMENT OF THE WALLS SO THAT BARS CAN BE ADDED FOR SAFETY. WE'VE BEEN DEALING WITH THIS IN SOME OF OUR STUFF, PATRICK, AND A GOOD QUESTION.

BATHTUBS ARE NOT ACCESSIBLE -- NO, THEY ARE, THEY JUST HAVE TO COMPLY. THE SLIDING DOOR THING IS RELATIVELY NEW. IT HAS TO DO WITH THE AMOUNT OF FORCE IT TAKES TO OPEN IT. AS LONG AS IT MEETS THE GUIDELINES, IT'S NOW OKAY. IN TERMS OF THE SIZE, I HAVE A QUESTION FOR YOU, DAVID. AND POSSIBLY LAYAL. IT APPEARS THAT YOU MAY HAVE THOUGHT THAT YOU HAD TO HAVE THE SETBACK, BUT APPARENTLY YOU DON'T. IF THE BASE BUILDING COULD BE CHARGER, THE DENSITY BONUS WOULD BE GREATER. SO MY SENSE IS THAT WHAT TIME YOU HAVE ASKED IS ENTIRELY WITHIN WHAT IS ALLOWED BY CODE.

LAYAL, THIS IS MORE A QUESTION FOR YOU, THE WAY THAT BERKELEY CALCULATES DENSITY BONUS, CONTRARY TO MOST CITIES IS NOT BY NUMBER OF UNITS BUT BY SQUARE FOOTAGE ALLOCATED FOR RESIDENTIAL LIVING. IT DOESN'T MATTER HOW YOU DICE IT OR SLICE IT. WHATEVER YOU HAVE IN YOUR BASE BUILDING IF IT'S PROVIDING 23% OR WHATEVER THE PERCENTAGE YOU'RE REQUESTING, YOU ARE YOU MEETING THE CODE.

>> WE BASE IT ON THE RESIDENTIAL FLOOR AREA. WE DO REQUIRE THERE ARE SUBSTANTIAL SIMILARITIES BETWEEN BASE PROJECT AND THE DENSITY BONUS PROJECT. ONE BEING THE ANKLE UNIT SIZE. IN THIS

CASE THEY'RE ALL STUDIO SO THE AVERAGE UNIT SIZE IS BASICALLY THE SAME.

>> C. KAHN: THANKS. I THOUGHT IT WAS A GOOD POINT THAT PATRICK BROUGHT IT UP AND I THOUGHT IT SHOULD BE PROPERLY ANSWERED.

>> S. BUCKLEY: I LOOK BACK THROUGH THE WAIVERS AND CONCESSIONS AND IT'S RELATED MORE TO THE SIDE YARDS THAN THE REAR YARD. THERE IS A FIVE FOOT SIDE YARD REQUIRED OVER 20 FEET. THAT WOULD HAVE IMPLICATIONS FOR UPPER STORIES. I THINK IT'S MORE OF A SIDE TO SIDE THAN A FRONT TO BACK.

>> C. KAHN: THANK YOU FOR CLARIFYING THAT.

>> S. O'KEEFE: OKAY. I CAN'T REMEMBER WHO WAS TALKING. I'M GOING TO RECOGNIZE TERESA.

>> I WAS GOING TO MENTION THAT IT'S THE SIDE SETBACKS THAT REDUCE THE NUMBER OF UNITS ON THE FLOOR PLATE. I WOULD LIKE TO MOVE THIS ALONG IF WE COULD AND I THINK THIS IS A REALLY NICE PROJECT. NICE DESIGN, VERY EFFICIENT UNITS. THOSE UNITS IN SAN FRANCISCO LOOK LOVELY.

>> S. O'KEEFE: THIS IS STILL QUESTIONS FOR THE APPLICANT. SOUNDS LIKE YOU'RE COMMENTING.

>> WOULD I LIKE TO MOVE IT ALONG. THAT'S ALL I WANT TO SAY.

>> S. O'KEEFE: I SAW A HAND UP. PATRICK.

>> P. SHEAHAN: WELL, I DON'T KNOW IF IT'S APPROPRIATE TO CARRY ON WITH THIS DISCUSSION ABOUT THE DENSITY BONUS, BUT IT

SEEMS LIKE IT. WHAT I'VE HEARD IN THE DIAGRAM FOR THE BASE UNIT, THE PLAN DOES SHOW FOUR UNIT CROSS ON THE SHATTUCK ELEVATION AND THREE UNITS ACROSS ON THE TERMINAL SIDE OF THE BUILDING. IT APPEARS IT WAS CONSIDERED FEASIBLE TO DO FOUR UNITS ACROSS. AND WITHOUT THE ASSUMED REAR YARD SET BECOME, IT APPEARS THAT FOUR UNITS COULD BE DONE ACROSS ON THE TERMINAL SIDE OF THE BUILDING. I DO MAINTAIN THAT EVERYTHING I'VE HEARD LEADS ME TO BELIEVE THAT THE AFFORDABLE HOUSING SHOULD BE RECALCULATED BASED ON EIGHT UNITS PER FLOOR.

>> CAN YOU SHOW WHERE YOU'RE TALKING ABOUT?

>> I DON'T HAVE ACCESS TO EVERY SHEET.

>> WHAT ARE YOU LOOKING AT PATRICK, SO YOU COULD LET US KNOW.

>> P. SHEAHAN: IT WAS THE DIAGRAM THAT DAVID SHOWED.

>> I DIDN'T SHOW THE STATE BONUS DENSITY DIAGRAM BUT IT'S IN YOUR SET.

>> WHAT PAGE ARE YOU REFERRING TO?

>> A0.3.

>> I DON'T SEE A PLAN.

>> THE BASE PROJECT ON THE RIGHT. PLAN LEVELS 2 THROUGH 6 SHOWS FOUR UNITS ON THE SHATTUCK SIDE AND THREE UNITS ON THE TERMINAL SIDE.

>> ON THE TERMINAL SIDE, IT'S NARROWER, BECAUSE THE SETBACK GETS INCREASED.

>> IT'S NOT INDICATED AS NARROWER.

>> THE DIAGRAM DOESN'T APPEAR TO BE SHOWING THE SETBACK THAT IS REQUIRED.

>> P. SHEAHAN: I BELIEVE IT DOES BUT --

>> YOU HAVE THE FOUR UNITS --

>> THE SIDE YARD REQUIREMENT DOESN'T START UNTIL 65 FEET BACK FROM THE FRONT OF THE STREET.

>> P. SHEAHAN: THAT'S THE NOTCH AT THE TERMINAL SIDE.

>> THAT'S WHY WE ASKED FOR THE WAIVER.

>> P. SHEAHAN: IT APPEARS TO ME YOU COULD STILL GET FOUR. THEY'RE SOMEWHAT COMPROMISED BY THE NOTCH. THE SIDE YARD AND -- OKAY.

>> CLERK: AS YOU GO UP HIGHER.

>> P. SHEAHAN: I CAN'T SAY MORE WITHOUT WORKING IT OUT. IT APPEARS TO ME THERE IS SQUARE FOOTAGE THAT WOULD WORK.

>> STAFF, CAN YOU SHOW HOW YOU MADE THE CALCULATION? LAYAL?

>> STAFF: SO IN THE STAFF REPORT ON PAGE 10 OF 13, THERE IS A DISCUSSION OF THE GROWTH FLOOR AREA ON THE PROJECT FLOORS. YOU WILL SEE THAT THE BASE PROJECT FLOORS 2 THROUGH 6 ARE LESS THAN 3,000. 2,988. AND THE DENSITY BONUS FLOORS ARE APPROXIMATELY 500 SQUARE FEET MORE WHICH IS ACCOMMODATE THAT EIGHTH UNIT ON EACH FLOOR.

>> OKAY.

>> S. O'KEEFE: ANY MORE PATRICK?

>> THAT'S ALL FOR THE MOMENT.

>> S. O'KEEFE: THANK YOU SO MUCH FOR CLARIFYING THAT. MORE QUESTIONS FOR STAFF. OR THE APPLICANT. SEEING NONE, WOULD ANYONE FROM THE PUBLIC LIKE TO COMMENT ON THIS PROJECT? NOW IS THE TIME IF YOU'RE A MEMBER OF THE PUBLIC AND WANT TO MAKE A COMMENT, RAISE YOUR HAND NOW OR PRESS STAR 9 IF YOU'RE JOINING US BY PHONE. SEEING NONE, WE CAN BRING IT BACK FOR BOARD DISCUSSION.

>> IF I CAN -- YES. ONE OF MY PARTNERS TEXTED ME TO POINT OUT AN IMPORTANT FACT FOR PATRICK. IF WE WERE TO GO TO FOUR ACROSS ON THE TERMINAL SIDE, THAT THOSE UNITS WOULD NOT MEET THE MINIMUM FLOOR REQUIREMENTS -- FLOOR AREA REQUIREMENT FOR THE BUILDING CODE FOR RESIDENTIAL DWELLING UNIT.

>> P. SHEAHAN: THANK YOU.

>> IT'S LIKE 850 SQUARE FEET. IF THEY'RE TWO FEET SMALLER, THEY'RE NOT GOING TO MEET THE MINIMUM STANDARD.

>> P. SHEAHAN: THANKS FOR THAT.

>> S. O'KEEFE: THAT'S ALL YOU WANT TO ADD? WE CAN CLOSE THE PUBLIC HEARING NOW MR. TRACHTENBERG?

>> YES, PLEASE.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I'D LIKE TO MOVE THE ITEM.

>> S. O'KEEFE: MOVE TO APPROVE. IS THERE A SECOND? OR COMMENTS? OKAY.

>> T. CLARKE: I'D LIKE TO SECOND THAT.

>> A MOTION AND A SECOND. JOHN. YOU WANT TO MAKE A COMMENT?

>> J. SELAWSKY: I WAS GOING TO SECOND.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND. ANY DISCUSSION? LET'S HAVE A ROLL CALL VOTE.

>> ON THE MOTION FOR APPROVING THE PROJECT AT 2023 AND 2025 SHATTUCK AVENUE ZP2019-0041, AS PRESENTED BY STAFF RECOMMEND BY THE DRC IS A MOTION BY BOARD MEMBER TREGUB AND A SECOND BY BOARD MEMBER CLARKE. I'LL CALL THE ROLL. BOARD MEMBER TREGUB.

>> I. TREGUB: AYE.

>> S. BUCKLEY: BOARD MEMBER CLARKE.

>> T. CLARKE: YES.

>> BOARD MEMBER SHEAHAN.

>> P. SHEAHAN: I WANT TO MAKE A BRIEF COMMENT REGARDING THE DENSITY BONUS ISSUE ALTHOUGH I AM VOTING YES. TO THE EFFECT THAT MY ONLY INTEREST IN PURSUING THIS LINE OF QUESTION IS TO GET MORE AFFORDABLE UNITS. THAT WILL THE CITY MAY BE ENTITLED TO. THAT IS THE FULL PURPOSE. THIS IS A FINE PROJECT.

>> S. O'KEEFE: THAT WAS CLEAR, PATRICK, I APPRECIATE YOU ON THAT. PATRICK VOTES YES.

>> S. BUCKLEY: BOARD MEMBER SELAWSKY.

>> J. SELAWSKY: YES. WITH THE COMMENT THAT I APPRECIATE PATRICK'S PUSHING AS HARD AS HE COULD ON THAT. THANK YOU.

>> S. BUCKLEY: BOARD MEMBER OLSON. ABSENT. BOARD MEMBER KAHN.

>> C. KAHN: YES AND A SUPPORT OF PATRICK'S PUSHING IT AS WELL.

>> S. BUCKLEY: BOARD MEMBER KIM.

>> D. KIM: YES.

>> S. BUCKLEY: BOARD MEMBER PINKSTON. ABSENT. AND CHAIR O'KEEFE.

>> S. O'KEEFE: YES. SO I BELIEVE THE MOTION PASSES.

>> S. BUCKLEY: YES.

>> S. O'KEEFE: MR. TRACHTENBERG, YOU HAVE YOUR USE PERMIT APPEALABLE TO THE CITY COUNCIL.

>> THANK YOU. THANK YOU SO MUCH.

>> S. O'KEEFE: GO BACK TO YOUR CAGE. ALL RIGHT. SO WE'LL TAKE A MINUTE -- OKAY, WE'RE GOING TO MOVE ON TO 1346 ORDWAY STREET WHICH IS AN APPEAL OF AN AUP. WITH APPEALS, JUST SO EVERYONE ON THE BOARD AND THE PUBLIC KNOWS THE APPEALS HAVE A SLIGHTLY DIFFERENT ORDER. WE BEGIN WITH THE STAFF REPORT AS ALWAYS. THEN WE'RE GOING TO HAVE THE APPELLANT GO FIRST AND APPELLANT, YOU'RE GOING TO BE GIVEN FIVE MINUTES TO SPEAK, THEN WE'LL LET THE ORIGINAL APPLICANT SPEAK FOR FIVE MINUTES. AND AFTER THAT, WE'RE GOING TO HAVE OPEN IT UP FOR MEMBERS OF THE PUBLIC TO MAKE COMMENTS IF THEY WISH. AFTER THAT, WE'RE GOING TO CLOSE THE PUBLIC HEARING AND BRING BACK FOR BOARD COMMENTS. THAT'S THE PROCEDURE. I BELIEVE WE HAVE THE APPLICANT AND APPELLANT HAVE BEEN ELEVATED TO PANELISTS. IS THAT CORRECT? I

THINK SO. WE'LL BEGIN WITH THE STAFF REPORT.

>> GOOD EVENING. I'M NILU KARIMZADEGAN. THIS IS TO APPROVE ADMINISTRATIVE UNIT ZP-2018-0174 TO LEGALIZE A HABITABLE BUILDING, TRELIS, FENCE AND HEDGE FOR A SINGLE-FAMILY DWELLING. THIS INCLUDES LOCATING AN OFF-STREET PARKING SPACE BY MODIFYING REQUIREMENTS ON THE REASONABLE ACCOMMODATION 23B.52. THE PROJECT SITE IS LOCATED IN THE R-1A DISTRICT OF THE NORTHWEST SIDE OF THE INTERSECTION ON HOPKINS AND ORDWAY AND EAST TO PEARL AVENUE. THE NEAREST ABUTTING NEIGHBORS' RESIDENT AT 1344 ORDWAY STREET IS LOCATED APPROXIMATELY EIGHT FEET TO THE NORTH OF SUBJECT PROPERTY. THE APPELLANT'S PROPERTY AT 1333 HOPKINS IS LOCATED 209 NORTH OF THE INTERSECTION AND SOUTH OF THE PROPERTY AND CLOSEST BUILDINGS ARE SEPARATED FROM THE MAIN DWELLING ON THE SUBJECT PROPERTY BY APPROXIMATELY 14 FEET. IN NOTICE OF VIOLATION WAS ISSUED IN MAY 2018 FOR A HEDGE OVER 6 FEET IN HEIGHT WITH REQUIRED SETBACKS. A ZONING APPLICATION WAS SUBMITTED IN SEPTEMBER 2018 TO LEGALIZE THE FENCE ON THE HEDGE. AFTER REVIEW OF THE APPLICATION, STAFF DETERMINED THAT ADDITIONAL AUPS ARE REQUIRED TO LEGALIZE AN EXISTING ACCESSORY BUILDING, A TRELIS AND FRONT YARD PARKING SPACE. AFTER AN OFFICIAL SURVEY WAS SUBMITTED, THE APPLICANT WAS PRESENTED WITH THE FOLLOWING THREE OPTIONS. ONE, TO RESTORE SITE TO THE ORIGINAL CONDITION INCLUDING USE OF THE LEGAL NONCONFORMING DRIVEWAY WITH A REAR PARKING SPACE. TWO TO ACCEPT THE

LEGAL -- APPROVAL TO REMOVE ALL PARKING-RELATED SURFACES INCLUDING REMOVAL OF THE CAR PAD AND TO APPLY FOR AN AUP VARIANCE FOR THE FRONT YARD PARKING SPACE AND WAIVER OF THE REQUIRED LANDSCAPE STRIP. THE APPLICATION WAS DEEMED COMPLETE IN DECEMBER 2019. AND WAS TENTATIVELY SCHEDULED FOR A ZAB HEARING IN JANUARY 2020. HOWEVER, APPLICANTS INCLUDED A STATEMENT FOR A MEDICAL CONDITION AND NEED FOR A FRONT YARD PARKING SPACE. STAFF REPORTS THAT DOCUMENTATION FOR EVALUATION IN ORDER FOR APPROVAL OF PARKING. AFTER RECEIVING A COPY -- A COPY OF THE APPLICATION FOR TEMPORARY DISABILITY AND MEDICAL REPORT AND CONSIDERING FACTORS REGARDING REASONABLENESS OF THE APPLICATION ON THEIR REASONABLE ACCOMMODATE CHAPTER, THE ZONING OFFICER DETERMINED THAT AUP REQUIREMENTS CAN BE WAIVED TO ALLOW FOR A FRONT STREET PARKING SPACE. NOTICE OF APPROVAL WAS SENT OUT ON FEBRUARY 25TH, 2020. THIS RECOMMENDATION INCLUDED APPROVAL TO LEGALIZE ACCESSORY BUILDING, TRELIS, HEDGE AND FRONT YARD OFF-STREET PARKING SPACE. HOWEVER, THE REQUEST TO LEGALIZE FENCE OVER 6 FEET IF HEIGHT WAS DENIED SINCE THE SURVEY SHOWED THAT THE FENCE IS LOCATED OUTSIDE THE APPLICANT'S PROPERTY LINE AND APPELLANT LOT. APPEAL OF THE AUP WAS SUBMITTED ON MARCH 17TH, 2020. INCLUDES SEVERAL POINTS IN MY STAFF REPORT. BECAUSE OF THE PROJECT CONSISTENCY WITH THE ZONING ORDINANCE AND GENERAL PLAN AND MINIMAL IMPACT ON THE SURROUNDING PROFITS STAFF RECOMMENDED APPROVAL. I HAVE SOME ADDITIONAL IMAGES IN THIS SLIDE YOU CAN

SEE THAT -- YOU CAN SEE THE HEDGE AND LOCATION FOR FRONT YARD PARKING SPACE BEFORE A NEWLY-INSTALLED FENCE WAS INSTALLED BY APPELLANT. THIS THE APPELLANT'S NEW FENCE. IN THIS IMAGE, YOU CAN SEE THE ACCESSORY BUILDING IN THE SOUTHWEST CORNER OF THE SUBJECT REPORT. THIS IS THE TRELIS WITHIN THE SOUTH SETBACK. AS YOU CAN SEE, IT HAS THE SAME HEIGHT AND LENGTH AS THE APPELLANT'S GARAGE. AND WITH THAT, I END MY PRESENTATION. PLEASE LET ME KNOW IF YOU HAVE ANY QUESTIONS.

>> S. O'KEEFE: GREAT, THANK YOU VERY MUCH. ARE THERE QUESTIONS FOR STAFF? WAIT. ONE SECOND. TERESA HAS HER HAND UP PATRICK IN THE PROPER WAY.

>> T. CLARKE: YOU SAID THAT THERE WAS A VARIANCE. WAS THAT JUST YOU'RE SAYING -- WAS THERE A VARIANCE? IN THE PRESENTATION YOU MENTIONED "VARIANCE." I DON'T SEE ONE ON HERE.

>> THE VARIANCE REQUIREMENT FOR NOT PROVIDING THE TWO FEET LANDSCAPE STRIP IS WAIVE UNDER REASONABLE ACCOMMODATION.

>> T. CLARKE: OKAY. AND THE OTHER QUESTION I HAD WAS YOU'RE SAYING APPELLANT BUILT A FENCE OVER 6 FEET?

>> STAFF: IT'S NOT OVER 6 FEET, HE BUILT IT AFTER WE SENT OUT THE NOTICES.

>> T. CLARKE: SO THE FENCE OVER 6 FEET IS NOW IN COMPLIANCE.

>> STAFF: THE WAY IT WORKED WAS WE GOT A NOTICE OF VIOLATION FOR HAVING A FENCE AND HEDGE OVER 6 FEET WITHIN THE

SIDE SETBACK. BUT AFTER THE SURVEY WAS SUBMITTED, WE REALIZED THAT THE FENCE IS NOT EVEN ON APPLICANT'S LOT, IT'S ON THE APPELLANT'S LOT SO WE DENIED. THERE IS NO FENCE OVER 6 FEET.

>> T. CLARKE: OKAY SO IS THE PERSON AT 1333 HOPKINS HAS THE FENCE OVER 6 FEET?

>> STAFF: NO.

>> T. CLARKE: WHOSE PROPERTY IS OFF?

>> STAFF: IT'S ON THE APPELLANT'S LOT AND IS NOT OVER 6 FEET.

>> T. CLARKE: OK.

>> S. O'KEEFE: THERE WAS A FENCE OVER 6 FEET BUT WAS NOT APPROVED AND IT'S GONE.

>> STAFF: THEY WANTED TO ADD TWO TO THREE FEET OVER THE 6 FEET TO MAKE IT HIGHER.

>> T. CLARKE: THEN THE TRELIS IS THERE, IT'S ON THE GARAGE, SO THAT'S WHAT THEY WANTED TO ADD FARTHER DOWN WHICH WASN'T ALLOWED, BUT YOU LEFT THE TRELIS OVER BY THE GARAGE.

>> STAFF: YES.

>> T. CLARKE: THANK YOU.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I THINK I HAD A SIMILAR QUESTIONS. SORRY TO BE DENSE. AT WHAT POINT WAS PART OF THE FENCE DENIED? WAS IT WHEN THEY SUBMITTED THE APPLICATION TO LEGALIZE IT? AND WAS IT BECAUSE IT'S ACTUALLY ON THE --

>> STAFF: THE AUP WAS DENIED, THE NOTICES, THE ZONING OFFICER DENIED THE FENCE OVER 6 FEET AND WE SENT NOTICES OUT. EVERYTHING ELSE WAS APPROVED IN FEBRUARY EXCEPT FROM THE FENCE.

>> I. TREGUB: BECAUSE THE FENCE WAS ACTUALLY PROPOSED TO BE -- THE APPELLANT'S LOT LINE?

>> STAFF: YES. IT WAS OUTSIDE THE APPLICANT'S LOT.

>> T. CLARKE: YOU'RE LETTING THEM HAVE THE HEDGE.

>> STAFF: YES THERE IS A CONDITION OF APPROVAL TO KEEP IT AT 14 FEET.

>> I. TREGUB: GOT IT. THANK YOU.

>> S. O'KEEFE: QUESTIONS FOR STAFF. PATRICK.

>> P. SHEAHAN: SO THE QUESTION FOR STAFF, SO IS THE TRELLIS OVER 6 FEET, IS THAT ATTACHED TO THE NEIGHBOR'S GARAGE?

>> STAFF: IT'S THREE INCHES FROM THE COMMON PROPERTY LINE.

>> P. SHEAHAN: SO IT IS WITHIN THE PROPERTY.

>> STAFF: YES.

>> P. SHEAHAN: AND THERE IS NO CONNECTION.

>> STAFF: NOT AS FAR AS THE SURVEY SHOWS.

>> P. SHEAHAN: OKAY. I'M NOT SURE OF THE ANSWER, BUT THAT MAY BE PROHIBITED BY BUILDING CODE HAVING A FLAMMABLE STRUCTURE ADJACENT TO THE PROPERTY LINE. BUT IT COULD BE A BUILDING CODE ISSUE.

>> STAFF: OKAY.

>> S. O'KEEFE: ALL RIGHT. THANK YOU, PATRICK. ANY MORE

QUESTIONS FOR STAFF BEFORE WE HEAR FROM THE APPELLANT? SEEING NONE. OKAY. APPELLANT. I BELIEVE IT'S MR. HICKMAN. I'M GOING TO GIVE YOU FIVE MINUTES TO MAKE YOUR PRESENTATION.

>> CAN YOU HEAR ME?

>> S. O'KEEFE: YES, GO AHEAD. SIR, ONE SECOND YOUR TIME HASN'T STARTED YET. CAN YOU SEE US RIGHT NOW?

>> I'M USING MY CELL PHONE.

>> S. O'KEEFE: BECAUSE WE HAVE A VISUAL INDICATOR OF TIME. HOW ABOUT I'M GOING TO GO AHEAD AND LET YOU KNOW WHEN YOU HAVE A MINUTE LEFT.

>> I MAY NOT NEED FIVE MINUTES TO EXPLAIN HOW RIDICULOUS ALL OF THIS IS.

>> S. O'KEEFE: LET'S HEAR IT. GO FOR IT.

>> THIS APPLICATION ON THE PART OF THE NEIGHBORS AND THE REASON FOR MY APPEAL IS IT'S SO RIDICULOUS. THE BERKELEY MUNICIPAL CODE INDICATES THAT GROWING, YOU KNOW, A ROW OF TREES ON THE PROPERTY LINE OR WITHIN TWO FEET OF THE PROPER LINE TO CREATE A HELEN IS CONSIDERED A FENCE. ALTHOUGH THE PLANNER CONTINUES TO SEPARATE FROM THE FENCE ISSUE, IT'S CONSIDERED A FENCE ACCORDING TO THE BERKELEY MUNICIPAL CODE. ALL I'M ASKING FOR IS FOR THE BOARD TO UP HOLD THE BERKELEY MUNICIPAL CODE WHERE THIS IS CONCERNED. HAVING A 14-FOOT FENCE MADE OF TREES OR ANY OTHER MATERIAL AROUND THE MOST DESIRABLE PART OF MY YARD IS RIDICULOUS! I MEAN JUST AS RIDICULOUS AS IF THEY HAD ASKED TO

PUT UP A CYCLONE FENCE. THE ORIGINAL DECISION MENTIONED THE PLANNER MENTIONED THAT HE WAS APPROVING IT BECAUSE THERE IS SOME FILTERED LIGHT THAT, YOU KNOW, POTENTIALLY COULD PASS THROUGH THE HEDGES. BUT YOU KNOW, LIGHT CAN PASS THROUGH A CYCLONE FENCE. THOSE HEDGES ARE A FENCE. THAT'S WHAT THEY ARE ACCORDING TO THE BERKELEY MUNICIPAL CODE AND ACCORDING TO CODE ENFORCEMENT. CODE ENFORCEMENT CAME OUT AND WROTE A REPORT AND SAID IT WAS ILLEGAL AND ISSUED A WARNING AND CITATION. I'LL MOVE ON TO ADDRESS THE TRELIS ISSUE. THAT'S THREE INCHES AWAY FROM MY GARAGE. I NOTICED THAT THE PLANNER IN HER EXPLANATION KEEPS SAYING THAT THE TRELIS IS NEAR THE PROPERTY LINE. SHE SAID THAT NUMEROUS TIMES. BUT SHE FAILED TO SAY THAT IN 1948 THE SIDE OF MY GARAGE WAS CONSTRUCTED ON THAT PROPERTY LINE. AND TO ALLOW SOME SORT OF ILLEGAL ACCESSORY STRUCTURE TO BE BUILT THREE INCHES AWAY FROM MY PROPERTY LINE MEANS THAT I WILL NEVER BE ABLE TO MAINTAIN MY GARAGE. HOW WILL I EVER PAINT MY GARAGE? WHAT WILL IF THERE IS DRY ROT. WHAT -- WHAT IF I NEVER HAVE ACCESS TO IT AGAIN. I BELIEVE THE MUNICIPAL CODE SPECIFIES STRUCTURES SHOULD BE FOUR FEET AWAY FROM THE PROPERTY LINE. THERE ARE SETBACKS REQUIRED. ALSO, WHERE PARKING IS CONCERNED, THERE IS VERY LOW VISIBILITY FROM THAT PARKING SPACE ESPECIALLY WITH A FENCE THERE. A CHILD COULD GET HURT WITH A CAR BACKING OUT OF THAT SPACE. IT'S JUST -- THERE IS A LOT OF NONCONFORMING STUFF GOING ON NEXT DOOR TO ME WHICH IF APPROVED, MAKES MY

PROPERTY NOT CONFORMING BECAUSE ALL OF THIS STUFF IS GOING ON ON MY PROPERTY LINE. SOME OF THE TREES PLANTED NEAR THE REAR OF MY PROPERTY BEHIND MY REAR GARAGE ARE WELL OVER 14 FEET TALL. THEY'RE PROBABLY OVER 20 FEET TALL. I GUESS THE NEIGHBORS DIDN'T REALIZE THAT'S PART OF MY PROPERTY BACK THERE AS WELL BEHIND MY GARAGE. ALL OF THIS IS YOU KNOW LIKE RIDICULOUS!

>> S. O'KEEFE: SIR, YOU HAVE ONE MINUTE LEFT.

>> I WOULD LIKE TO MENTION THAT ONLY EVIDENCE WE HAVE OF A DISABILITY ON THE PART OF THE APPLICANT AT 1346 ORDWAY IS A TEMPORARY DISABILITY FACTOR. NOT EVEN A PERMANENT DISABILITY. WHY WOULD SOMEBODY BE ALLOWED TO CONSTRUCT SOMETHING BASED ON A DISABILITY WHEN ALL THEY'VE PRESENTED TO THE CITY IS A TEMPORARY. TO END MY STATEMENT, I'LL SAY THAT EVERYTHING CONSTRUCTED THERE WAS CONSTRUCTED ILLEGALLY.

>> S. O'KEEFE: OKAY. YOUR TIME IS UP.

>> THEY'VE DONE NOTHING LEGAL.

>> S. O'KEEFE: OKAY. THANK YOU SO MUCH FOR STICKING TO YOUR TIME. WE CERTAINLY APPRECIATE YOU COMING TO TELL US WHAT IS GOING ON. WE HAVE A COUPLE OF QUESTIONS. JOHN HAS A QUESTION FOR THE APPELLANT.

>> J. SELAWSKY: NOT -- YES, I DO, BUT LET ME POINT OUT --

>> S. O'KEEFE: JUST QUESTIONS, JOHN.

>> J. SELAWSKY: THE ICON THAT SHOWS UP FOR THE APPELLANT SAYS 1346 ORDWAY -- I SEE THAT'S NOT HIS ADDRESS.

>> S. O'KEEFE: THAT'S THE PROJECT.

>> J. SELAWSKY: PROJECT ADDRESS. OKAY. OKAY. I'M CURIOUS ABOUT THE 14-FOOT -- THE LINE OF TREES WHICH YOU CONTEND IS LEGALLY A FENCE. AND I'M NOT SURE -- HOW DID YOU ASCERTAIN THAT?

>> I LOOKED ON LINE AT THE BERKELEY MUNICIPAL CODE REGARDING ALLOWABLE FENCE HEIGHT. AND THE CODE IS VERY SPECIFIC, IT STATES AT THAT A FENCE SHALL NOT BE CONSTRUCTED -- I'M PARAPHRASING -- OVER 6 FEET TALL WITHOUT A PERMIT NOR HAVE TREES OR HEDGES BE USED TO TRY TO CIRCUMVENT THE LAW BY CREATING A FENCE WALL MADE OF HEDGES OR TREES. AND IT SHOULD NOT BE DONE WITHOUT A PERMIT. THEY TOOK IT UPON THEMSELVES TO INSTALL THIS ANYWAY. WE WOULDN'T BE HERE RIGHT NOW DISCUSSING THIS HAD I NOT REPORTED THIS TO CODE ENFORCEMENT. CODE ENFORCEMENT EVENTUALLY CAME OUT, WARNED HIM THAT WHAT THEY HAD CONSTRUCTED THERE IS ILLEGAL. AND THAT'S WHAT INITIATED ALL OF THIS. THEN THEY CONTINUED AFTER THEY LEARNED THAT CERTAIN CONSTRUCTION WAS ILLEGAL, THEY CONTINUED TO BUILD MORE AND MORE ILLEGAL THINGS.

>> S. O'KEEFE: OKAY. JOHN, DID YOU GET AN ANSWER TO YOUR QUESTION?

>> J. SELAWSKY: YES, THANK YOU FOR THE RESPONSE.

>> S. O'KEEFE: THANKS. TERESA. DO YOU HAVE A QUESTION FOR APPELLANT?

>> T. CLARKE: YES. SO BASICALLY THE HEDGE THAT YOU ARE OBJECTING TO IS THE ONE ON YOUR PROPERTY LINE. THEY HAVE ANOTHER

HEDGE ON THE OTHER SIDE, IT SOUNDS LIKE.

>> T. CLARKE: YOUR PROPERTY IS TO THE SOUTH OF THE PROPERTY, IS THAT CORRECT?

>> THAT'S CORRECT.

>> T. CLARKE: YOU'RE NOT GOING TO BE GETTING SHADING FROM THOSE HEDGES, ARE YOU? NOT MUCH. ARE YOU OBJECTING TO IT BECAUSE OF THE -- IS THERE AN OBJECTION BASED ON SHADING OR SOMETHING LIKE THAT? THE HEDGE.

>> I OBJECT TO IT BECAUSE I FEEL ENCLOSED, IT INTERFERES WITH MY AIRSPACE AND THE OPEN FEELING THAT I'VE ALWAYS HAD. I OWNED MY PROPERTY FOR 30 YEARS. WE CLOSED UP FROM MAY 1ST, 1990 ON THIS PROPERTY. AND I'VE --

>> T. CLARKE: SO YOU HAVE THE FEELING OF ENCLOSURE AT THE EDGE.

>> YES. HOW WOULD YOU LIKE IT IF SOMEBODY BUILT A 14-FOOT WALL AROUND YOUR YARD.

>> S. O'KEEFE: TERESA, SAY AGAIN.

>> T. CLARKE: HE'S OBJECT BE TO THE HEDGE BEING -- CLOSING IN HIS VIEWS.

>> I HAVE A WALL AROUND ME.

>> S. O'KEEFE: TERESA HAS ANOTHER QUESTION.

>> AND -- IT WAS PLANTED WITHIN THE SETBACK, THOSE HEDGES ARE ACTUALLY CAUSING MY FENCE TO LEAN OVER.

>> T. CLARKE: THAT'S WHAT I WANTED. IT'S NOT SHADING BUT

IT'S A TALL ELEMENT NEXT TO THE PROPERTY LINE AND DAMAGING YOUR FENCE.

>> YES.

>> T. CLARKE: IS YOUR OBJECTION TO THE TRELLIS? JUST FOR MAINTENANCE. THAT TRELLIS, YOU CAN STILL MAINTAIN YOUR GARAGE EVEN THOUGH THE TRELLIS IS THERE, CAN YOU NOT?

>> I CANNOT. HOW WOULD I? THEY'VE GOT PLANT MATERIAL GROWING IN THAT AREA ALL OVER THE SIDE OF MY GARAGE. SOME OF IT GROWING UP ON TO THE ROOF.

>> T. CLARKE: THE PICTURES WE SAW DID NOT SHOW ANY VEGETATION. IT JUST SHOWED A TRELLIS. AND THEN THE OTHER --

>> IT PREVENTS ME FROM MAINTAINING MY GARAGE.

>> S. O'KEEFE: SIR, THANK YOU SO MUCH.

>> T. CLARKE: OKAY, THEN THE NEXT ONE IS THE ACCESSORY STRUCTURE. IS THAT IMPACTING YOU?

>> WHICH ACCESSORY STRUCTURE.

>> T. CLARKE: YOU SAID THAT THE BUILD --

>> S. O'KEEFE: THE BUILDING IN THE BACK.

>> T. CLARKE: THE BUILDING IN THE BACK.

>> THAT IMPACTING ME?

>> T. CLARKE: IS THAT NEGATIVELY AFFECTING YOUR PROPERTY IN SOME WAY?

>> IT'S NONCONFORMING.

>> T. CLARKE: BUT IS IT AFFECTING THE USE OF YOUR PROPERTY

IN SOME WAY?

>> I DON'T KNOW. BECAUSE I DON'T KNOW WHAT THEY PLAN TO DO WITH IT. THEY'VE APPLIED TO MAKE IT HABITABLE. THEY HAVE A LOT OF NONCONFORMING STUFF GOING ON. THAT RENDERS MY PROPERTY NONCONFORMING BECAUSE MY PROPERTY IS ADJACENT TO THEIRS. CAN.

>> T. CLARKE: THANK YOU, SIR.

>> C. KAHN: I HAVE A QUESTION. YOU SAY AT THAT TIME HEDGE IS PUSHING YOUR FENCE OVER, BUT OUR RECORDS INDICATE THAT IS A NEWLY INSTALLED FENCE. AM I CORRECT?

>> NO. NOT THAT PORTION. THERE IS A NEWLY INSTALLED PORTION NEAR THE FRONT -- NEAR THE SIDE WALL NEAR THE FRONT OF BOTH PROPERTIES.

>> C. KAHN: THANK YOU FOR THE CLARIFICATION.

>> S. O'KEEFE: ANY OTHER QUESTIONS FOR THE APPELLANT? OKAY. THANK YOU SO MUCH SIR, WE APPRECIATE YOU COMING. I'M GOING TO GO AHEAD AND MUTE YOU AND WE'LL HEAR FROM THE APPLICANT. ALL RIGHT. APPLICANT. YOU HAVE FIVE MINUTES.

>> I HAVE TO SHARE MY SCREEN.

>> S. O'KEEFE: AND IF YOU COULD RESPOND TO SOME OF THE THINGS SAID BY THE APPELLANT, THAT WOULD BE HELPFUL.

>> CAN EVERYONE SEE MY SCREEN?

>> NO, I CAN'T.

>> NOW WE CAN SEE IT.

>> ALL RIGHT. GOOD EVENING, I'M JENNIE DURANT TO ADDRESS

OUR NEIGHBORS APPEALS AGAINST OUR ZONING APPROVALS. EACH FOUR POINTS OF APPEAL CORRESPOND TO OUR UNIT. WE HAVE AN ARBOR WE BUILT NEAR HIS GARAGE AND HEDGE. HERE IS A PHOTO OF THE FRONT OF OUR HOUSE AND THE PARKING SPACE FOR WHICH WE RECEIVED AN AUP. THE APPELLANT SAID I'M NOT HANDICAPPED ENOUGH TO QUALIFY FOR THE AUP. HOWEVER THE APPELLANT IS NOT AWARE OF THE FULL NATURE OF MY DISABILITY. THIS IS BY DESIGN BECAUSE I WISH TO PRESERVE MY PRIVACY BUT WE SUBMITTED DOCUMENTATION AND PHOTO COPIES AND THE FINAL PLACARD ALL OF WHICH INFORM THE ZONING OFFICE'S DETERMINATION. MY CONDITION IS DEGENERATIVE. HAVING TO WALK FROM A PARKING SPACE WHETHER FROM THE CURB OR DOWN THE STREET CARRYING HEAVY BAGS OF GROCERIES, OUR 4-YEAR-OLD DAUGHTER WOULD BE UNTENABLE. THIS IS WHY WE HAVE REQUESTED AN AUP FOR OUR FRONT PARKING SPACE. THE APPELLANT MENTIONS A NEWLY INSTALLED 6-FOOT FENCE AFTER THE FINDS WERE POSTED. HE PRESCRIPTIONS CONCERN THAT OUR PARKING SPACE IS NOW UNSAFE BECAUSE OF THE FENCE AND OUR VIEW OF PEDESTRIANS AND ON COMING TRAFFIC IS OBSCURED BUT THIS IS NOT A CONCERN. SECONDLY WAVE' NOT HAD ANY PROBLEMS SPOTTING PEDESTRIANS AS WE SLOWLY PULL OUT OF OUR LOT. WE NOTED THAT SEVERAL GARAGES EXTEND OUT TO THE SIDEWALK ON ORDWAY LIKE THESE. THE VIEW IS MORE OBSCURED FROM OURS BUT IT DOESN'T MAKE IT NONCONFORMING. THIS SLIDE SHOWS FOUR CARS PARKED IN FRONT SO IT'S NOT DETRIMENTAL TO THE ESTHETIC OF OUR NEIGHBORHOOD. SECOND ISSUE IS THE HABITABLE ACCESSORY BUILDING. HE CLAIMS IT WILL

CAST SHADOWS ON HIS PROPERTY IS NOT POSSIBLE. IN THE BOTTOM IMAGE YOU CAN SEE THE ACCESSORY BUILDING IS ADJACENT TO LOT 46 WHILE OUR NEIGHBORS PROPERTY IS LOT 45. I'VE INCLUDED A COMPASS IN THE SURVEY. YOU CAN SEE THE SHADOWS ARE CAST TOWARDS OUR PROPERTY. THE PHOTO IN THE UPPER LEFT SHOWS THE SHADOWS CAST BY HIS GARAGE ON OUR YARD AND THIS OCCURS YEAR AROUND. ISSUE THREE IS THE TRELLIS ADJACENT TO THE APPELLANT'S GARAGE WALL. COMPLAINED HE WILL NOT BE ABLE TO ACCESS IT FOR REPAIRS. ONLY THE TOP IS THREE INCHES FROM HIS GARAGE. THE POSTS ARE 22-INCHES FROM THE WALL. WE'D LIKE TO PUT HIS COMMENTS ABOUT MAINTENANCE AND RADIO PAIR IN CONTEXT. HERE ARE SEVERAL PHOTOS OF THE DERELICT STATE OF THE APPELLANT'S GARAGE AND THE BACK OF HIS PROPERTY WHICH OUR DAUGHTER'S ROOM LOOKS ON TO. THIS IS ONE REASON WE PLANTED A HELEN SO WE DON'T HAVE TO LOOK AT HIS PROPERTY. ON THE LOWER LEFT IS A PHOTO FROM MAY 2017 WITH. ACCORDING TO OUR NEIGHBORS AND GOOGLE EARTH, HIS PROPERTY HAS BEEN IN A STATE OF DISREPAIR FOR OVER A DECADE. LASTLY WE APPEALED FOR THE HEDGE STATING IT'S NOT NON-CONFORMING AND DISTURBS THE PEACE AND ENJOYMENT OF OUR NEIGHBORHOOD. ONCE THE PERMITS ARE GRANTED, IT WILL BE CONFORMING. AS FOR DISTURBING THE PEACE AND ENJOYMENT OF THE NEIGHBOR I WANT TO SHOW THE NEIGHBORS. PEOPLE WITH WHEELCHAIRS AND STROLLERS MUST WALK IN THE STREET TO PASS. THIS WAS A PHOTO OF THIS PROPERTY IN DECEMBER. THE WINDOWS ARE CONSTANTLY BEING REPLACE AND REMAIN

UNFINISHED TO DATE. THE GUTTER PICTURE HERE HAS OPINION HANGING LIKE THIS SINCE OCTOBER AND IS CURRENTLY STILL THERE.

ADDITIONALLY, THE UNIT ON THE SIDE OF HIS BUILDING FACING US ARE VACANT WHICH MAKES IT DIFFICULT TO ACCEPT HIS CLAIMS ABOUT THE SPACE ABOUT THE HEDGE. ADDITIONALLY THE FRONT DOOR HAS BEEN UNFINISHED FOR FOUR YEARS AND CARDBOARD AND PAPER ON THE WINDOWS. IT APPEAR ABANDONED. THIS IS THE MAIN REASON WE LIKE THE HEDGE AS A VISUAL BARRIER. AND WE PUT CEMENT REINFORCEMENT. WE INVESTED IN OUR HOME TO MAKE IT ATTRACTIVE AND WE HOPE THAT THE ZONING BOARD WILL SEE THE IMPROVEMENTS ARE NOT DETRIMENTAL TO THE NEIGHBORS AND ARE BENEFICIAL FOR THE NEIGHBORHOOD.

>> S. O'KEEFE: ANY QUESTIONS FOR THE APPLICANT? TERESA.

>> T. CLARKE: SO WHAT IS YOUR NAME?

>> JENNIE.

>> SO ON THE HEDGE, WHY DOES IT NEED TO BE 14 IS FEET HIGH? IT SEEMS EXCESSIVE.

>> IT'S CURRENTLY 10 FEET.

>> T. CLARKE: I WONDER WHY YOU NEED IT TO BE THAT HIGH.

>> IN THE PHOTO I POSTED HERE, IT'S CURRENTLY 10 FEET. SOMETIMES SOME OF THE BRANCHES WILL KIND OF EXTEND UP A LITTLE BIT. WE'RE FINE KEEPING IT CLOSER TO THE 10 FEET THAT IT CURRENTLY IS. BUT WE WANTED TO HAVE A LITTLE EXTRA ROOM IN CASE THIS GROWS UP OR DURING THE PANDEMIC, IT WAS HARD TO FIEND A PRUNER TO COME. IT GAVE US SOME LEEWAY.

>> T. CLARKE: THAT WAS MY MAIN CONCERN ABOUT THAT. I THINK THAT WAS MY ONLY QUESTION WAS THAT. DID SEEMS LIKE THE OTHER THINGS ARE SELF-EXPLANATORY. THANK YOU.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I APPRECIATE THAT QUESTION. I THINK THAT'S A WORTHWHILE SOLUTION. TO THE -- A RECOMMENDATION THAT YOU LOOK UP ASSEMBLY BILL 68 WHICH ADDRESSES ADUS. WHATEVER ACTION WE TAKE TONIGHT, THAT CAN BE LEGALIZED UNDER THE STATE ASSEMBLY BILL 68 AS I UNDERSTAND IT COULD BE LARGER THAN YOU HAVE THERE. FOR RESIDENTIAL PURPOSES.

>> S. O'KEEFE: DO YOU HAVE A QUESTION FOR THE APPLICANT?

>> C. KAHN: THAT WAS A BIT OF ADVICE, NO QUESTION.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I'M GOING TO ASK STAFF. SO NO QUESTIONS FOR THE APPLICANT.

>> S. O'KEEFE: OKAY. ANY OTHER QUESTIONS? I HAVE A QUESTION. MISS DURANT. HELP ME UNDERSTAND WHAT ALL THESE PICTURES AND INFORMATION ABOUT YOUR NEIGHBOR'S STATE OF THE REPAIR OF HIS HOUSE HAS TO DO WITH THE APPEAL WHICH ABOUT YOUR PROPERTY? I DON'T UNDERSTAND HOW IT'S RELEVANT. IF YOU COULD BRIEFLY ANSWER BECAUSE I'M CONFUSED.

>> WE WANT A VISUAL BARRIER, WE'RE TRYING TO EXPLAIN WHY WE PLANTED THE HEDGE IN THE FIRST PLACE BECAUSE HIS PROPERTY IS UNATTRACTIVE AND OUR BEDROOM WINDOWS LOOK OUT ON TO HIS

PROPERTY.

>> S. O'KEEFE: OKAY. YOU DON'T NEED A REASON -- YOU DON'T NEED A GOOD REASON TO DO SOMETHING. YOU'RE ENTITLED TO IT OR NOT UNDER ZONING CODE. OKAY SO WE'RE GOING TO OPEN IT UP TO MEMBERS OF THE PUBLIC WHO WOULD LIKE TO SPEAK. THERE IS -- STAFF HELP ME OUT. THERE IS ONE PERSON WITH THEIR HAND UP FOR A WHILE. I THINK IT'S THE APPELLANT. HE'S SPOKEN.

>> STAFF: YES CAN.

>> S. O'KEEFE: ANYWAY, I WANTED TO MAKE SURE I WASN'T MISSING SOMETHING. THERE IS JILL JIN IS HERE.

>> T. CLARKE: DOESN'T THE APPELLANT GET TO SPEAK AGAIN?

>> T. CLARKE: NO, WE DON'T DO THAT WITH APPEAL. WE DO ONE OR THE OTHER AND THEN THE PUBLIC. SO JILL JIN, I'M GOING TO ALLOW YOU TO TALK AND YOU'LL HAVE TWO MINUTES TO SPEAK.

>> CAN YOU HEAR ME? I AM A NEIGHBOR ON ORDWAY STREET AND WE'VE BEEN HERE TWO YEARS CLOSE TO THREE NOW. FIRST OF ALL, I WANT TO EXPRESS THAT WE 100 PERCENT ARE IN SUPPORT OF THE APPLICANT'S APPLICATION FOR ALL THOSE PERMITS. I THINK AFTER HEARING BOTH SIDES, I THINK IT IS TOTALLY REASONABLE AND IT'S JUST NECESSARY FOR HER TO CREATE A VISUAL BARRIER AGAINST THE UNDER MAINTENANCE OF HER NEXT DOOR NEIGHBOR. AND ALSO, AS A NEIGHBOR, I WALK THE DOG PAST THIS AREA ALL THE TIME. I'VE SEEN TENANTS OF HER NEIGHBOR HAVING LIKE RECREATION DRUG USE IN FRONT OF THE PARKING LOT AND ANOTHER DAY THERE WAS A POLICE CAR TAKING

SOMEONE AWAY IN HANDCUFFS. IT'S NOT VERY CHILD FRIENDLY ENVIRONMENT. SO I THINK IT'S TOTALLY REASONABLE TO TRY TO BUILD SOME BARRIER AGAINST ALL THAT CHAOS. AND THE PICTURES THEMSELVES SPEAK LOUDLY LIKE THE APPELLANT'S CONCERN ABOUT MAINTENANCE DOESN'T SEEM TO BE VERY VALID BECAUSE IT SEEMS LIKE AFTER ALL THESE YEARS LIVING HERE, HE DOESN'T MAKE ANY MAINTENANCE. FROM THE PICTURES THAT I SEE, IT WILL ACTUALLY TOTALLY IS AVAILABLE FOR MAINTAINING HIS GARAGE. YES, I JUST WANT TO EXPRESS MY SUPPORT TO ALL THE PERMITS JENNIE HAS APPLIED FOR.

>> S. O'KEEFE: THANK YOU VERY MUCH. OKAY. AND NOW I'M GOING TO RECOGNIZE ELIANA AND TAMAR. LET'S UNMUTE YOU. YOU HAVE -- CAN YOU SEE US?

>> WE CAN -- I CAN SEE YOU NOW.

>> S. O'KEEFE: SO THERE SHOULD BE, IF YOU LOOK -- I'LL TELL YOU WHEN YOUR TIME IS UP BUT IT SAYS COB STAFF ALLISON, THAT'S YOUR TIMER.

>> I DON'T SEE IT, BUT YOU CAN TELL US.

>> S. O'KEEFE: YOU HAVE TWO MINUTES.

>> GOOD EVENING WE'RE AT 1334 AND WE'D LIKE TO SHOW OUR SUPPORT FOR OUR NEIGHBORS AT 1336 ORDWAY. NOTHING TO IMPROVE THEIR HOME HAS DISTURBED THE PEACE OF OUR NEIGHBORHOOD RATHER WE BELIEVE IT HAS BEEN BENEFICIAL. THEY'VE BEEN GOOD AND REASONABLE NEIGHBORS AND WE WORKED WITH THEM TO TRIM THE TREES BETWEEN OUR TWO PROPERTIES AND EVERYTHING THEY'VE DONE HAS BEAUTIFIED THEIR

PROPERTY. IT WAS QUITE DESOLATE BEFORE WHEN THEY MOVED IN. AND WE JUST ENJOY BEING THEIR NEIGHBORS AND WE SUPPORT EVERYTHING THAT THEY'RE DOING. THEY'RE CONSIDERATE AND POLITE AND THOUGHTFUL AND I THINK THAT IS ALL WE'D LIKE TO SAY. WE SUPPORT EVERYTHING THAT THEY'RE TRYING TO DO WITH THIS.

>> S. O'KEEFE: OKAY. THANK YOU VERY MUCH. THANKS FOR COMING.

>> T. CLARKE: WHAT ADDRESS ARE YOU AT AGAIN? ELIANA AND TAMAR, WHAT ADDRESS ARE YOU AT? I THINK WE LOST THEM.

>> WE'RE BACK. WE'RE AT 1344 SO WE'RE RIGHT ON OTHER SIDE OF JENNIE. AND KEKI.

>> S. O'KEEFE: ALL RIGHT. ANYONE ELSE FROM THE PUBLIC WISH TO SPEAK? SEEING NONE, WE'LL BRING IT BACK TO THE BOARD FOR COMMENTS. CLOSING THE PUBLIC HEARING. I DON'T THINK ANYTHING MAGIC HAPPENS WHEN I SAY THAT BUT THE PUBLIC HEARING IS CLOSED. JOHN.

>> J. SELAWSKY: THANK YOU. I THOUGHT THAT WAS A MAGICAL MOMENT. COULD I ASK STAFF A QUESTION?

>> S. O'KEEFE: YES. SURE, ANYTHING GOES NOW.

>> J. SELAWSKY: THERE IS SOME CONFUSION WITH THE APPELLANT AND THE APPLICANT ABOUT THE HEDGE. SO STAFF, IS THE HEDGE, THE LINE OF TREES LEGALLY CONSIDERED A FENCE?

>> STAFF: ZONING ORDINANCE CHAPTER 23F DEFINES A HEDGE THE SAME AS A FENCE. SO YEAH, WE CONSIDER IT IN OUR REVIEW. WE

CONSIDER IT LIKE A FENCE. BUT A FENCE OVER 6 FEET WITHIN SETBACK IS ALLOWED WITH AN AUP. THAT'S THE APPLICANT IS APPLYING FOR.

>> J. SELAWSKY: RIGHT. BUT IT IS LEGAL HE.

>> STAFF: WE TREAT IT LIKE A FENCE.

>> J. SELAWSKY: THANK YOU.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I HAD A COUPLE OF QUESTIONS FOR STAFF AS WELL. WITH A FENCE, PLEASE REMIND ME, IS THERE A MAXIMUM LIMIT -- I MEAN YOU CAN DO OVER 6 FEET FOR A FENCE WITH AN AUP, BUT IS THERE AN ABSOLUTE HEIGHT LIMIT FOR A FENCE IN WHICH YOU HAVE TO GET A VARIANCE?

>> S. O'KEEFE: STEVE, GO AHEAD.

>> S. BUCKLEY: I'M SHARING MY SCREEN WHICH SHOWS THE FENCE AND HEDGE DESIGN. I'M NOT SURE IF EVERYONE CAN SEE THAT.

>> S. O'KEEFE: YOU'RE NOT -- YES YOU'RE SHARING IT.

>> S. BUCKLEY: I WANTED TO CLARIFY ALSO THERE IS THE TRELLIS WHICH WE'VE DISCUSSED ALONG THE SIDE OF THE GARAGE WHICH IS ON POSTS AND A TRELLIS ABOVE. THIS IS THE LATTICE. MAYBE THAT'S A BETTER TERM. THE LATTICE ON TOP OF THE FENCE IS WHAT WAS REQUESTED TO GO ABOVE 6 FEET. SO THERE IS THE EXISTING BOARD FENCE WHICH IS 6 FEET WHICH AS NILU MENTIONED IS SURVEYED AS BEING ACROSS THE PROPERTY LINE. THE LATTICE WAS GOING TO BE ABOVE AND THAT HAS NOT BEEN INSTALLED AND HAS BEEN DENIED AS PART OF THE PERMIT. THE HEDGE IS THE TALL TREES THAT ARE SHOWN

BESIDE THE FENCE. SO A FENCE, A WALL, A HEDGE IF IT'S DENSE ENOUGH, YOU CAN'T PASS THROUGH IT, THEN IT'S CONSIDERED A FENCE. IT'S CONSIDERED THE SAME AS A FENCE. THE HEIGHT OF THAT IS LIMITED REALLY BY OUR ACCESSORY STRUCTURE REGULATIONS WHICH ARE PRETTY LIBERAL. YOU CAN GO UP TO SAY 12 OR 24 OR 35 FEET WITH THOSE DEPENDING ON WHAT KIND OF PERMIT. THIS PERMIT IS TO NOT EXCEED 6 FEET. THERE IS -- CERTAINLY AT 12 OR 14 FEET, THAT IS NORMAL.

>> I. TREGUB: THANK YOU, THAT VISUAL IS REALLY HELPFUL, BUT I'M STILL A LITTLE BIT UNCLEAR LOOKING AT THE HEIGHT DIAGRAMS HERE. IS THIS SUPPOSED TO BE FOR ILLUSTRATIVE PURPOSES? I SEE, SO THE HEDGE WOULD BE AT THE BOTTOM, NOT THE TOP OF THE PICTURE. IS THAT THE SIX PLUS TWO PLUS SIX, THE 14 FEET?

>> S. BUCKLEY: THAT'S CORRECT. THEY'RE PROPOSING A MAXIMUM OF 14 FEET FOR HOWEVER TALL MIGHT GROW AND THEN IT WOULD GET TRIMMED BACK AND GROW SOME MORE.

>> I. TREGUB: MY LAST QUESTION THEN IS THEY'RE PROPOSING A MAXIMUM. SO EVEN WITH AN AUP, IS IT WITHIN OUR POWER TO PUT AN ABSOLUTE HEIGHT LIMIT AND IF SO, HOW COMMON IS IT TO GET AN APPLICATION FOR A 14-FOOT HEDGE OR FENCE OR OTHER KIND OF ACCESSORY STRUCTURE OF THAT NATURE?

>> S. BUCKLEY: I'VE SEEN A FEW. AS TALL AS 12 OR 14 FEET. THE CIRCUMSTANCES ARE OFTEN ON HILLSIDES WHERE IS THERE IS A GRADE DIFFERENTIAL OR A PRIVACY CONCERN. FENCES AND WALLS WOULD

BE LESS LIKELY TO BE APPROVED WHERE AS HEDGES TEND TO BE MORE ACCEPTABLE. THEY'RE MORE OF A GREEN SCREEN. I CAN THINK OF TWO THAT WE'RE CURRENTLY CONSIDERING AS A PRIVACY MEASURE.

>> I. TREGUB: OKAY. THANK YOU.

>> S. O'KEEFE: TERESA.

>> T. CLARKE: I THINK 14 FEET IS A LITTLE HIGH FOR MY COMFORT. I MEAN I THINK A HEDGE IS DEFINITELY BETTER THAN A FENCE. I AGREE THAT THE FENCE SHOULD ONLY BE SIX FEET. BUT 14 FEET SEEMS A LITTLE BIT HIGH. I'D BE MORE AMENABLE TO 10 OR 12 FEET. I WANTED TO HEAR FROM OTHER PEOPLE. IT'S NOT SHADING THE NEIGHBOR. AND THE OTHER NEIGHBOR IS FINE APPARENTLY WITH THAT BECAUSE THEY SPOKE. THAT NEIGHBOR COULD MOVE. BUT I THINK A HEDGE IS JUST NOT AS IMPOSING THAT MUCH. IT'S GREEN AND LIVE. I DON'T WANT A FENCE THERE OF 12 FEET, BUT I THINK A HEDGE I CAN LIVE WITH. I THINK 14 IS A LITTLE HIGH. BECAUSE IT'S SO SOLID. THOSE THINGS GROW SOLID. THEY CREATE A HEDGE. AND THEY'RE VERY DENSE. SO IT IS ALMOST LIKE A GREEN WALL WHICH IS NOT THAT BAD. SO I WOULD LIKE TO MAKE A MOTION THAT WE PROVE THE PROJECT. I THINK THE PARKING SPOT IS ACCEPTABLE TO ME. EVEN IF THE RESIDENT GETS BETTER OR WHATEVER, I THINK THE PARKING SPOT WE MAY ALREADY WANT TO APPROVE THAT. ANYWAY, WE'VE DONE THAT BEFORE WHERE THE SITUATION WHERE THE DRIVEWAY HAS BEEN SO NARROW IS TRYING TO GET IT IN THE SIDE YARD DOESN'T MAKE ANY SENSE. IF THEY DON'T NEED IT IN THE FUTURE, THEY WON'T PARK IN IT. I DON'T THINK THE

SAFETY ISSUE IS A PROBLEM BECAUSE EVERYBODY BACKS OUT OF THEIR DRIVEWAYS. SO AND I THINK THE ACCESSORY BUILDING IS FINE. I DON'T SEE ANY ISSUES WITH THAT. I DO BELIEVE THAT THE GARAGE CAN BE MAINTAINED WITH THAT TRELIS THERE. AS A GOOD NEIGHBOR, THEY DON'T HAVE TO ALLOW HIM TO MAINTAIN IT, IT'S NOT -- BUT I THINK IT DOES ALLOW FOR MAINTENANCE OF THE PAINTING. IT LOOKS LIKE THEY DID PAINT IT IN THE 2017 PICTURE. I WOULD LIKE TO HEAR ANYBODY ELSE HE -- WHAT DID I SAY 10 OR 12 FEET?

>> S. O'KEEFE: DO YOU WANT 10 OR 12.

>> T. CLARKE: I THINK 12 IS OKAY. SO I WOULD LIKE TO MAKE A MOTION TO APPROVE EVERYTHING EXCEPT INSTEAD OF 14 FEET, GO FOR 12 FEET ON THAT.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I WOULD LIKE TO SECOND HER MOTION. I WOULD LIKE TO STATE IT AS A 10 TO 12 FEET EDGE THE UNDERSTANDING THAT THE APPLICANT WOULD ATTEMPT TO KEEP IT TO 10 FEET AS THEY STATED WOULD BE ADEQUATE FOR THEIR NEEDS FOR SCREENING PURPOSES, BUT IT MIGHT GROW A FOOT OR TWO BEFORE THEY GET AROUND TO CUTTING IT AGAIN. SO 10 TO 12.

>> S. O'KEEFE: YOU CAN PUT THAT IN THE MOTION IF YOU WANT, BUT IT'S ONLY ENFORCEABLE -- YOU HAVE TO HAVE A MAXIMUM.

>> C. KAHN: I SECOND THE 12 FEET. SHOSHANA, YOU'RE RIGHT.

>> S. O'KEEFE: SO THERE IS A MOTION AND A SECOND FOR 12-FOOT MAXIMUM ON THE FENCE HEDGE. DOHEE.

>> I WANTED TO SUPPORT THE MOTION. I APPRECIATED SHOSHANA'S QUESTION FOCUSING ON THE AREA AT HAND AND THE ISSUES AT HAND AND SEEING THE PARKING FOR -- TO ACCOMMODATE DISABILITIES AND THE AUP IS NOT BEING RELATIVELY AS BIG AS OTHER AUPS COULD BE. ALSO CONSIDERING THAT THE APPLICANT WAS WILLING TO TRIM THE HEDGE TO AROUND 10 TO 12 FEET MAXIMUM. I WOULD LIKE TO SPORT MOTION.

>> S. O'KEEFE: PATRICK.

>> P. SHEAHAN: I WOULD LIKE TO MAKE A FRIENDLY AMENDMENT TO LIMIT THE HEDGE GROWTH TO 10 FEET. MY REASONING IS FIRST OF ALL IT WOULD BE GREAT TO SEE SOME LEVEL OF [INDISCERNIBLE] BETWEEN THE NEIGHBORS. I THINK TO OBSERVE A 10-FOOT LIMIT TO THE HEDGE MAY SIMPLY HELP AND THE APPLICANT HAS INDICATED THAT THEY'RE SATISFIED WITH A 10-FOOT HEIGHT FOR THEIR PURPOSES. SO I WOULD LIKE TO ADD THAT AS A FRIENDLY AMENDMENT.

>> S. O'KEEFE: TERESA, WHAT DO YOU THINK ABOUT THAT?

>> T. CLARKE: I'M OKAY WITH THAT. I THINK TESTIMONY DOES GO TOWARD THE NEIGHBOR AND GIVES THE NEIGHBOR -- THAT'S A COMPROMISE. I THINK THAT THAT'S ACCEPTABLE.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I'D LIKE TO SPLIT THE BABY AND SAY 11 FEET. YOU CAN'T CUT IT EVERY DAY. TO ACHIEVE 10 FEET, I THINK ALLOWING IT TO GROW TO 11 FEET AND CUT IT BACK TO 10 FEET. IS THAT OKAY, PATRICK?

>> P. SHEAHAN: I THINK IT RELIES ON A GOOD FAITH EFFORT AND

GOOD FAITH UNDERSTANDING. AND YES, PLANT GROW AND MAYBE YOU TRIM IT ONCE I YEAR, THAT'S A REASONABLE EXPECTATION.

>> S. O'KEEFE: SO WE'LL COMPROMISE AT 11. GREAT. JOHN.

>> T. CLARKE: I LIKE THE ROUND NUMBER OF 12.

>> S. O'KEEFE: 11 IS PRIME.

>> S. O'KEEFE: 11 FEET IT IS. I RECOGNIZE JOHN.

>> J. SELAWSKY: HOW ABOUT 10.95. I DIDN'T KNOW ANY TENSION OR ANIMOSITY -- NEVER MINE. THANK YOU FOR YOUR COMMENTS EARLIER SHOSHANA ABOUT RELEVANCY OF TESTIMONY. I THINK WE HAVE TO DISMISS ALL THE APPEAL POINTS TO BE LEGAL ON THIS. THERE WERE FOUR APPEAL POINT.

>> S. O'KEEFE: I THINK WE CAN DENT APPEAL.

>> J. SELAWSKY: NOBODY SAID THAT. THEY ARE A MOVING FORWARD WITHOUT DENIAL OF THE APPEAL. THEY'RE MOVING THE PROJECT WITHOUT DENYING THE APPEAL. BUT THERE ARE TECHNICALLY THERE ARE FOUR APPEAL POINT.

>> S. O'KEEFE: WE WILL HE RESTATE THE MOTION WITH THE CORRECT LANGUAGE.

>> J. SELAWSKY: WONDERFUL. SO WE'RE AT 11 FEET?

>> S. O'KEEFE: YES.

>> S. O'KEEFE: I WANT TO MAKE A COMMENT, A FOLLOW-UP TO MY QUESTION BEFORE. I JUST -- FOR ALL MEMBERS OF THE PUBLIC, THE APPELLANT. APPLICANT AND ANYONE ELSE LISTENING, I JUST WANT TO MAKE IT CLEAR THAT AT ZAB WHEN WE MAKE THE DECISIONS WE MAKE

THEM ON WHAT PEOPLE ARE ENTITLED TO OR NOT UNDER THE LAW. WE OBVIOUSLY HAVE SOME DISCRETION, BUT WE'RE DECIDING IS THE APPLICANT ENTITLED TO THIS? YES OR NO. IT'S OBJECTIVE. THERE IS NO "DO YOU HAVE A GOOD REASON" ELEMENT TO IT. THERE IS NO, ARE YOU A GOOD PERSON? OR GOOD NEIGHBOR? THOSE ARE NOT PARTS OF OUR DECISION-MAKING PROCESS. MORE IMPORTANTLY IS WHEN YOU ARE APPEALING SOMETHING THAT'S ADJACENT TO YOUR PROPERTY, YOU HAVE A LEGAL RIGHT TO DO THAT. THERE IS NO BOX ON THE APPEAL FORM THAT SAYS "DO YOU HAVE A NICE HOUSE," "DO YOU MAINTAIN YOUR STUFF?" A PERSON THAT HAS PROPERTY IN DISARRAY HAS A LEGAL RIGHT TO MAKE AN APPEAL AS SOMEONE WHOSE PROPERTY IS WELL KEPT. I THINK THAT -- I DON'T THINK THE APPEAL HAS MERIT AND I THINK STAFF HAS DONE A GOOD JOB GOING THROUGH THE POINTS POINT BY POINT. I WANT TO MAKE IT CLEAR THAT'S WHY I'M SUPPORTING IT IS ON A LEGAL BASIS AND HAS NOTHING TO DO HOW THE PEOPLE MAINTAIN THEIR PROPERTY. THAT IS IRRELEVANT TO THE PROCESS. STEVE, I SAW YOU DO THIS.

>> S. BUCKLEY: THE FINDINGS ARE IS THERE A DETRIMENT REGARDING SUNLIGHT AIR VIEWS AND COMMUNITY CHARACTER. I THINK THOSE ARE FACTORS WHEN WE EVALUATE THESE AND LOOK AT THE HEIGHTS AND LOCATIONS OF THE PHYSICAL STRUCTURE AND THE PARKING.

>> S. O'KEEFE: THAT'S OF THE PROJECT BEING PROPOSED, NOT THE NEIGHBORING PROPERTIES.

>> CORRECT.

>> S. O'KEEFE: I WANTED TO SAY THAT. THANK YOU FOR LISTENING AND INDULGING ME. IGOR HAS HIS HAND UP.

>> I. TREGUB: THANK YOU SO MUCH SHOSHANA SO FOR ELOQUENTLY STATING THE WAY THE ZAB OPERATES. I COULD NOT AGREE MORE. I WILL ADD BECAUSE THIS IS A PRETTY UNIQUE SITUATION IN THE SENSE THAT I DON'T THINK THAT ALL MY YEARS ON ZAB I'VE SEEN ONE WHERE A REASONABLE ACCOMMODATION IS GRANTED. I WANTED TO BE CLEAR. BECAUSE THE PROCESS OF REQUESTING A REASONABLE ACCOMMODATION CAN PUT AN APPLICANT IN A REALLY CHALLENGING POSITION. THEY HAVE TO PROVIDE A LOT OF RECORDS THAT ARE PRIVATE. AND I JUST WANT TO GO ON RECORD AND SAY THAT I BELIEVE STAFF 100% WHETHER THEY SAID THEY WENT THROUGH A PROCESS TO ENSURE THAT A BASIS EXISTS FOR A REASONABLE ACCOMMODATION TO BE GRANTED. SO THANK YOU.

>> S. O'KEEFE: ANY OTHER COMMENTS BEFORE WE VOTE?

>> SO JUST TO SAY THAT WE'RE -- IN MY MOTION I MEANT TO SAY WE WERE AGREEING WITH STAFF'S RECOMMENDATION TO DENY THE APPEAL, EXCEPT FOR ONE THAT THE HEDGE BE NO TALLER THAN 11 FEET.

>> S. O'KEEFE: OKAY. THE WORDING OF OUR RECOMMENDATION IS APPROVE ADU AND DISMISS THE APPEAL. THEN WITH THE MODIFICATION OF 11-FOOT MAXIMUM ON THE HEDGE. ARE WE READY TO TAKE A ROLL CALL VOTE? LOOKS LIKE IT. LET'S DO IT.

>> S. BUCKLEY: ON THE MATTER OF OF 1346 ORDWAY STREET, THE APPEAL RELATED TO ZONING PERMIT 2018-0174, MOTION BY BOARD MEMBER CLARKE AND SECONDED BY BOARD MEMBER KAHN TO DENY THE

APPEAL AND APPROVE THE PROJECT WITH THE MODIFICATION AT 11 FEET FOR THE HEDGE. BOARD MEMBER TREGUB.

>> AYE.

>> CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> [INDISCERNIBLE]

>> BOARD MEMBER SELAWSKY.

>> YES.

>> BOARD MEMBER OLSON IS ABSENT. BOARD MEMBER KAHN.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> BOARD MEMBER PINKSTON IS ABSENT. CHAIR O'KEEFE.

>> S. O'KEEFE: YES. SO THE MOTION PASSES. MOTION CARRIES.

SO ORDWAY STREET, YOU HAVE YOUR PERMIT AND IT IS APPEALABLE TO THE CITY COUNCIL. THANK YOU EVERYONE FOR COMING. SO MEETING IS ALMOST OVER, BUT NOT QUITE. DON'T GO ANYWHERE, FRIENDS. WE HAVE SUBCOMMITTEE REPORTS. YOU DIDN'T MEET, RIGHT, IGOR?

>> I. TREGUB: I WAS DEMOTED AND PROMOTED AGAIN. WE HAVE NOT MET.

>> S. O'KEEFE: JULY WHAT, IGOR?

>> I. TREGUB: OH, MY GOODNESS.

>> S. O'KEEFE: IT DOESN'T MATTER. AND DRC, YOU MET, RIGHT?

>> WE HAVEN'T MET SINCE OUR LAST ZAB MEETING. WE'LL MEET
NEXT THURSDAY.

>> S. O'KEEFE: OKAY, THEN I GUESS WE CAN ADJOURN.

>> I. TREGUB: JULY 22ND.

>> S. O'KEEFE: GREAT. COOL. OKAY. WELL, GREAT TO SEE
EVERYBODY.

>> T. CLARKE: NICE TO SEE EVERYBODY.

>> I. TREGUB: DO WE NEED A MOTION TO ADJOURN?

>> S. O'KEEFE: WE'VE NEVER NEEDED IT.

>> MOTION TO ADJOURN.

>> I. TREGUB: SECOND.


>> SHOSHANA, NICE JOB. BYE, EVERYBODY, SEE YOU IN TWO
WEEKS.

>> GOOD-BYE.

>> BYE.

>> GOOD-BYE.

>> I'M HERE TO LET PEOPLE CASUALLY LEAVE AND THEN I HIT
END.



Administrative Record
ZAB Appeal:
1346 Ordway Street
Administrative
Use Permit #ZP2018-0174

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: ADMINISTRATIVE USE PERMIT #ZP2018-0174, 1346 ORDWAY STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY OCTOBER 13, 2020 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to uphold the Zoning Officer's decision to approve Administrative Use Permit #2018-0174, to legalize an existing 128 sq. ft. accessory building in the southwest corner of the subject lot; legalize an existing 5 ft. x 21 ft., 9-ft. tall trellis located within the south setback; legalize an existing 11-ft. tall hedge in the north and south setbacks; and establish a front yard off-street parking space to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, under BMC's Reasonable Accommodation Section.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **October 1, 2020**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Nilu Karimzadegan, Project Planner at (510) 981-7419. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed: September 29, 2020

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision 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 Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing*

ATTACHMENT 8

or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage prior to the public hearing.



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR

October 13, 2020

(Continued from September 22, 2020)

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Support Community Refrigerators

RECOMMENDATION

1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.

RATIONALE FOR RECOMMENDATION

The City of Berkeley spent \$6.5 million of the general fund to combat homelessness in 2019. The COVID-19 pandemic, the raging fires and smoke in the state of California, the unhoused community is being hit even harder. The economic challenges of businesses closing, financial strains and health concerns increasing leads to increased disparities. It is necessary to support our communities who cannot buy basic necessities for survival such as food. A district fridge would bring together our communities to aid the homeless. Moreover, this is a part of a larger goal to bridge financial inequities in the City of Berkeley.

BACKGROUND

The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest.

Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day.

This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in “food deserts” (neighborhoods that lack access to fresh, affordable food) or “food swamps” (neighborhoods where there is an overabundance of fast food).

In the City of Oakland, the community group “Town Fridge” has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items.

Residents can also apply to be a “fridge host”, hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement.

Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community.

FINANCIAL IMPLICATIONS

The estimated price of a low-cost fridge is approximately \$800. Purchasing one for each district of Berkeley amounts to approximately \$8,000 allocated from the budget.

This program can be at no cost to the City as residents replace their refrigerators with newer technology refrigerators, and can donate their old refrigerators to be used as Community Refrigerators.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

Sanjita Pamidimukkala
Eshal Sandhu
District 2 Intern

ATTACHMENTS:

1. Resolution
2. Four Pictures from Deputy City Manager Paul Buddenhagen of Community Fridge at 59th and Marshall

REFERENCES:

1. Oakland Town Fridge <https://linktr.ee/townfridge>



TOWN FRIDGE

Current Locations:

NORTH OAKLAND
+59th Street,
in between Marshall
and Fremont

WEST OAKLAND
+Linden Street, Past 30th
+16th Street and West
+14th Street and Peralta

DOWNTOWN
+Broadway and 15th
Street, in the plaza

WE KEEP US FED

OPEN 24/7

59th and Marshall
30th and Linden
16th and West
44th and Peralta
Pro Arts (OGP)

FREE FOOD

**THIS ISN'T CHARITY
THIS IS MUTUAL AID**

COMIDA GRATIS

TAKE WHAT YOU NEED - LEAVE WHAT YOU DON'T

**TOWN FRIDGE
DONATION GUIDELINES**

OPEN 24/7

We Accept:
Produce
Pantry Staples
Bottled Water
Prepared Meals
NO RAW MEAT

WE KEEP US FED

THIS ISN'T CHARITY THIS IS MUTUAL AID

Label and date all perishables on the container.
Put non-perishables on the shelving outside the fridge.
If a fridge is full, do not leave your donation! Check another fridge location, see if there is a nearby encampment or people who would want the food. If they say no, or you cannot find anyone, please take it home and do not leave it outside the fridge.
Spread the love! If you have a big donation of the same items, spread it across several fridges.
Tag @townfridge on Instagram when you make a donation, so we can keep track of donations and give live updates.
Take what you need, leave what you can.





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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA,
PROVIDING OUR HOUSELESSNESS COMMUNITY WITH DISTRICT REFRIGERATORS

WHEREAS, The City of Berkeley spent close to \$20 million on providing homeless services. About \$6.5 million came from its general fund, about \$9.5 million came from regional, state, and federal funds and \$3.9 million were one-time funds from the state's Homeless Emergency Aid Program; and

WHEREAS, COVID-19 has strained access to money and resources such as food for our homeless communities. The fires and dangerous air quality have also created a need for cooled water. Health disparities increase in times of distress and hit our at-risk communities the hardest; and

WHEREAS, Implementing an accessible refrigerator program, run by each district and its neighborhoods is a step in the right direction. Several cities across the country such as Los Angeles, Oakland, and New York have already created community fridges. Businesses, organizations, and individuals work together to keep the fridges stocked with prepackaged meals, leftovers, fresh fruits and vegetables, water, and other drinks. Anyone who feels the need to can take anything they need, at any time of day; and

WHEREAS, This is essential now. Food insecurity is an issue that ravages homeless communities. Yet, in some cities, we dump more than one million tons of food into landfills . Many community fridges are located in areas with high levels of food insecurity, either in "food deserts" (neighborhoods that lack access to fresh, affordable food) or "food swamps" (neighborhoods where there is an overabundance of fast food); and

WHEREAS, In the City of Oakland, the community group "Town Fridge" has set up refrigerators in publicly accessible locations throughout Oakland. The purpose is to create a mutual aid to address food insecurities in the community. These community refrigerators have donation guidelines posted at their locations, where they accept produce, pantry staples, bottled water, prepared meals but forbid raw meat. They also require: label and dates of all perishables on food containers; placing non-perishables on the shelving outside the fridge; If a fridge is full, they ask donors to not leave the food outside the fridge, but donate the food to a nearby encampment. Many locations have outside shelving for placement of non perishable items. Residents can also apply to be a "fridge host", hosting a community refrigerator on their block. Since this program has been established, it is a model for other cities to implement; and

WHEREAS, Community fridges will allow 24/7 access to fresh foods to the public, while empowering people of our community; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California supports not only the implementation of district fridges to reduce the amount of food insecurity in the homeless community, but also the reduction of financial inequities in our city. Specifically, the Council of the City of Berkeley calls for:

1. Create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate \$8,000 of the budget for the purchasing of the refrigerators.



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR

October 13, 2020

(Continued from September 22, 2020)

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila (Author) and Councilmember Ben Bartlett (Co-Sponsor)

Subject: Request the United States House of Representatives and/or Senate to introduce
"The Breathe Act"

RECOMMENDATION

1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act".
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

BACKGROUND

The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

1. Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms

The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

2. Investing in New Approaches to Community Safety Utilizing Funding Incentives

The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;
- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
- Incentivize State, tribal, and local governments to make specified changes that shrink their criminal-legal systems and, in return, provide federal funding to make non-punitive, non-carceral, participatory investments in communities.
- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
 - Banning pretextual stops and “consent” searches;
 - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
 - Abolishing State gang databases;
 - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
 - Decriminalizing and retroactively expunging State drug convictions;
 - Categorically eliminating misdemeanor and “pay only” probation;
 - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
 - Repealing all existing State juvenile offenses; and
 - Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are

selected through a participatory process. Selected interventions may include, but are not limited to:

- Transformative justice and healing justice programs;
- Violence interruption and intervention, including in domestic violence situations;
- Abuse interruption, intervention, and prevention;
- Park redevelopment, streetlights, and other infrastructure;
- Neighborhood mediation programs;
- Supportive housing;
- New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
- Safe passage to schools programs;
- Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
- Employment opportunities that benefit formerly incarcerated individuals.

3. Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People

The legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:
 - Altering their school funding formulas so that there is funding equity between schools;
 - Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
 - Removing police, School Resource Officers (SROs), ICE, probation, armed security, metal detectors, and other surveillance equipment and practices from schools;
 - Creating a clear, time-bound plan for ensuring that all communities have public access to safe, clean water for housing, drinking, and food production;
 - Creating a clear, time-bound plan for ensuring that all communities have access to breathable air within EPA safety limits; and
 - Creating a clear, time-bound plan for meeting 100% of the State power demand using clean, renewable, and zero-emission energy sources.
- Provides resources for programs and investments that include, but are not limited to:
 - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
 - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
 - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;
 - Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;

- Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
 - Providing free public transportation to students; and
 - Modernizing, renovating, or repairing facilities used by public schools.
 - Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
 - Funding climate resilience in communities so that they can prepare for climate change-fueled disasters (such as hurricanes, floods, and wildfires) that are exacerbated by human fossil fuel consumption; and
 - Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
 - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
 - Expanding Medicaid as offered under the Affordable Care Act without work requirements or any burdensome administrative requirements during enrollment;
 - Creating alternatives to terminating parental rights, including guardianship arrangements, and procedures for reinstating parental rights;
 - Eliminating State laws that bar formerly incarcerated people from serving as guardians to their own children or others in their community; and
 - Ensuring all communities have convenient access to sources of healthy food.
 - Provide resources for programs and investments that include, but are not limited to:
 - Food cooperatives and urban gardens;
 - Paid parental and sick leave;
 - Comprehensive, high-quality child and elder care; and
 - The creation of comprehensive health centers that offer culturally competent services for all people, including services related to reproductive health.
 - Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
 - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
 - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
 - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.
 - Provide resources for programs and investments that include, but are not limited to:

- Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
- Pilot programs for universal basic income;
- “Baby bonds” programs, including a preference for communities that were specifically targeted by redlining
- Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
 - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
 - Authorizing State funds to expand the affordable housing supply; and
 - Change local zoning laws so as to allow multifamily unit construction and ban exclusionary zoning laws.
 - Provide resources for programs and investments that include, but are not limited to:
 - Modernizing and expanding the stock of affordable housing;
 - Providing quality assisted housing;
 - Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
 - Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
 - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
 - A universal child allowance;
 - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
 - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
 - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
 - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
 - Federal programs to better support successful reentry.

4. Holding Officials Accountable & Enhancing Self-Determination of Black Communities

The legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police

violence; border violence; and the systemic violation of the U.S. Government's treaty obligations to Tribal nations.

- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
 - Enfranchising all formerly and presently incarcerated people in federal elections;
 - Creating a public financing program for campaigns that are powered by small dollar contributions;
 - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
 - Enfranchise all formerly and presently incarcerated people for State and local elections; and
 - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
 - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
 - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

The legislation has yet to be introduced by a current member of the United States Congress or Senate.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSONS

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, REQUESTING THE UNITED STATES HOUSE OF REPRESENTATIVES AND/OR SENATE TO INTRODUCE THE "BREATHE ACT"

WHEREAS, The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

WHEREAS, The BREATHE Act would divest Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms. The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the "three strikes" law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

WHEREAS, The BREATHE Act would invest in New Approaches to Community Safety Utilizing Funding Incentives. The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;

- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
- Incentivize State, tribal, and local governments to make specified changes that shrink their criminal-legal systems and, in return, provide federal funding to make non-punitive, non-carceral, participatory investments in communities.
- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
 - Banning pretextual stops and “consent” searches;
 - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
 - Abolishing State gang databases;
 - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
 - Decriminalizing and retroactively expunging State drug convictions;
 - Categorically eliminating misdemeanor and “pay only” probation;
 - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
 - Repealing all existing State juvenile offenses; and
 - Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are selected through a participatory process. Selected interventions may include, but are not limited to:
 - Transformative justice and healing justice programs;
 - Violence interruption and intervention, including in domestic violence situations;
 - Abuse interruption, intervention, and prevention;
 - Park redevelopment, streetlights, and other infrastructure;
 - Neighborhood mediation programs;
 - Supportive housing;
 - New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
 - Safe passage to schools programs;
 - Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
 - Employment opportunities that benefit formerly incarcerated individuals.

WHEREAS, The BREATHE Act allocates new money to build Healthy, Sustainable & Equitable Communities for All People. The proposed legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:

- Altering their school funding formulas so that there is funding equity between schools;
- Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
- Removing police, School Resource Officers (SROs), ICE, probation, armed security, metal detectors, and other surveillance equipment and practices from schools;
- Creating a clear, time-bound plan for ensuring that all communities have public access to safe, clean water for housing, drinking, and food production;
- Creating a clear, time-bound plan for ensuring that all communities have access to breathable air within EPA safety limits; and
- Creating a clear, time-bound plan for meeting 100% of the State power demand using clean, renewable, and zero-emission energy sources.
- Provides resources for programs and investments that include, but are not limited to:
 - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
 - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
 - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;
 - Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;
 - Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
 - Providing free public transportation to students; and
 - Modernizing, renovating, or repairing facilities used by public schools.
 - Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
 - Funding climate resilience in communities so that they can prepare for climate change-fueled disasters (such as hurricanes, floods, and wildfires) that are exacerbated by human fossil fuel consumption; and
 - Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
 - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
 - Expanding Medicaid as offered under the Affordable Care Act without work requirements or any burdensome administrative requirements during enrollment;
 - Creating alternatives to terminating parental rights, including guardianship arrangements, and procedures for reinstating parental rights;

- Eliminating State laws that bar formerly incarcerated people from serving as guardians to their own children or others in their community; and
 - Ensuring all communities have convenient access to sources of healthy food.
- Provide resources for programs and investments that include, but are not limited to:
 - Food cooperatives and urban gardens;
 - Paid parental and sick leave;
 - Comprehensive, high-quality child and elder care; and
 - The creation of comprehensive health centers that offer culturally competent services for all people, including services related to reproductive health.
- Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
 - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
 - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
 - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.
- Provide resources for programs and investments that include, but are not limited to:
 - Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
 - Pilot programs for universal basic income;
 - “Baby bonds” programs, including a preference for communities that were specifically targeted by redlining
 - Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
 - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
 - Authorizing State funds to expand the affordable housing supply; and
 - Change local zoning laws so as to allow multifamily unit construction and ban exclusionary zoning laws.
 - Provide resources for programs and investments that include, but are not limited to:
 - Modernizing and expanding the stock of affordable housing;
 - Providing quality assisted housing;

- Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
- Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
 - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
 - A universal child allowance;
 - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
 - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
 - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
 - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
 - Federal programs to better support successful reentry.

WHEREAS, The BREATHE Act would hold Officials accountable & enhance Self-Determination of Black Communities. The proposed legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police violence; border violence; and the systemic violation of the U.S. Government’s treaty obligations to Tribal nations.
- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
 - Enfranchising all formerly and presently incarcerated people in federal elections;
 - Creating a public financing program for campaigns that are powered by small dollar contributions;
 - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
 - Enfranchise all formerly and presently incarcerated people for State and local elections; and
 - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
 - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
 - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California requests the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act".

BE IT FURTHER RESOLVED, copies of this resolution are sent to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.



Commission on Disability

ACTION CALENDAR

October 13, 2020

(Continued from September 22, 2020)

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Alex Ghenis, Chairperson, Commission on Disability

Subject: Proposed Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley

RECOMMENDATION

Receive a presentation on the Navigable Cities Framework for Ensuring Access and Freedom-of-Movement for People with Disabilities in Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The Commission on Disability recently agreed upon a series of priorities for 2019 and early 2020. One of these priorities is a proposed “Navigable Cities” framework to guide investments, regulations, and other actions in the City of Berkeley. An initial Navigable Cities framework was approved by the Commission in its meeting on April 3, 2019. The framework features three (3) Principles of Navigable Cities and four (4) initiatives that the Commission on Disability will pursue throughout 2020. The full Navigable Cities outline is attached to this item.

The Commission on Disability requests that the City Council review and support the Navigable City framework, principals and initiatives. The Commission will provide updates to the City Council on progress moving forward, including any information discovered by the Commission, proposed action items for the City Council, etc. (Item approved 5/1/2019 to be submitted with photos. Motion: Singer, Second: Ramirez, Walsh: Aye, Smith: Aye, Ghenis: Aye, Weiss: Aye, Leeder: LOA, Abstain: 0. Photos approved 11/6/2019: Motion: Leeder, Second: Singer, Smith: Aye, Walsh: Aye, Ghenis: Aye, Ramirez: Aye, Absent: 0 Abstain: 0)

The full principles and initiatives of Navigable Cities are featured in the attached document. They are summarized here:

Principles:

1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.

2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.
3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.

Initiatives:

1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact navigability.
3. Provide appropriate input on plans to adjust the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

Proposed “navigable cities” framework for ensuring access and freedom-of-movement for people with disabilities in Berkeley is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

The City of Berkeley contains hundreds of miles of streets, sidewalks and other public spaces (e.g. outdoor plazas and parks). Many streets, sidewalks, bicycle pathways and other public spaces do not provide smooth navigation for people with disabilities (PWDs), who collectively represent around 15% of the City’s residents and visitors. In addition, Berkeley features many transportation options including pedestrian and bicycle pathways, BART, buses, paratransit, nonprofit transportation services, transportation network companies (TNCs, e.g. Uber & Lyft), bike-sharing services, etc.; however, not all of these provide full access to people with disabilities, endangering independence and potentially violating civil rights. Examples of inaccessibility include:

- Not all sidewalks feature “curb cuts” at intersections, meaning that individuals using wheelchairs or scooters must essentially take detours – either a full block, or to a nearby driveway. Exiting through driveways may present dangers, such as a lack of visibility to oncoming cars.
- Many sidewalks are excessively uneven, for example as tree roots push soils upward and displace sections of sidewalk. The exact nature of sidewalk damage varies across the City – some feature clear vertical breaks between sidewalk segments, while some sidewalks have “bumps” and cracks.
- Construction of new buildings and maintenance to pathways blocks sidewalks, forcing individuals to use designated temporary pathways or cross streets entirely.

Certain pathways do not feature appropriate accessibility – such as ramps from sidewalks to street-level pathways – or are otherwise difficult to navigate.

- “Shared mobility” services – e.g. ride-sharing and shared bicycles (Ford Go-Bike, etc.) – do not always feature fully-accessible products and services. For example, TNCs have only recently introduced wheelchair-accessible vehicles, which still feature delays compared to TNCs’ regular time frames. Bike-sharing services do not provide alternative, accessible options for individuals with limited balance who could otherwise ride tricycles. Proposed motorized scooters likewise do not provide accessible options, and scooter-riders on sidewalks present dangers to many PWDs.
- Items which are present in the middle of sidewalks and other public spaces may pose barriers to some PWDs; these items include the large sign downtown announcing BART and bus schedules, as well as informational kiosks being explored by City Council and staff. Barriers are of particular concern to individuals who are blind or low-vision and have become familiar with Berkeley’s pathways without obstacles.

These items and more represent ongoing barriers and progressing problems for PWDs in Berkeley. The Commission on Disability is concerned by a lack of accessibility, in general and especially considering Berkeley’s identity as the home of the modern disability rights movement.

BACKGROUND

None noted, aside from the information above.

ENVIRONMENTAL SUSTAINABILITY

The Commission on Disability believes that pursuing a Navigable Cities framework will present opportunities to improve environmental sustainability. For example, more easily navigable pedestrian pathways and accessible alternatives to shared bicycles will enable PWDs to reduce reliance on personally-operated vehicles and related carbon emissions. The Commission will consider sustainability in its Navigable Cities initiatives.

POSSIBLE FUTURE ACTION

Unknown.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

CONTACT PERSON

Dominika Bednarska, Disability Services Specialist
(510) 981-6418

Attachments:

1: Attachments: Pictures and image descriptions of sidewalk issues.

2: Presentation

From: Shira Leeder [mailto:shira@leeder.com]

Sent: Tuesday, September 24, 2019 2:34 AM

To: Helen Walsh <branach@comcast.net>; Bednarska, Dominika <DBednarska@cityofberkeley.info>; Alex Ghenis <alex.ghenis@gmail.com>

Subject: Re: Shira's unsafe sidewalk experience Photos and notes

Photo 1: Rose and Henry streets pass the Safeway.

Side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users especially those with mobility equipments and seniors, it's like a roller coaster going down a deep grade drop.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses and those with mobility devices.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair and those with mobility devices and baby strollers.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair, mobility devices and baby strollers to pass. The sidewalk needs to be repaved the entire block because the sidewalk is bumpy and dangerous and too narrow. I have to go in the streets where vehicles are and it is risky because of taking chances of being hit and killed.

Photo 5: Sutter and Amador streets by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going especially going home when going toward Solano Avenue. That whole two or three blocks of that since from Shattuck and Rose going toward Sutter street needs to be repaved and put several stop signs or pedestrians safely signals.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by the bus stop. The sidewalks are too narrow and at a down incline.

Photo 7: Using bike lane in opposite direction no other cross walks or ways to get to sidewalk. I have to ride in the streets / bike lanes if the sidewalks are too bumpy and hazardous and if there are tree roots issues or construction zones,

Photo 8: No curb cut from bike lane using only cross walk to cross street, no stop sign cars go fast and not stop especially at night time with no street lights and signal to walk in the crosswalk without risking of being hit and killed by vehicles passing by.

On Monday, September 23, 2019, 3:25:08 PM PDT, Helen Walsh <branach@comcast.net> wrote:

Photo 1: Rose and Henry

side uneven tree roots causing cracks and uneven pavement making it unsafe for wheelchair users.

Photo 2: 2 blocks away from Rose and Henry around apt 137 uneven side walk by tree. Side walk goes up then angles down very unsafe for wheelchair uses.

Photo 3: Up from last photo uneven sidewalk pavement unsafe for wheelchair.

Photo 4: by bus stop Berryman street uneven pavement unsafe for wheelchair to pass.

Photo 5: Sutter street by bus stop uneven pavement bump in front of curb cut making it unsafe to pass. I have to use bike lane against traffic or with traffic depending on where I am going.

Photo 6: No curb cut, drive way cracked sidewalk and street, gravel ditch my wheelchair has to go up or down. This is by bus stop.

Photo 7: using bike lane in opposite direction no other cross walks or ways to get to sidewalk.

Photo 8: no curb cut from bike lane using only cross walk to cross street. no stop sign cars go fast.

iSent from the Event Horizon

























From: MARTHA SINGER [mailto:marthasinger@me.com]
Sent: Wednesday, November 06, 2019 3:06 PM
To: Bednarska, Dominika <DBednarska@cityofberkeley.info>
Subject: sidewalk obstacles domingo ave



MARTHA SINGER MD
marthasinger@mac.com

NAVIGABLE CITIES FRAMEWORK

ALEX GHENIS

CHAIRMAN

COMMISSION ON DISABILITY

OVERVIEW

- Goals & Framework
- Principles
- Initiatives
- Current situation
- Other factors
- Q&A

GOALS & FRAMEWORK

- Overarching work: create a fully navigable, inclusive city for people with disabilities
- Principles: 3 overarching principles on equity & inclusion
- Initiatives: 4 focus areas for ongoing & upcoming efforts
- COD will continue addressing initiatives; appreciate partnership & support

PRINCIPLES

1. All people residing in and/or visiting the City of Berkeley have the right to efficient, convenient and barrier-free movement.
2. People with disabilities (PWDs) often have distinct transportation-related needs and may be less able to navigate around items obstructing pathways.
3. Changes to commercial activities and government policies (whether in Berkeley, the Bay Area, the State of California, or the United States as a whole) can have notable impacts on navigability.

INITIATIVES

1. Support smooth, barrier-free pathways frequently used by PWDs.
2. Ensure that new transportation services provide appropriate access to PWDs and do not negatively impact and navigability.
3. Provide appropriate input on plans to adjusted the layout of neighborhoods, urban centers, streets, pathways, etc.
4. Address the availability and accessibility of appropriate parking options, especially in city-owned and/or city-maintained parking lots/garages.

EXAMPLES OF INACCESSIBILITY

Curb Cuts	Sidewalks	Construction Barriers	Shared Mobility	Sidewalk Obstructions
<ul style="list-style-type: none">• Not enough curb cuts• Need more detectable warnings• Problems:<ul style="list-style-type: none">• Extra travel distance (detours)• Unsafe crossings• Tripping hazard	<ul style="list-style-type: none">• Sudden or gradual changes in elevation• Often from tree roots• Long back-log of 50/50 requests	<ul style="list-style-type: none">• Entirely blocked sidewalks• Occasional detours w/ difficult access	<ul style="list-style-type: none">• Transportation Network Companies (TNCs): CPUC purview• No accessible alternatives for bikes & scooters	<ul style="list-style-type: none">• Poorly-placed signs & items (e.g. trash bins) in PROW.• Creates issues for: physical disabilities with obstruction and blind/low vision safety issues

SOLUTIONS

Curb Cuts

- ADA Transition Plan (Survey in Process)
- Improvements as part of Construction Projects

Sidewalks

- ADA Transition Plan (Survey in Process)
- Improvements as part of Construction Projects
- 50/50 Program

Construction Barriers

- Resources for Increased Enforcement with Contractors
- Adoption of the Caltrans Temporary Pedestrian Access Routes Handbook (2020) for work zones

Shared Mobility

- Transportation Network Companies (TNCs): CPUC purview
- Transportation and Disability Services are discussing providing adapted scooters and bicycles.
- Disability Services and Transportation are discussing adding adaptive driving equipment and wheelchair vans to City Car Share Fleet.

Sidewalk Obstructions

- City Ordinance reinforcing the 3 ft clear rule in State and Federal law.
- Resources for enforcement, tree removal etc.





Office of the City Manager

INFORMATION CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Interim Director, Planning and Development
 Subject: LPO NOD: 2277 Shattuck Avenue/#LMSAP2020-0001

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires 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 approved a Structural Alteration Permit (SAP) for the subject City Landmark site. This action is subject to a 15-day appeal period, which began on September 28, 2020.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. 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 October 13, 2020. 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 – #LMSAP2020-0001, 2277 Shattuck Avenue/The Hezlett’s Silk Store Building



LANDMARKS
PRESERVATION
COMMISSION
NOTICE OF DECISION

DATE OF BOARD DECISION: September 3, 2020
DATE NOTICE MAILED: September 28, 2020
APPEAL PERIOD EXPIRATION: October 13, 2020
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): October 14, 2020¹

2277 Shattuck Avenue – The Hezlett’s Silk Store Building

Structural Alteration Permit (#LMSAP2020-0001) to install two new entry gates at the front of the landmark building.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

PERMITS REQUIRED:

- Structural Alteration Permit, pursuant to Berkeley Municipal Code Section 3.24.200

APPLICANT: David Trachtenberg, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA

ZONING DISTRICT: Commercial Downtown Mixed-Use Outer Core (C-DMU Outer Core)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines for Historical Resource Rehabilitation.

The application materials for this project are available online at:

¹ Pursuant to BMC Section 23B.32.090, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION
NOTICE OF DECISION
Structural Alteration Permit - #LMSAP2020-0001
2277 Shattuck Avenue – The Hezlett’s Silk Store Building
September 28, 2020
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<http://www.cityofberkeley.info/zoningapplications>

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 7-0-1-1

YES: ABRANCHES DA SILVA, ADAMS, ALLEN, CRANDALL, ENCHILL, JOHNSON,
MONTGOMERY

NO: NONE

ABSTAIN: FINACOM

ABSENT: SCHWARTZ

Note New Methods for Submitting Appeals during Shelter-In-Place Order

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 during the 2020 City Council Shelter-In-Place Order, you must:

1. Mail a letter clearly and concisely setting forth the grounds for the appeal with a check or money order for required fees to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley, 94704. The City Clerk’s telephone number is (510) 981-6900.

OR

Alternatively, you may email your complete appeal and all attachments to the Planning Department at planning@cityofberkeley.info and include a telephone number where you can be reached during the day. Planning Department staff will call you within three business days to obtain payment information for the required fees by credit card *only*.

- a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. 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. Signatures collected

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per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.

- 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.
3. 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).

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 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:

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- 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.

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. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3rd Fl., between 8 a.m. and 4 p.m., Monday through Friday, except Tuesday when the Center closes at 3PM.

ATTACHMENTS:

- 1. Findings and Conditions
- 2. Project Plans



ATTEST: _____
Fatema Crane, Secretary
Landmarks Preservation Commission

Cc:
City Clerk
Applicant: David Trachtenberg, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA

FINDINGS AND CONDITIONS

2277 Shattuck Avenue – The Hezlett’s Silk Store Building

Structural Alteration Permit LMSAP#2020-0001

To install two new entry gates at the front of the landmark building.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

SECRETARY OF THE INTERIOR’S STANDARDS FINDINGS

Regarding the Secretary of the Interior’s Standards for Restoration, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The property will be used as a commercial space, as it was historically.
2. The historic character of the property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize this property have been avoided.
3. This property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken in this project.
4. Changes to the property that have acquired historic significance in their own right are not affected by this proposal.
5. If affected, distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the historic period will be preserved.
6. Deteriorated features from the historic period will be repaired rather than replaced if affected. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Any archeological resources at this site will be unaffected by the proposed work which includes no excavation.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work

will be differentiated from the old where possible and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. If the new gates were removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

FINDINGS FOR APPROVAL

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically, the Commission finds that:
 - The proposed entry gates will not result in a substantial change to the overall character of this Mediterranean Revival building. The new work will retain the building's overall massing, scale, and form, and will not remove existing, character-defining features of the building such as three central arched windows on the upper façade, decorative clay tile, smooth coated stucco on the front façade, brick on the sides and rear of the building, decorative elements, and terrazzo tile on the floor of the exterior entryway.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. Exercise and Lapse of Permits (Section 23B.56.100)

- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- A. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has:
 - (1) applied for a building permit; or
 - (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

5. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

- 6. **Repair and replacement of character-defining features.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence. Mortared rock wall repair shall include only appropriately sourced rock and be directed by professionals with relevant expertise.
- 7. **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.

GENERAL NOTES

1. THE CONTRACTOR SHALL EXECUTE THE WORK OF THIS PROJECT IN FULL COMPLIANCE WITH THE FOLLOWING CODE EDITIONS: 2016 CBC, 2016 CHBC, 2016 CEC, 2016 CMC, 2016 CPC, 2016 CFC, 2016 CEC, 2016 TITL 24 ENERGY STANDARDS AND THE 2016 CAL GREEN BUILDING STANDARDS CODE, AS AMENDED BY THE CITY OF BERKELEY. THE CONTRACTOR SHALL GIVE ALL NOTICES AND COMPLY WITH ALL APPLICABLE REGULATIONS, LAWS, ORDINANCES AND ORDERS BY ANY PUBLIC AUTHORITY HAVING JURISDICTION OVER THE PROJECT. THE CONTRACTOR SHALL BRING TO THE ATTENTION OF THE ARCHITECT IN A TIMELY FASHION ANY DISCREPANCIES OR CONFLICTS BETWEEN THE REQUIREMENTS OF APPLICABLE CODES AND THE DRAWINGS OF WHICH THE CONTRACTOR IS OR BECOMES AWARE.

2. THE CONTRACTOR SHALL STUDY THE CONTRACT DOCUMENTS AND REPORT TO THE ARCHITECT IN WRITING ALL INCONSISTENCIES AND OMISSIONS HE FINDS PRIOR TO COMMENCING WORK. THE CONTRACTOR SHALL BECOME FAMILIAR WITH THE EXISTING CONDITIONS OF THE SITE AND PROJECT PRIOR TO COMMENCING WORK. IF THE CONTRACTOR PROCEEDS WITH ANY OF THE WORK WITHOUT INSTRUCTIONS OF THE ARCHITECT, WHERE SUCH INSTRUCTIONS ARE REQUIRED BY THE CONTRACT DOCUMENTS, THE CONTRACTOR SHALL MAKE GOOD AT HIS OWN COST ANY RESULTING ERROR, DAMAGE, OR DEFECTS.

3. WRITTEN DIMENSIONS ON DRAWINGS SHALL TAKE PRECEDENCE OVER DIMENSIONS SCALED FROM DRAWINGS. CONTRACTOR SHALL NOT SCALE DRAWINGS. IF A DIMENSION(S) HAS BEEN OMITTED THE CONTRACTOR SHALL BRING THIS TO THE ATTENTION OF THE ARCHITECT IN A TIMELY FASHION.

4. CONTRACTOR SHALL VERIFY DIMENSIONS AND DETAILS OF ALL PROJECT COMPONENTS. CONTRACTOR SHALL BE RESPONSIBLE FOR INSTALLATION CLEARANCES OF ALL ITEMS, INCLUDING BUT NOT LIMITED TO MECHANICAL AND ELECTRICAL EQUIPMENT, AND CABINET WORK, TO BE INSTALLED IN THE PROJECT.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR INITIATING, MAINTAINING AND SUPERVISING ALL SAFETY PRECAUTION PROGRAMS IN CONNECTION WITH WORK, AND FOR MAINTAINING APPROPRIATE INSURANCE TO PROTECT THE CONTRACTOR, THE OWNER AND THE ARCHITECT.

6. CONTRACTOR SHALL PROTECT THE ADJACENT PROPERTY, THE PUBLIC AND SHALL BE RESPONSIBLE FOR ANY DAMAGE OR INJURY DUE TO HIS NEGLIGENCE.

7. THE ARCHITECT WILL ASSIST THE OWNER IN SUBMITTING PLANS TO THE DEPARTMENT OF BUILDINGS FOR BUILDING PERMIT APPLICATION; ARCHITECT WILL ANSWER BUILDING DEPARTMENTS' PLAN CHECK COMMENTS AND RE SUBMIT AS REQUIRED. THE OWNER WILL SECURE AND PAY FOR THE BUILDING PERMIT. CONTRACTOR WILL PAY FOR ALL OTHER PERMITS (INCLUDING ANY REQUIRED SIDEWALK SHED PERMITS, PARKING OR DUMPSTER PERMITS), LICENSES, INSPECTIONS AND THE LIKE REQUIRED TO EFFECT THE WORK OF THE CONTRACT DOCUMENTS THROUGH RECEIPT OF A CERTIFICATE OF OCCUPANCY.

8. CONTRACTOR SHALL CONSULT WITH REPRESENTATIVES OF APPLICABLE UTILITIES, INCLUDING BUT NOT LIMITED TO GAS, WATER, POWER, SEWER, TELEPHONE, AND CABLE TELEVISION, DETERMINE EXACT LOCATIONS AND AVAILABILITY OF UTILITIES, AND DETERMINE CONDITION OF EXISTING SERVICE PRIOR TO COMMENCING WORK. CONTRACTOR SHALL ADVISE ARCHITECT AND OWNER OF UNANTICIPATED CHANGES TO THE EXISTING SERVICES REQUIRED FOR THE SUCCESSFUL COMPLETION AND OPERATION OF THE PROJECT SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT AND OWNER PRIOR TO COMMENCEMENT OF CONSTRUCTION.

9. CONTRACTOR SHALL ERECT AND MAINTAIN TEMPORARY BARRICADES AND DUST-PROOF PARTITIONS AS NEEDED FOR PROTECTION AGAINST NUISANCE AND ACCIDENT, AND SHALL CONTINUOUSLY MAINTAIN ADEQUATE PROTECTION OF HIS WORK AND THE OWNER'S PROPERTY FROM DAMAGE OR LOSS ARISING IN CONNECTION WITH THE WORK OF THIS PROJECT.

10. IMPROVEMENTS ON THE SITE, WORK IN PROGRESS, STORED MATERIALS ON PROPERTY SHALL BE PROTECTED BY THE CONTRACTOR FROM DAMAGE ARISING FROM THE WORK AND FROM NORMAL USE OF THE SITE DURING THE COURSE OF THE WORK, WHETHER BY THE CONTRACTOR OR ANY OTHER PARTY. ALL ITEMS DAMAGED DUE TO INSUFFICIENT PROTECTION SHALL BE FULLY RESTORED TO THEIR PRIOR CONDITION BY THE CONTRACTOR AT NO COST TO THE OWNER.

11. PARTITION DIMENSIONS ARE TO FACE OF STUD UNLESS NOTED OTHERWISE. OTHER COMPONENTS ARE DIMENSIONED TO DIMENSION POINTS SHOWN ON DETAILS, OR AS NOTED ON THE DRAWINGS.

12. NO PART OF THE STRUCTURE SHALL BE OVERLOADED BEYOND ITS SAFE CARRYING CAPACITY BY THE PLACING OF MATERIALS, EQUIPMENT, TOOLS, MACHINERY OR ANY OTHER ITEMS DURING THE COURSE OF THE CONTRACTORS WORK.

13. AT THE COMPLETION OF THE WORK, THE CONTRACTOR SHALL CLEAN HIS AND THE SURROUNDING AREA REMOVE ALL WASTE MATERIALS AND RUBBISH FROM THE PROJECT AS WELL AS HIS OR HER TOOLS, CONSTRUCTION EQUIPMENT, MACHINERY AND SUPPLUS MATERIALS. THE CONTRACTOR SHALL REMOVE PUTTY AND PAINT FROM ALL GLASS, MIRRORS, AND WASH AND POLISH SAME. REMOVE ALL LABELS, TAGS, GREASE, DIRT, STAINS, ETC. AND CLEAN ALL FIXTURES AND EQUIPMENT TO THE EXTENT OF RESTORING THEM TO THE ORIGINAL FINISH.

14. THE CONTRACTOR SHALL MAINTAIN A CURRENT COPY OF THE 2013 CBC ON SITE.

15. CONTRACTOR SHALL BE RESPONSIBLE FOR SECURITY OF THE SITE, CONSTRUCTION-IN-PROGRESS, AND STORED MATERIALS AND EQUIPMENT, WHETHER ON- OR OFF-SITE.

16. THE OWNER SHALL PAY FOR TESTING OF ANY MATERIALS DISCOVERED ON THE SITE BY THE ARCHITECT, OWNER OR CONTRACTOR SUSPECTED OF CONTAINING TOXIC SUBSTANCES REQUIRING SPECIAL REMOVAL AND DISPOSAL. CHANGES TO THE CONTRACT RESULTING FROM THE DISCOVERY, TESTING, OR REMOVAL OF SUCH MATERIALS (IF ANY) SHALL BE EFFECTED BY A CHANGE ORDER.

17. GENERAL CONTRACTOR WILL BE RESPONSIBLE FOR ANY AND ALL WORK PROVIDED BY ANY AND ALL SUBCONTRACTORS. GENERAL NOTES THAT REFER TO 'CONTRACTOR' INCLUDE ALL WORK PROVIDED BY SUBCONTRACTORS. CONTRACTOR AND ALL SUBCONTRACTORS SHALL VERIFY ALL GRADES, DIMENSIONS, AND CONDITIONS IN FIELD PRIOR TO THE START OF PROJECT AND AT APPROPRIATE TIMES DURING THE COURSE OF CONSTRUCTION BEFORE RELATED PROJECT PHASES.

18. EACH SUBCONTRACTOR IS CONSIDERED A SPECIALIST IN HIS RESPECTIVE FIELD AND SHALL PRIOR TO THE SUBMISSION OF HIS BID AND THE PERFORMANCE OF WORK, NOTIFY THE CONTRACTOR OF ANY WORK CALLED OUT IN THE CONSTRUCTION DOCUMENTS WHICH CANNOT BE EXECUTED AS INDICATED OR CANNOT BE FULLY GUARANTEED. THE CONTRACTOR WILL THEN NOTIFY THE OWNER AND ARCHITECT PRIOR TO ACCEPTANCE OF SUBCONTRACTORS BID.

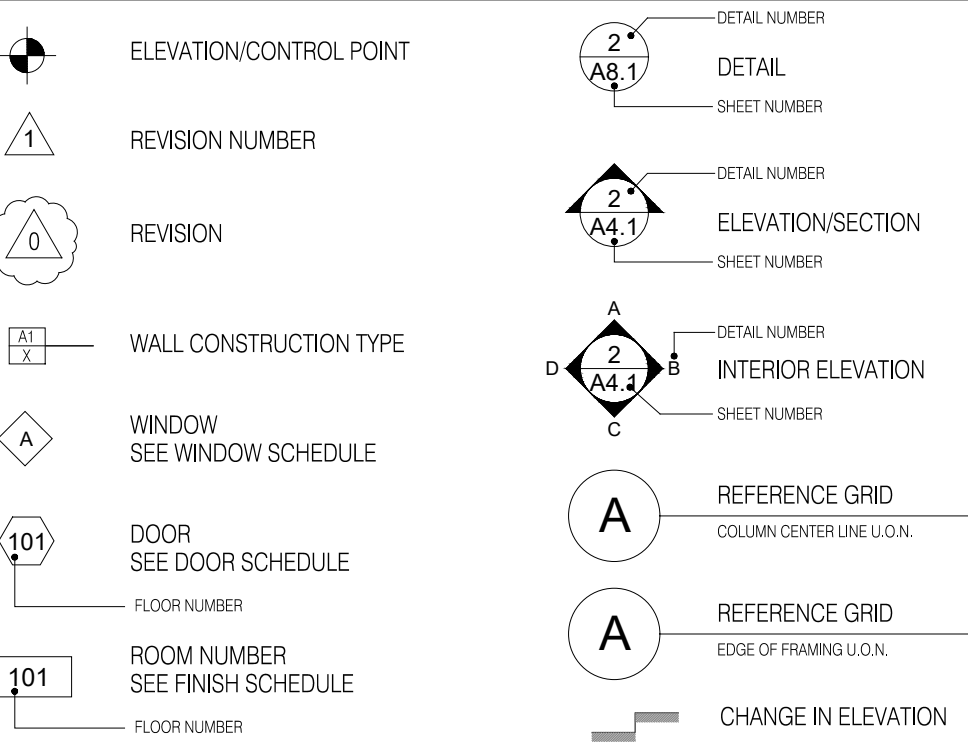
19. THE ARCHITECT HAS MADE THE ASSUMPTION THAT EXISTING CONCEALED CONDITIONS ARE STANDARD. THE CONTRACTOR WILL BE EXPECTED TO PERFORM THE NECESSARY WORK TO COMPLETE THE INDICATED CONSTRUCTION. IN THE EVENT THAT DEMOLITION REVEALS UNEXPECTED CONDITIONS, THE CONTRACTOR MUST INFORM THE OWNER AND ARCHITECT OF ANTICIPATED CHANGE ORDERS IN ADVANCE.

20. CONTRACTOR IS TO PROVIDE SAMPLES OF REQUESTED SUBMITTALS AND OF ALL PROPOSED MATERIAL SUBSTITUTIONS TO THE ARCHITECT FOR REVIEW. THE ARCHITECT WILL REQUIRE FIVE WORKING DAYS FOR REVIEW OF ALL SUBMITTALS INCLUDING SHOP DRAWINGS. SHOP DRAWINGS AND MATERIALS TO THE ARCHITECT WILL HAVE BEEN REVIEWED AND APPROVED BY THE CONTRACTOR. BY SUBMITTING SHOP DRAWINGS AND SUBMITTALS TO THE ARCHITECT, THE CONTRACTOR REPRESENTS THAT THE CONTRACTOR HAS DETERMINED AND VERIFIED MATERIAL, FIELD MEASUREMENTS, AND FIELD CONSTRUCTION RELATED THERETO, AND HAS CHECKED AND COORDINATED THE INFORMATION CONTAINED WITHIN SUCH SUBMITTALS WITH THE REQUIREMENTS OF THE WORK AND OF THE CONTRACT DOCUMENTS. THE ARCHITECT'S REVIEW OF SUBMITTALS AND SHOP DRAWINGS IS FOR CONFIRMATION OF DESIGN INTENT ONLY.

21. THESE CONTRACT DOCUMENTS INTEND TO DESCRIBE A FINISHED PROJECT READY FOR LEGAL USE.

22. ANY CHANGE, MODIFICATION OR INTERPRETATION OF THE SCOPE OR REQUIREMENTS OF THESE DOCUMENTS, UNDERTAKEN WITHOUT CONSULTATION WITH THE ARCHITECT (AND ANY UNFORESEEN CONDITIONS RESULTING THEREFROM) SHALL BE THE RESPONSIBILITY OF THE OWNER OR CONTRACTOR AS THE CASE MAY BE. AS STIPULATED IN THE OWNER/ARCHITECT AGREEMENT, TRACHTENBERG ARCHITECTS SHALL BE HELD HARMLESS FROM ANY CLAIMS RESULTING FROM SUCH ACTIVITY

SYMBOL LEGEND



ABBREVIATIONS

&	AND	JT.	JOINT
L	ANGLE	LAM.	LAMINATE
@	AT	LT.	LIGHT
CL	CENTER LINE	M.B.	MACHINE BOLT
#	POUND OR NUMBER	MAX.	MAXIMUM
d	PENNY	MECH.	MECHANICAL
ACOUS.	ACOUSTIC	MEMB.	MEMBRANE
ADJ.	ADJUSTABLE	MET./MTL.	METAL
APPROX.	APPROXIMATE	MFR.	MANUFACTURER
A.F.F.	ABOVE FINISH FLOOR	MIN.	MINIMUM
ALT.	ALTERNATE	MISC.	MISCELLANEOUS
ALUM.	ALUMINUM	M.O.	MASONRY OPENING
A.B.	ANCHOR BOLT	MTD.	MOUNTED
BD.	BOARD	MUL.	MULLION
BITUM.	BITUMINOUS		
BUILD.	BUILDING	(N)	NEW
BLK.	BLOCK	N	NORTH
BLKG.	BLOCKING	N.I.C.	NOT IN CONTRACT
B.T.	BOTTOM OF TRUSS	NO.	NUMBER
BRS	BACKER ROD AND SEALANT	N.T.S.	NOT TO SCALE
CLG.	CEILING	O/	OVER
C.T.	CERAMIC TILE	O.C.	ON CENTER
CLKG.	CAULKING	O.F.C.I.	OWNER FURNISHED, CONTRACTOR INSTALLED
CLR.	CLEAR		
CONC.	CONCRETE	P. LAM.	PLASTIC LAMINATE
CONN.	CONNECTION	PLYWD.	PLYWOOD
CONSTR.	CONSTRUCTION	P.T.	PRESSURE-TREATED
C.J.	CONTROL JOINT	PTD.	PAINTED
CONT.	CONTINUOUS	PTN.	PARTITION
CTSK.	COUNTERSUNK		
CMU	CONCRETE MASONRY UNIT	Q.T.	QUARRY TILE
D	DEPTH	R.	RISER
DBL.	DOUBLE	RAD.	RADIUS
DET./DTL.	DETAIL	REF.	REFRIGERATOR
D.F.	DOUGLAS FIR	RENF.	REINFORCED
DM.	DIAMETER	REQ.	REQUIRED
DM.	DIMENSION	RESIL.	RESILIENT
DN.	DOWN	RM.	ROOM
DWG.	DRAWING	R.O.	ROUGH OPENING
EA.	EACH	RWD.	REDWOOD
ELEC.	ELECTRICAL	RWL.	RAINWATER LEADER
ELEV.	ELEVATION		
EQ.	ELECTRICAL PANEL	SQ. FT.	SQUARE FEET
E.P.	EQUAL	SHT.	SHEET
EQ.	EQUAL	SQ. IN.	SQUARE INCH
(E)	EXISTING	SM.	SIMILAR
EXP./JT.	EXPANSION JOINT	S.L.D.	SEE LANDSCAPE DRAWING
EXT.	EXTERIOR	S.M.D.	SEE MECHANICAL DRAWING
F.D.	FLOOR DRAIN	SPEC.	SPECIFICATIONS
F.E.	FIRE EXTINGUISHER	SQ.	SQUARE
F.F.	FINISH FLOOR	S.S.	STAINLESS STEEL
F.F.E.	FINISH FLOOR ELEVATION	STD.	STANDARD
FN.	FINISH	STL.	STEEL
FL	FLOOR	STOR.	STORAGE
F.O.C.	FACE OF CONCRETE	STOR.	SEE STRUCTURAL DRAWING
F.O.F.	FACE OF FINISH		
F.O.M.	FACE OF MASONRY	TEL.	TELEPHONE
F.O.S.	FACE OF STUD	T&G	TONGUE AND GROOVE
F.O.S.H.	FACE OF SHEATHING	T.	TREAD
FT.	FOOT	THK.	THICK
FTG.	FOOTING	TYP.	TYPICAL
FURR.	FURRING	T.O.	TOP OF
		T.O.C.	TOP OF CONCRETE
		T.O.D.	TOP OF OUTRIGGER
		T.O.P.	TOP OF PLATE
		T.O.S.	TOP OF SLAB
		T.O.T.	TOP OF TRUSS
GA.	GAUGE	U.O.N.	UNLESS OTHERWISE NOTED
G.C.	GENERAL CONTRACTOR	VERT.	VERTICAL
GL	GLASS	V.I.F.	VERIFY IN FIELD
GSM	GALVANIZED SHEET METAL	V.G.	VERTICAL GRAIN
GYP. BD/	GYP. WALL BOARD	W	WIDTH
GWB.		W/	WITH
H	HEIGHT	WD.	WOOD
H.B.	HOSE BIB	WDW	WINDOW
H.C.	HOLLOW CORE	W/O	WITHOUT
HDWD.	HARDWOOD	WP	WATERPROOF
HDWR.	HARDWARE	WRC	WESTERN RED CEDAR
HQRZ.	HORIZONTAL		
HR.	HOUR		
HW	HARDWOOD		
IN.	INCH		
INTM.	INTERMEDIATE		
INSUL.	INSULATION		
INT.	INTERIOR		

PROJECT DIRECTORY

OWNER:
John Gordon/Janis Mitchell
2091 Rose Street
Berkeley, CA 94709
(510)704-1800

ARCHITECT:
Trachtenberg Architects, Inc.
2421 Fourth Street
Berkeley, CA 94710
(510) 849-1414
www.TrachtenbergArch.com

VICINITY MAP



PROJECT DESCRIPTION

PROJECT ADDRESS: 2277 Shattuck Avenue, Berkeley, CA 94704 (APN: 057 202901100)

SCOPE OF WORK: NEW ENTRY GATES ONLY

SHELL IMPROVEMENTS FOR FUTURE TENANT IMPROVEMENTS (LMSAP2018-0001 & B2018-02935) & TENANT IMPROVEMENT UNDER SEPARATE PERMIT

ZONING CODE ANALYSIS
(BASED ON THE BERKELEY ZONING ORDINANCE)

ZONING: C-DMU OUTER CORE COMMERCIAL DISTRICT

EXISTING USE: RETAIL

PROPOSED USE: RETAIL (NO CHANGE)

	EXISTING	PROPOSED	PERMITTED/REQUIRED
PARKING:	0	0	0 - EXISTING NON-CONFORMING
SETBACKS (BUILDING 0-20' HEIGHT)			
FRONT:	0'-0"	(NO CHANGE)	0'-0"
SIDE (LEFT):	0'-0"	(NO CHANGE)	0'-0"
SIDE (RIGHT):	0'-0"	(NO CHANGE)	0'-0"
REAR:	0'-0"	(NO CHANGE)	0'-0"
BUILDING HEIGHT:	±26'-9"	(NO CHANGE)	60'-0"
BUILDING STORIES:	2+BASEMENT	(NO CHANGE)	N/A
LOT AREA:	3,074 SF		
FLOOR AREA:			
MAIN BUILDING			
BASEMENT	3,018 SF	3,018 SF	
GROUND FLOOR	2,783 SF	2,783 SF	
SECOND FLOOR	2,501 SF	2,501 SF	
TOTAL	8,302 SF	8,302 SF	
BUILDING FOOTPRINT:	3,018 SF		
LOT COVERAGE:	98%	98%	N/A
USEABLE OPEN SPACE:	0	0	N/A (NEW BUILDINGS ONLY)
FAR:	2.75	2.75	N/A

DRAWING LIST

SHEET NO. & TITLE	SUBMISSION & DATE
ARCHITECTURAL DRAWINGS	
A0.0 GENERAL INFORMATION	●
A1.1 SITE PLAN	●
A2.0A EXISTING FLOOR DEMO PLANS	●
A2.0B EXISTING FLOOR/ROOF DEMO PLANS	●
A2.1 PROPOSED FLOOR PLANS	●
A2.2 PROPOSED FLOOR/ROOF PLANS	●
A3.1 EXTERIOR ELEVATIONS	●
A3.2 EXTERIOR ELEVATIONS	●
A4.1 EAST-WEST BUILDING SECTION	●
A8.1 DETAILS	●
MAT MATERIAL BOARD	●

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JOB: 1713 DRAWN BY:

SCALE: - DATE:

SHEET:
GENERAL
INFORMATION

A0.0

GENERAL SHEET NOTES

1. THIS SITE MUST IMPLEMENT APPLICABLE PORTIONS OF THE STATE STORM WATER BEST MANAGEMENT PRACTICES MANUAL FOR CONSTRUCTION TO THE MAXIMUM EXTENT PRACTICABLE TO PREVENT EROSION AND SEDIMENT FROM ENTERING THE STORM DRAIN SYSTEM. FAILURE TO UTILIZE ADEQUATE CONTROL IS A VIOLATION OF BMC 17.20. A COPY OF THE MANUAL IS AVAILBLE UPON REQUEST AT THE PERMIT SERVICE CENTER AND AVAILBLE ONLINE AT www.cabmphandbooks.com
2. CONTRACTOR TO OBTAIN A SEPARATE PUBLIC WORKS ENGINEERING PERMIT FROM THE PERMIT SERVICE CENTER FOR ALL WORK IN THE PUBLIC RIGHT OF WAY.
3. PER BMC 16.06.020, A NEW SIDEWALK CURB AND GUTTER IN THE PUBLIC RIGHT OF WAY CONTIGUOUS TO THE PROPERTY IS REQUIRED TO BE INSTALLED. THE NEW SIDEWALK MUST BE INSTALLED AT 2% CROSS-SLOPE TO MEET ACCESSIBILITY STANDARDS. SIDEWALK ELEVATIONS AT ACCESSIBLE ENTRANCES SHOULD BE CAREFULLY CHECKED FOR COMPLIANCE WITH DISABLED ACCESS REQUIREMENTS.
- 3.1. THE REQUIREMENT IS WAIVED IF THE EXISTING SIDEWALK IS IN EXCELLENT CONDITION, FREE OF CRACKS AND DISPLACEMENT, WITH A CROSS-SLOPE WHICH DOES NOT EXCEED 2%. IF YOU FEEL YOU MEET THIS REQUIREMENT, PLEASE SCHEDULE AN APPOINTMENT WITH AN ENGINEERING INSPECTOR AT 981-7500 SO THAT THE CONDITIONS MAY BE FIELD VERIFIED.
4. CONTRACTOR TO OBTAIN A SEPARATE PUBLIC WORKS ENGINEERING PERMIT FROM THE PERMIT SERVICE CENTER FOR ALL WORK IN THE PUBLIC RIGHT OF WAY.
5. WALKWAYS ALONG ACCESSIBLE ROUTE OF TRAVEL (1) ARE CONTINUOUSLY ACCESSIBLE, (2) HAVE MAXIMUM 1/2" CHANGES IN ELEVATION, (3) ARE MINIMUM 48" IN WIDTH, (4) HAVE MAXIMUM 1/4" PER FOOT CROSS SLOPES, (5) HAVE MAXIMUM 5% (1:20) RUNNING SLOPES, AND (6) HAVE 36" WIDE CONTINUOUS DETECTABLE WARNINGS (COMPLYING WITH CBC SEC. 11B-705.1.1 & 11B-705.1.2.5) WHERE THE PEDESTRIAN PATH CROSSES OR ADJOINS A VEHICULAR WAY SUCH AS A DRIVEWAY TO WARN OF POTENTIAL HAZARDS. (CBC SEC. 11B-247.1.2.5)

LEGEND

- ACCESSIBLE ROUTE (SEE NOTE #4) PROVIDE INTERNATIONAL SYMBOL OF ACCESSIBILITY SIGNAGE AT ACCESSIBLE BUILDING ENTRANCES (SEE 11A02)

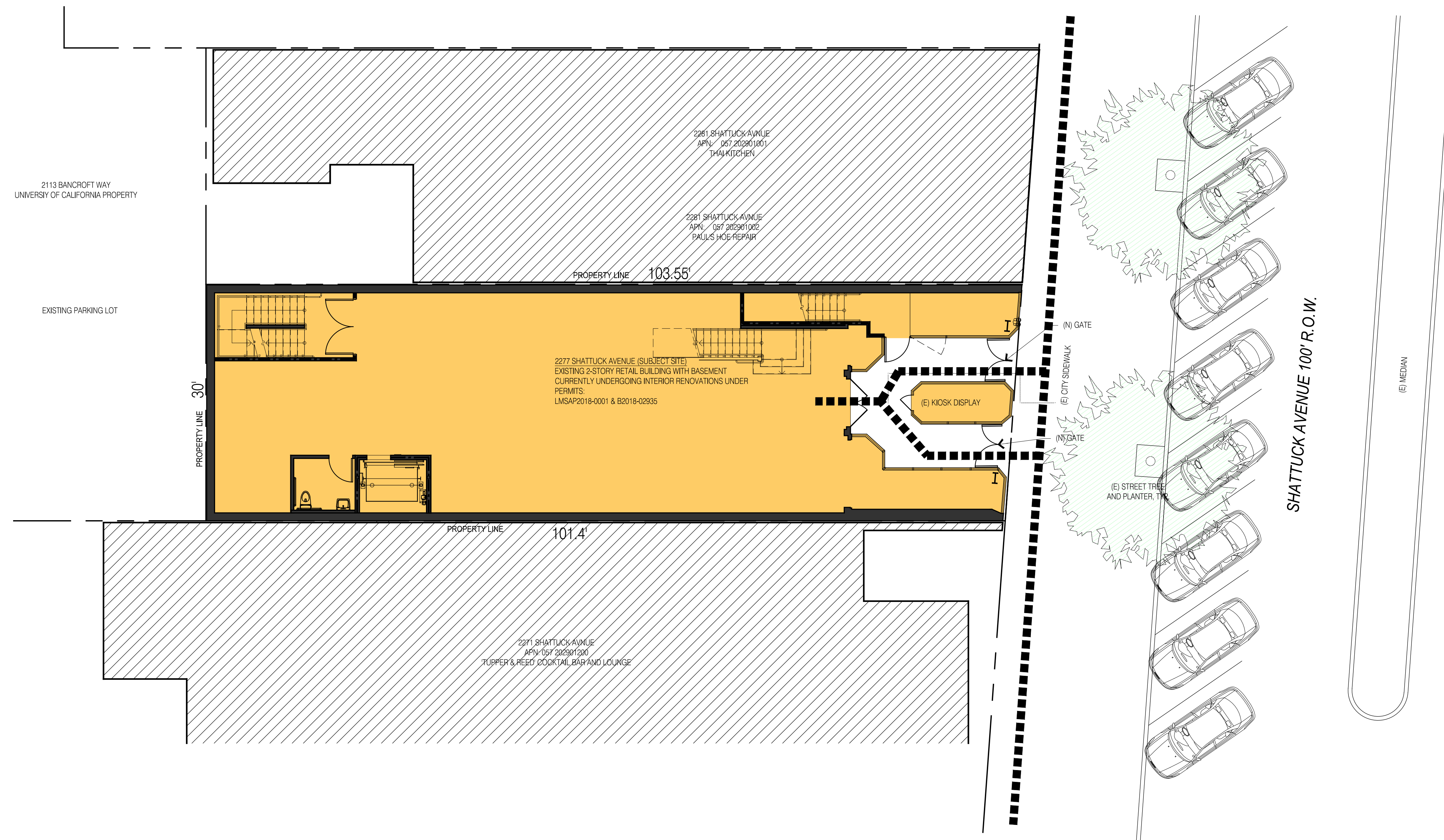
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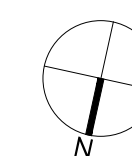
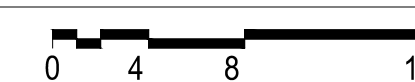
JOB: 1713 DRAWN BY:

SCALE: - DATE:

SHEET:

SITE PLAN

1 SITE PLAN
1/8"=1'-0"



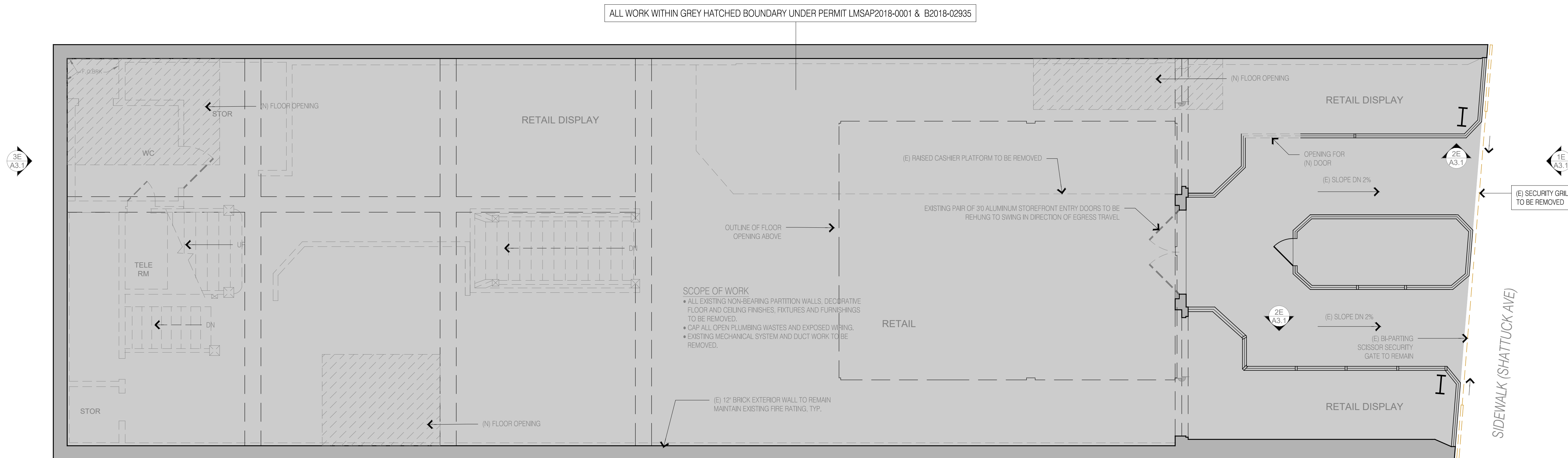
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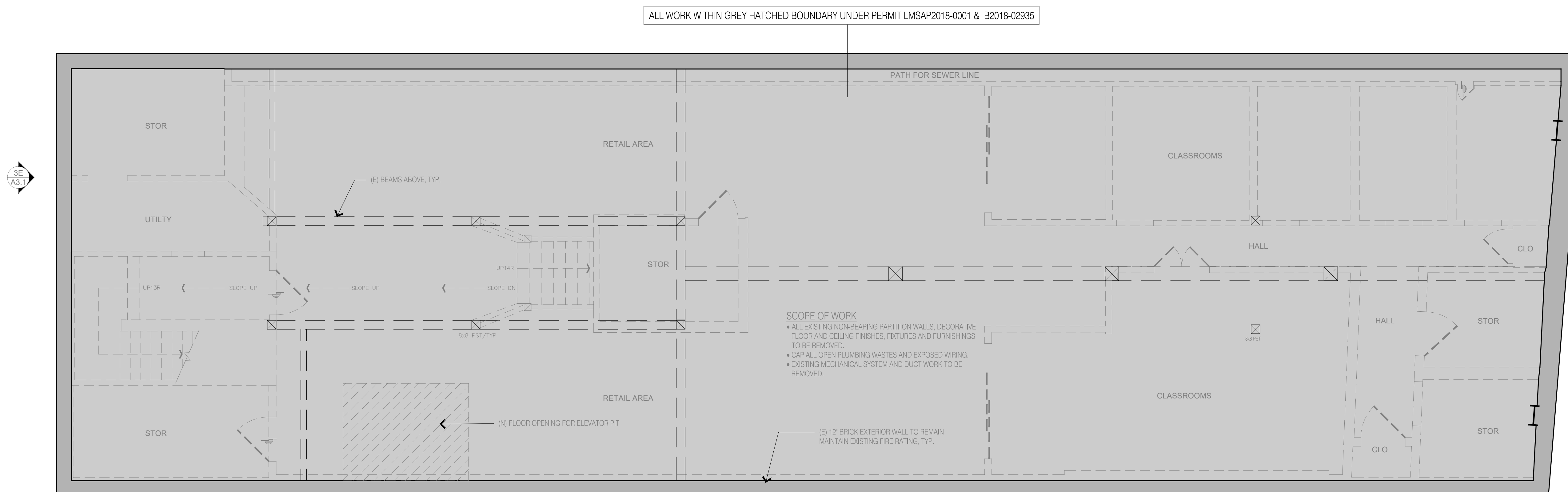
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2 EXISTING GROUND FLOOR DEMO PLAN
1/8"=1'-0"
0 2' 4' 8'



1 EXISTING BASEMENT DEMO PLAN - NO WORK THIS PERMIT
1/8"=1'-0"
0 2' 4' 8'

GENERAL SHEET NOTES

- CAP (E) PLUMBING AND WASTE LINES TO BE ABANDONED.

LEGEND

- (E) WALL TO REMAIN
- (E) CONSTRUCTION TO BE REMOVED UNDER PERMIT LMSAP2018-0001 AND B2018-029335
- (E) CONSTRUCTION TO BE REMOVED UNDER THIS PERMIT

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SCALE: - DATE:

SHEET:
EXISTING FLOOR DEMO PLANS

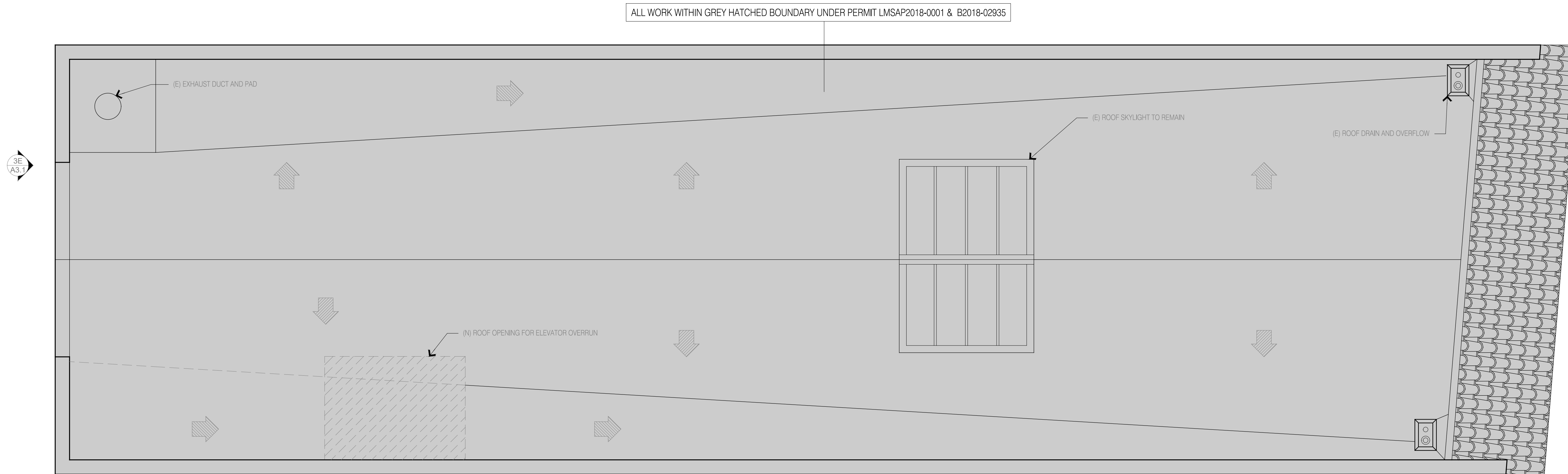
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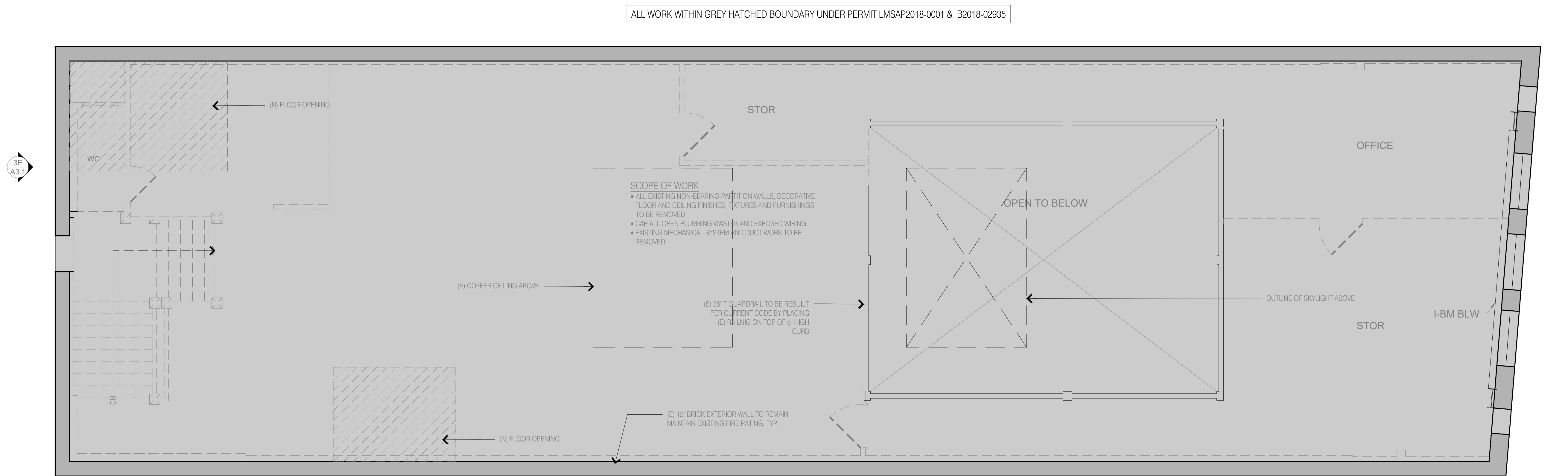
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2
-
EXISTING ROOF - NO WORK THIS PERMIT
1/8"=1'-0"



1
-
EXISTING SECOND FLOOR - NO WORK THIS PERMIT
1/8"=1'-0"



GENERAL SHEET NOTES

1. CAP (E) PLUMBING AND WASTE LINES TO BE ABANDONED.

LEGEND

- (E) WALL TO REMAIN
- (E) CONSTRUCTION TO BE REMOVED UNDER PERMIT LMSAP2018-0001 AND B2018-029335
- (E) CONSTRUCTION TO BE REMOVED UNDER THIS PERMIT

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JOB: 1713 DRAWN BY:
SCALE: - DATE:

SHEET:
EXISTING FLOOR/ROOF DEMO PLANS

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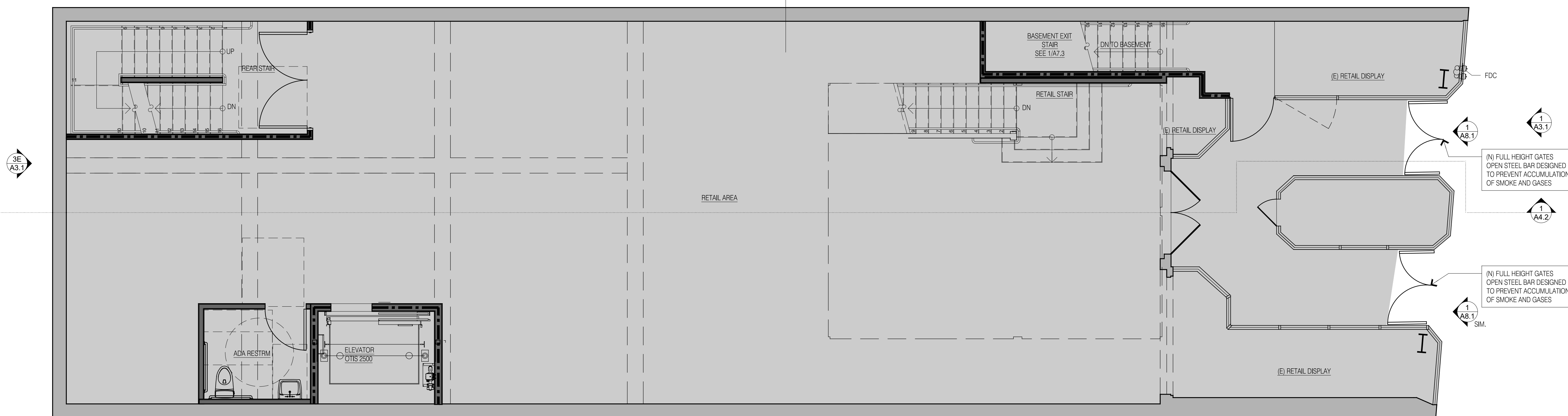


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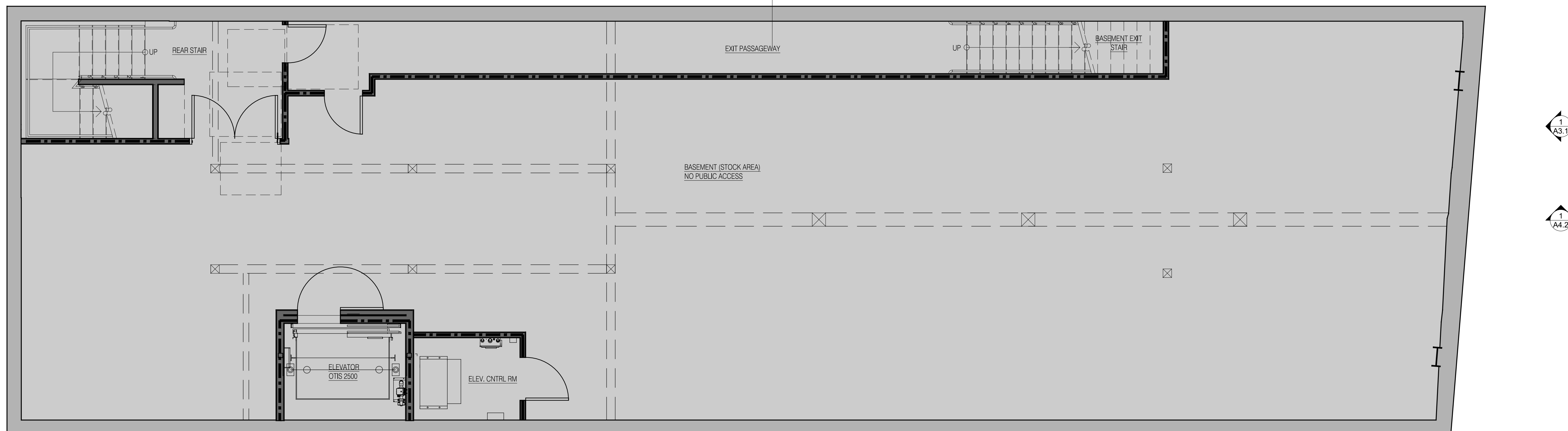
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ALL WORK WITHIN GREY HATCHED BOUNDARY UNDER PERMIT LMSAP2018-0001 & B2018-02935



2 GROUND FLOOR PLAN
1/8"=1'-0" 0 2' 4' 8' N

ALL WORK WITHIN GREY HATCHED BOUNDARY UNDER PERMIT LMSAP2018-0001 & B2018-02935



1 BASEMENT PLAN
1/8"=1'-0" 0 2' 4' 8' N

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PROPOSED FLOOR PLANS

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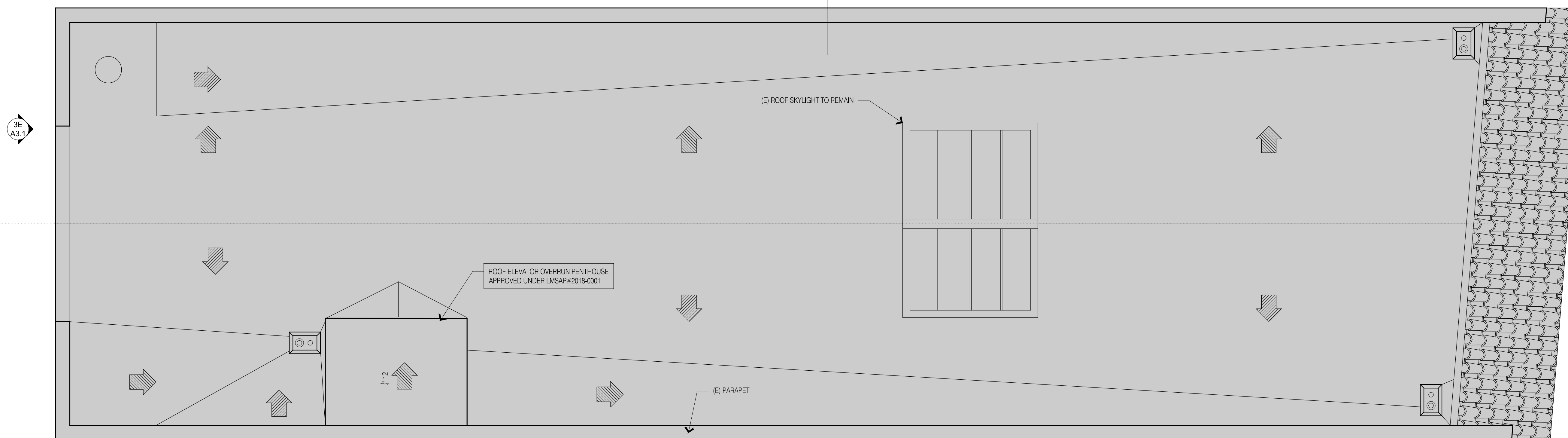


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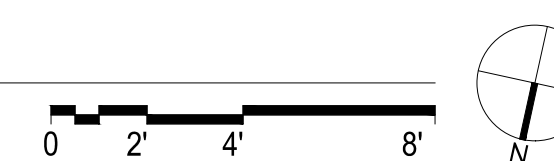
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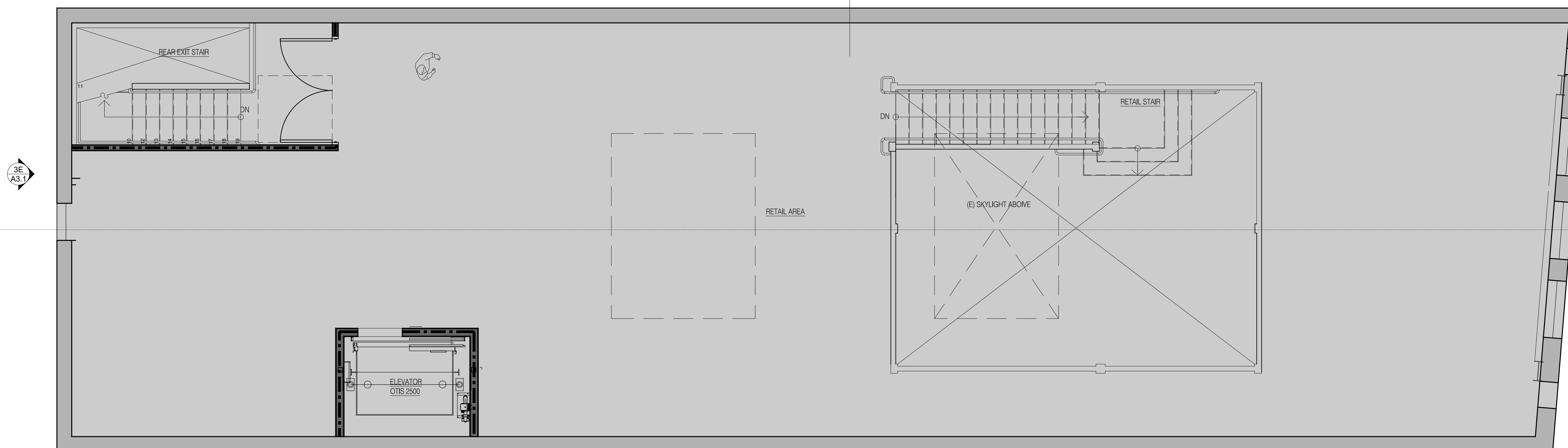
ALL WORK WITHIN GREY HATCHED BOUNDARY UNDER PERMIT LMSAP2018-0001 & B2018-02935



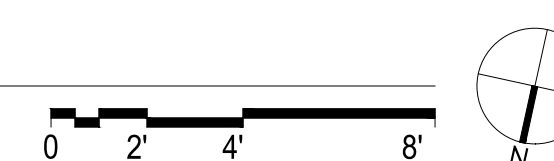
2 ROOF PLAN
1/8" = 1'-0"



ALL WORK WITHIN GREY HATCHED BOUNDARY UNDER PERMIT LMSAP2018-0001 & B2018-02935



1 SECOND FLOOR PLAN
1/8" = 1'-0"



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SCALE: - DATE:

SHEET:
PROPOSED FLOORS
PLAN



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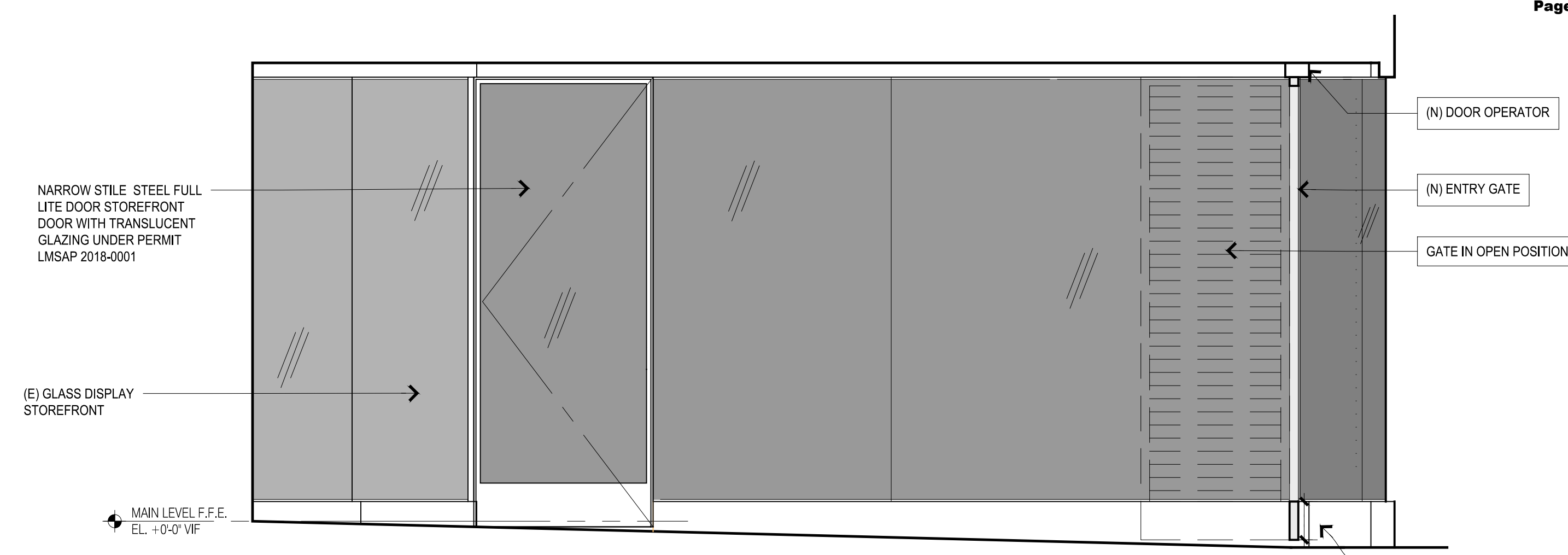
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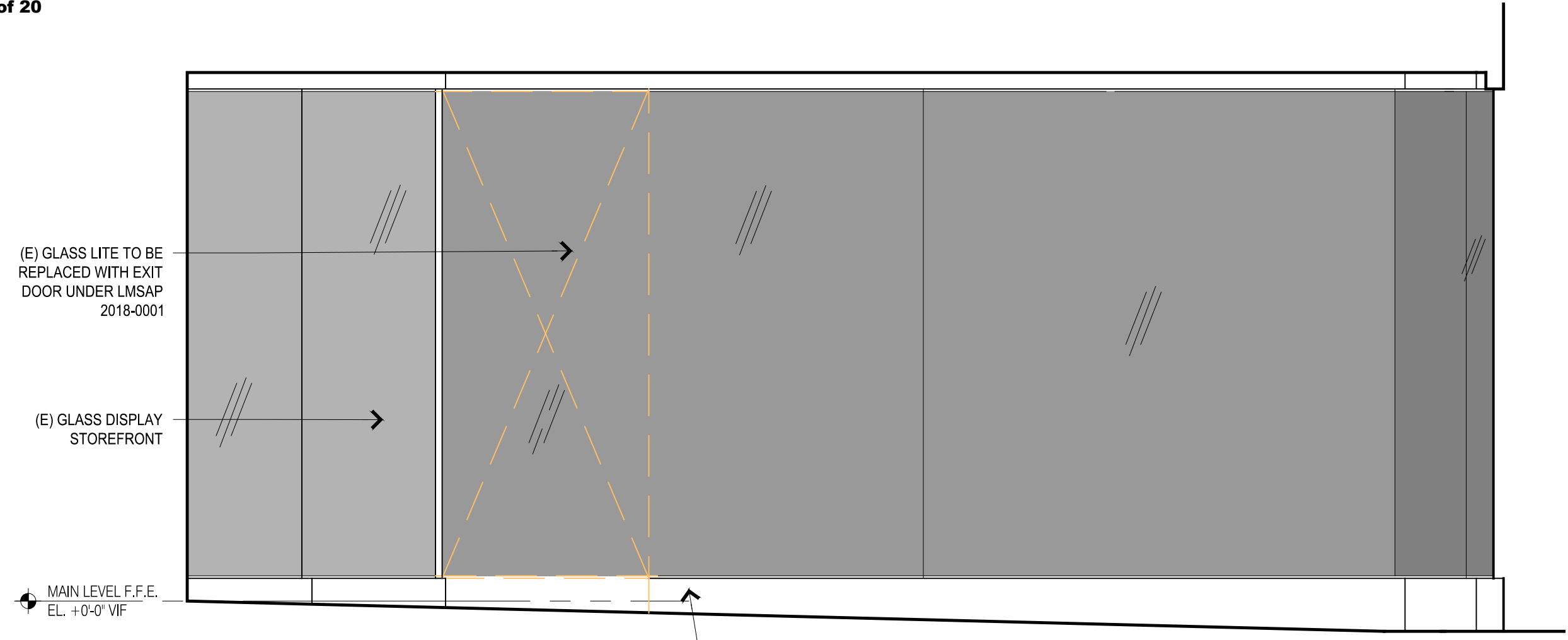
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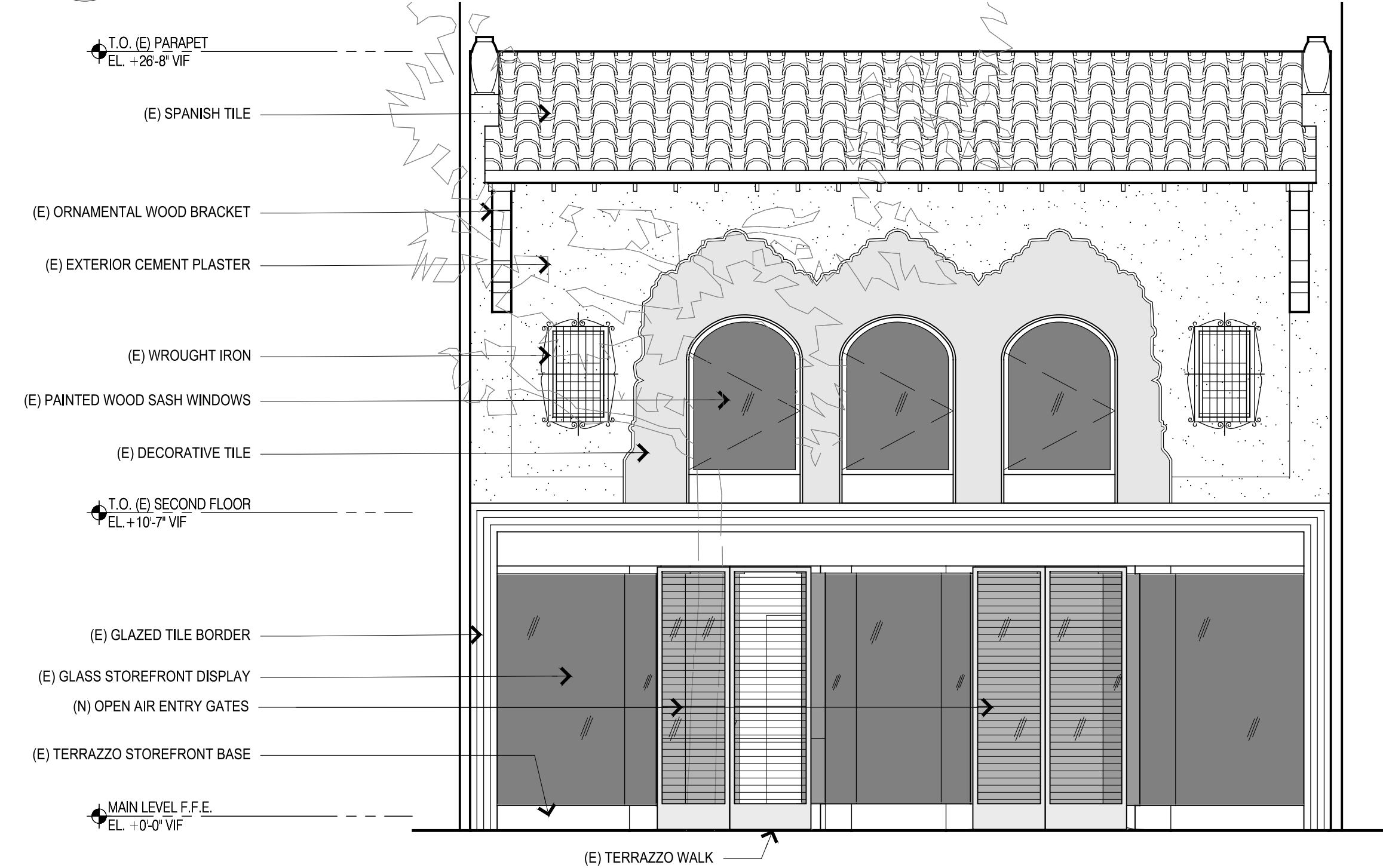
EXTERIOR ELEVATIONS



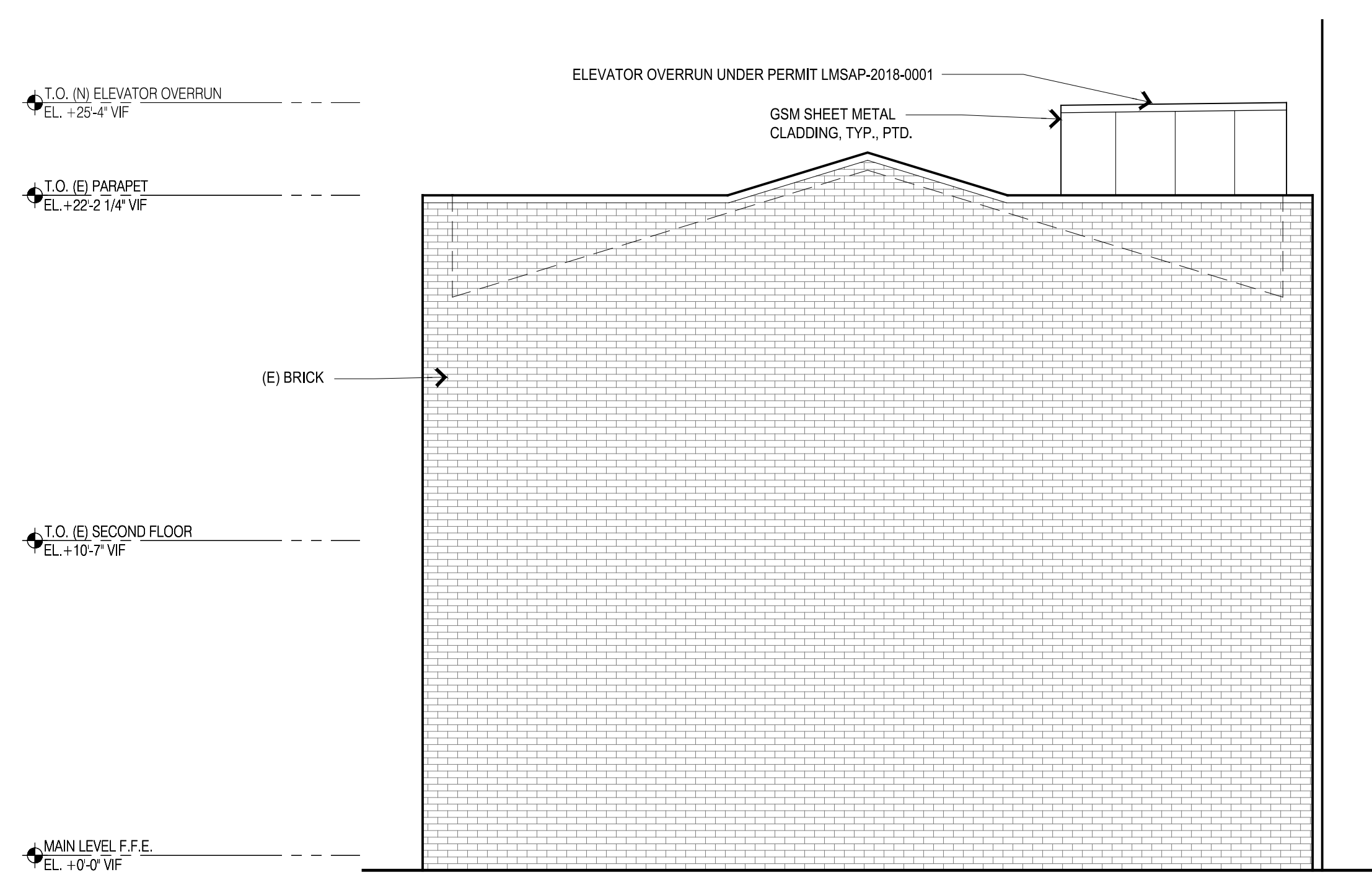
2
-
SOUTH DISPLAY WRAP - PROPOSED
1/2" = 1'-0"



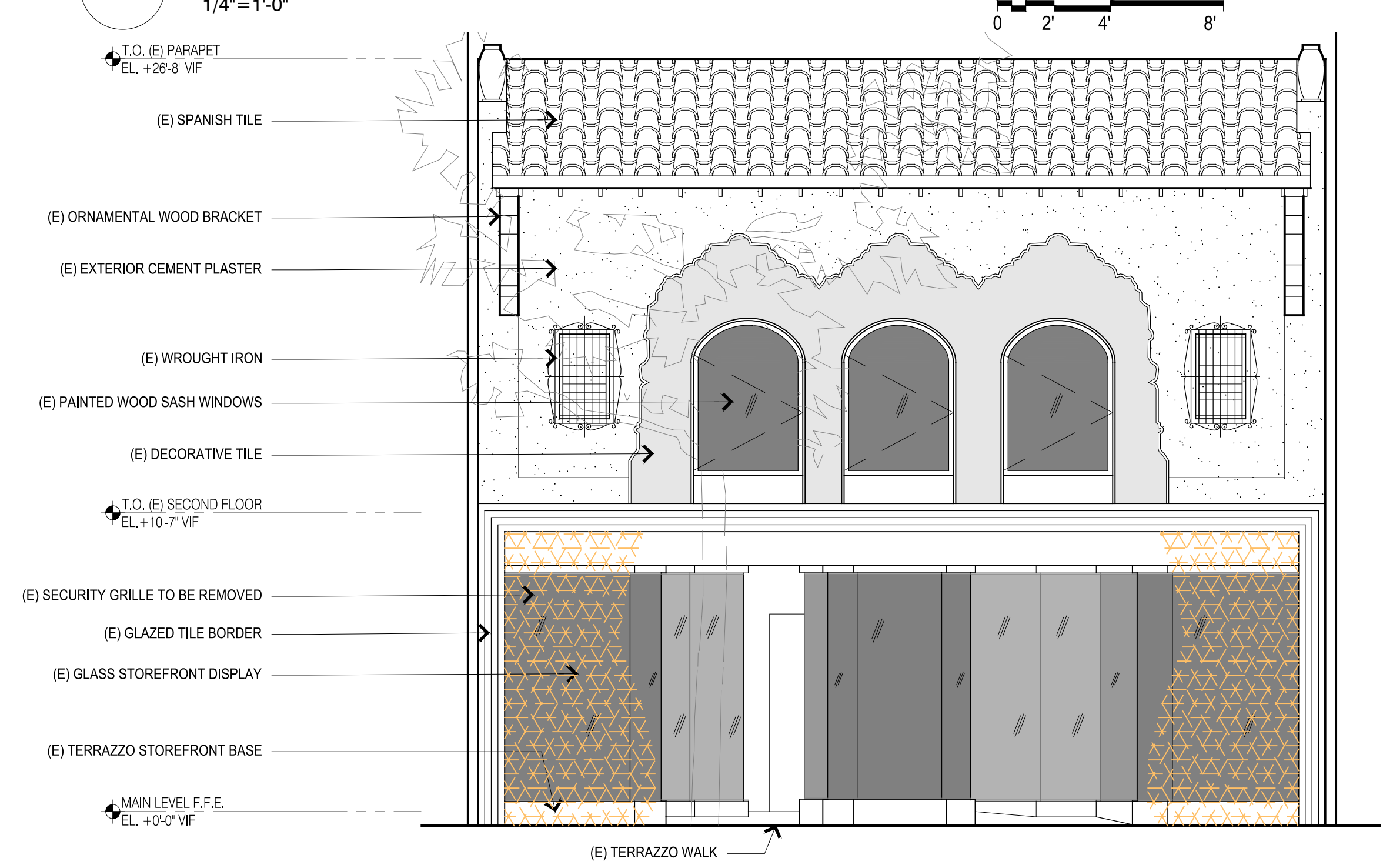
2E
-
SOUTH DISPLAY WRAP - EXISTING
1/2" = 1'-0"



1
-
SHATTUCK AVENUE FACADE - PROPOSED
1/4" = 1'-0"



3E
-
EAST FACADE - NO CHANGE
1/4" = 1'-0"



1E
-
SHATTUCK AVENUE FACADE - EXISTING
1/4" = 1'-0"

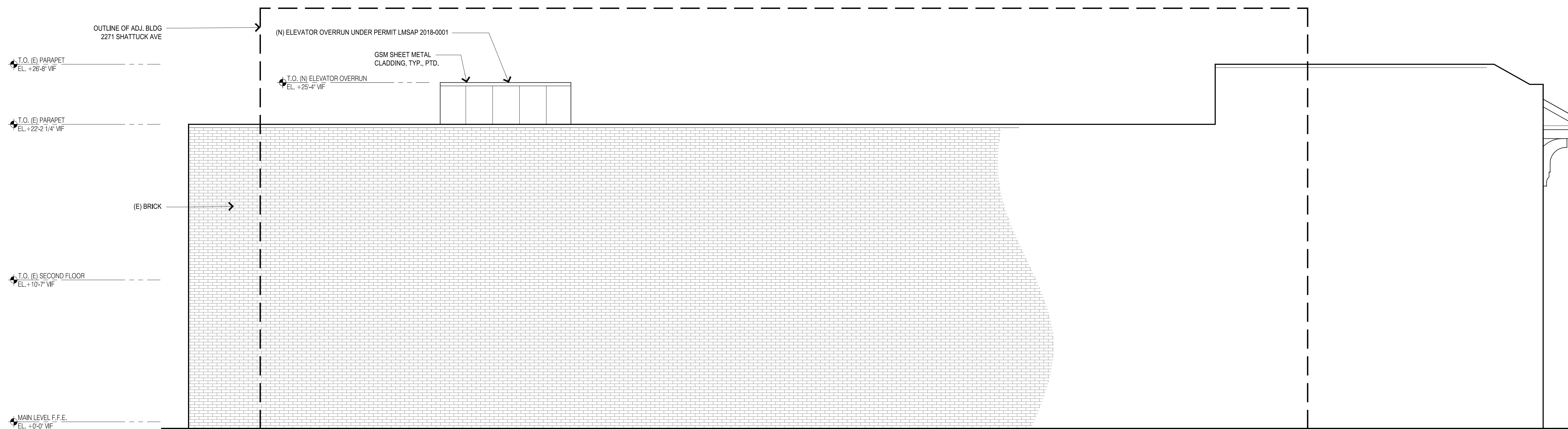
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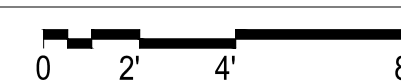


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SCALE:	-	DATE:	
SHEET:			

EXTERIOR ELEVATIONS

1E SOUTH FACADE - NO CHANGE
1/4" = 1'-0"



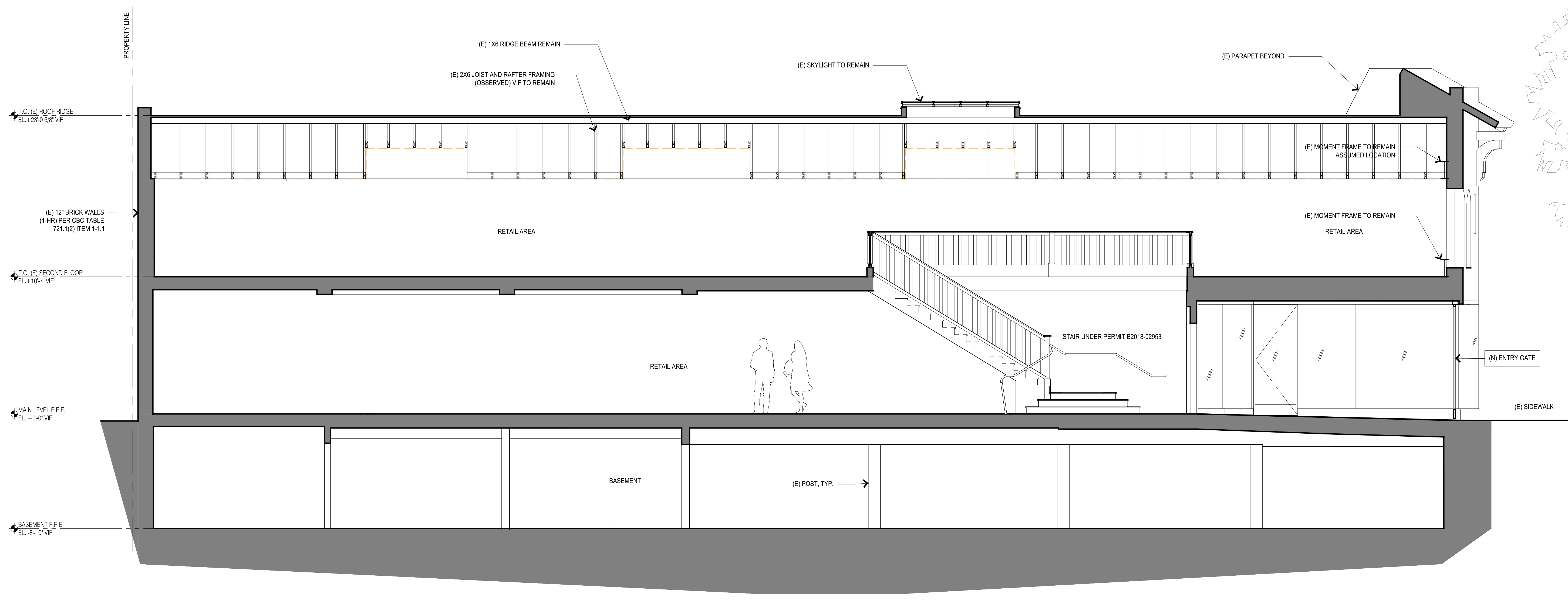
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EAST-WEST BUILDING SECTION

1 E-W BUILDING SECTION - PROPOSED
1/4" = 1'-0"
0 2 4 8'

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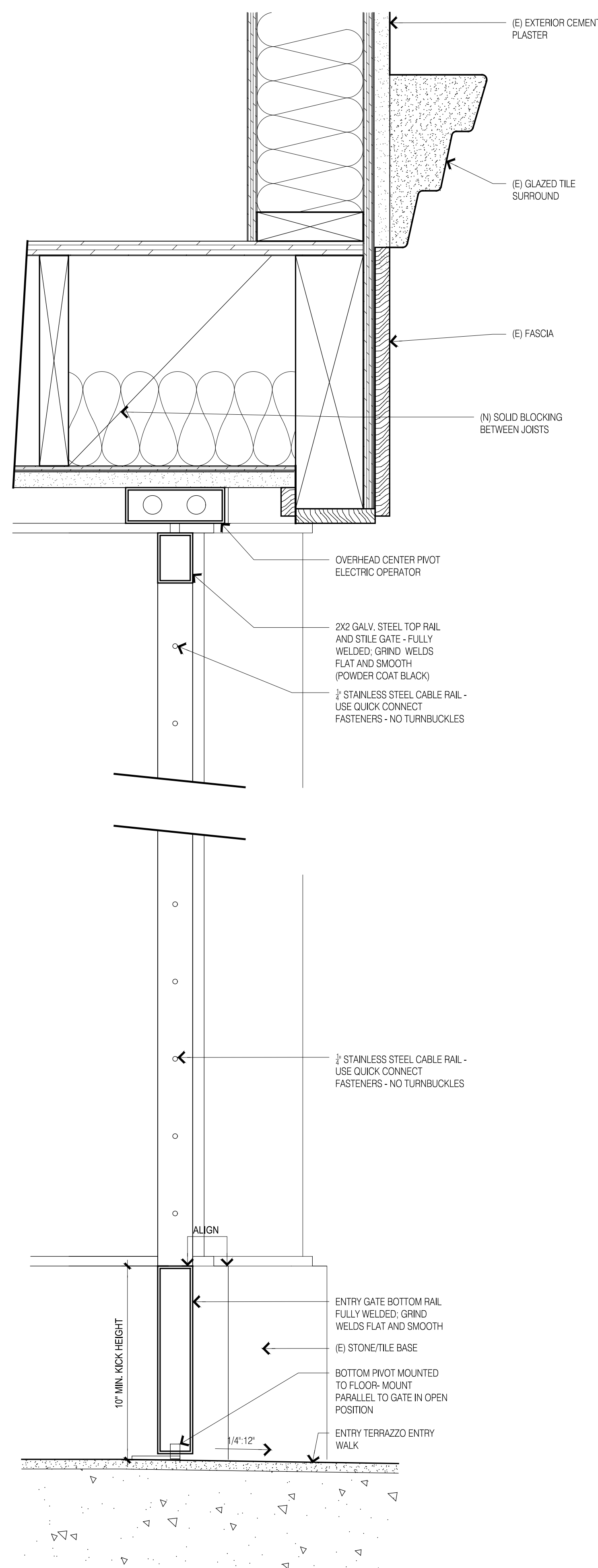
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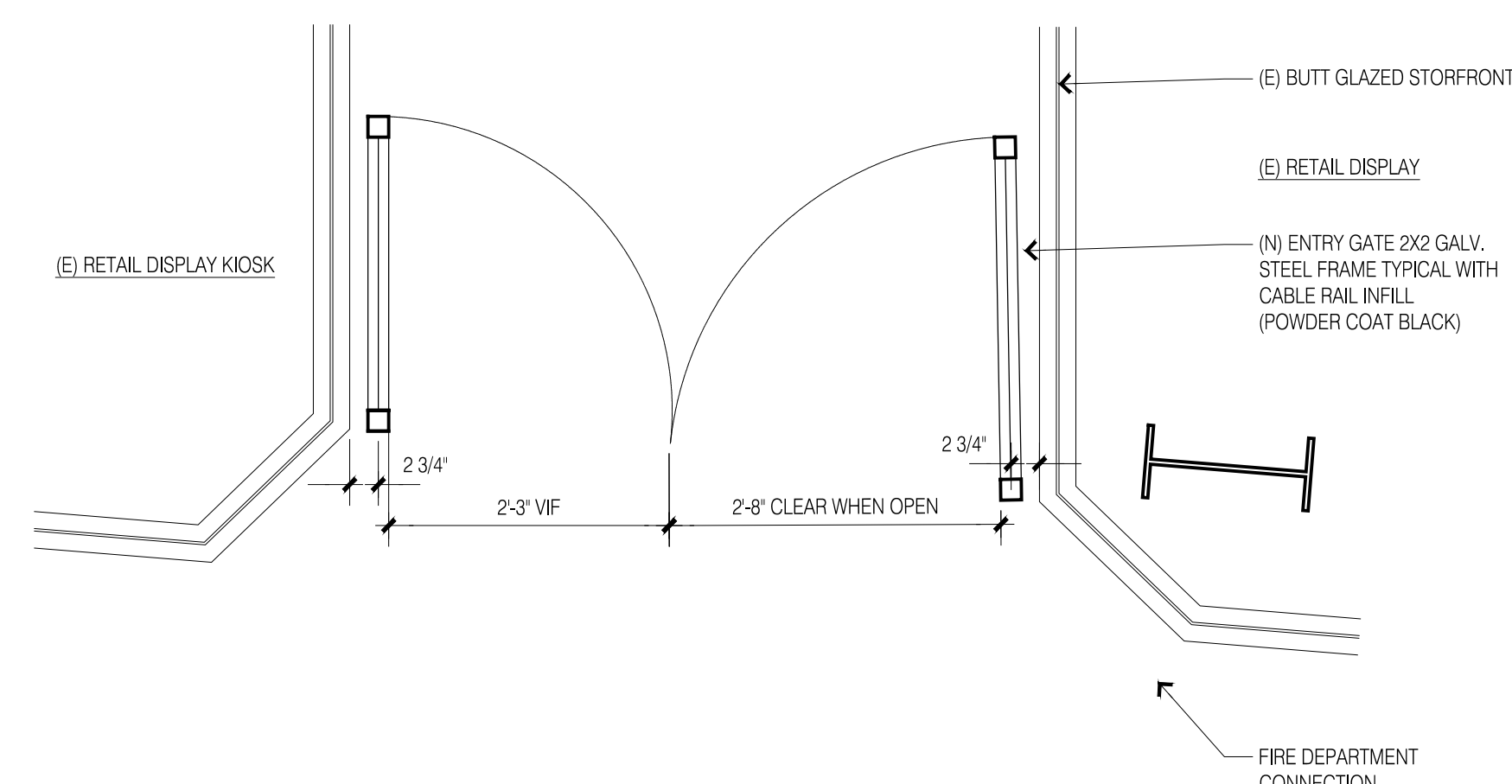
07.16.2020 LANDMARKS SAP



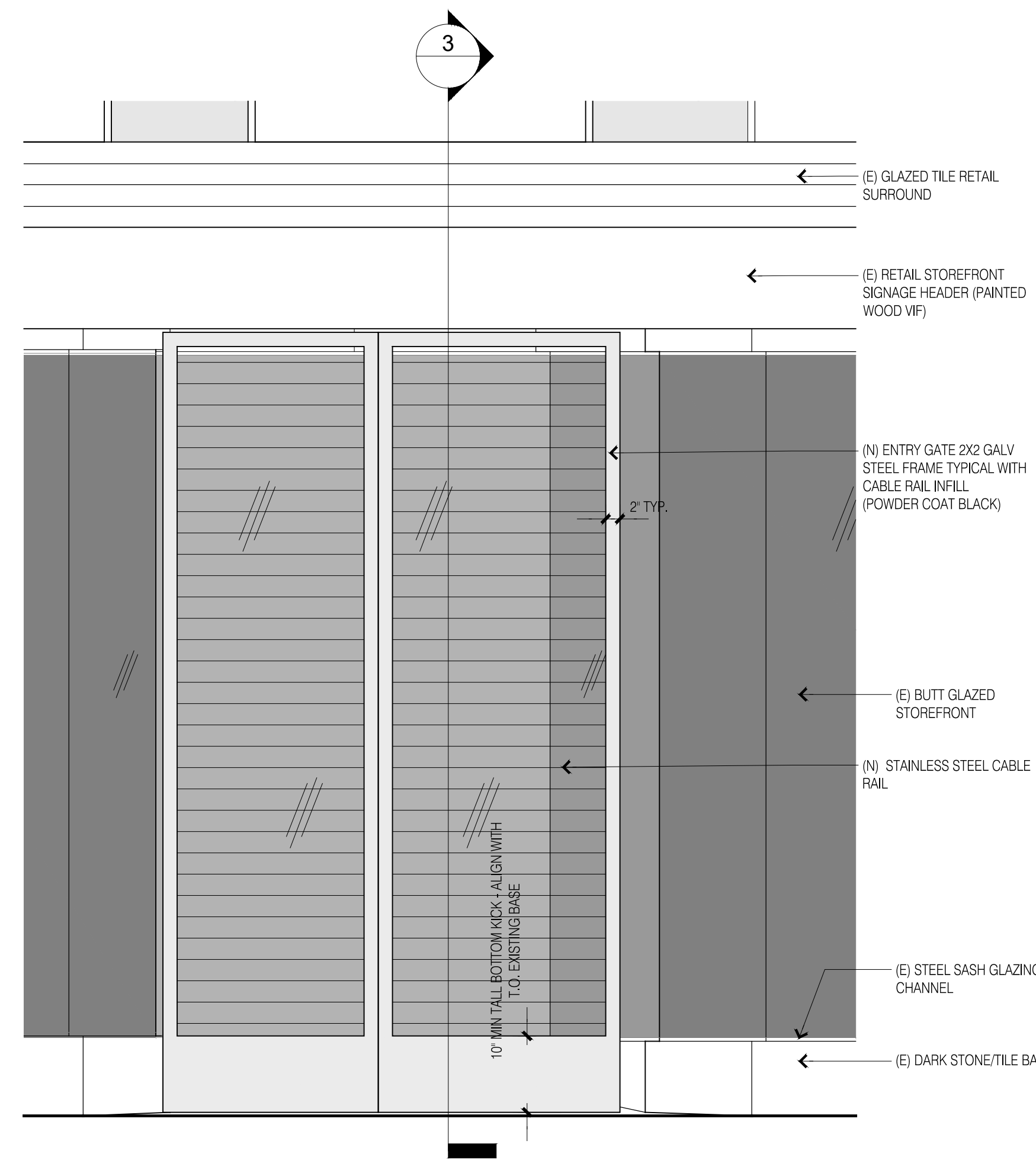
4 ENTRY GATE REFERENCE
1-1/2"=1'-0"



3 ENTRY DOOR SECTION
3"=1'-0"



2 ENTRY GATE PLAN
1-1/2"=1'-0"



1 ENTRY GATE ELEVATION
1-1/2"=1'-0"

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JOB: 1713 DRAWN BY:
SCALE: - DATE:
SHEET:

DETAILS

EXISTING MATERIALS & FINISHES

PROPOSED MATERIALS & FINISHES



EXISTING GLASS AND METAL STOREFRONT

Existing Frame Finish: Painted Black
Existing Glazing: Clear



EXISTING METAL STOREFRONT AND CURB

Existing Finish: Painted Black



NEW ENTRY GATE WITH CABLE RAIL INFILL

Frame Finish: Powder Coat Black to match existing steel sash

Infill: 1/4" Stainless Steel Cable Railing

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JOB: 1713 DRAWN BY:

SCALE: - DATE:

SHEET:

MATERIAL BOARD

MAT



Office of the City Manager

INFORMATION CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Interim Director, Planning and Development Department
 Subject: LPO NOD: 1915 Berryman Street/#LMIN2020-0003

INTRODUCTION

The attached Notice of Decision for the denial of a City Landmark or Structure of Merit designation request 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 denied City Landmark and Structure of Merit status to the property at 1915 Berryman Street. This action is subject to a 15-day appeal period, which began on September 28.

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 September 22, 2020. 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.

LPC Hearing – August 6, 2020

At the hearing on this matter, the LPC voted 7-2-0-0¹ to deny the request of 65 Berkeley residents to grant either City Landmark or Structure of Merit status to the subject residential property, which was originally constructed in 1889. According to the LPC's findings, the property exhibits insufficient architectural merit to warrant designation status, lacks necessary aspects of historical integrity, and does not represent the more significant contributions of persons important to history. Approximately 80 people addressed the Commission during the public comment on this item; the majority of speakers expressed opposition to a designation, citing the property's lack of obvious historical merit and the importance of permitting a proposed demolition and new housing project for the site to move forward (Use Permit application #ZP2020-0045, currently under review).

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 – #LMIN2020-0003 at 1915 Berryman Street

¹ Vote: 7-2-0-0; Yes: Abranches Da Silva, Adams, Crandall, Enchill, Johnson, Montgomery, Schwartz; No: Finacom, Allen; Abstain: none; Absent: none.



LANDMARKS
PRESERVATION
COMMISSION

NOTICE OF DECISION

DATE OF BOARD DECISION: August 6, 2020
DATE NOTICE MAILED: September 28, 2020
APPEAL PERIOD EXPIRATION: October 13, 2020
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): October 14, 2020¹

1915 Berryman Street

The Payson House

Landmark application (#LMSAP2020-0003) for consideration of City Landmark or Structure of Merit designation status for a residential property.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **DENIED** the following permit:

- City Landmark or Structure of Merit designation status, pursuant to Berkeley Municipal Code Section 3.24.110.A-B

APPLICANT: Daniella Thompson, 2663 Le Conte Avenue, Berkeley

ZONING DISTRICT: Residential – Southside (R-S)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines for Historical Resource Rehabilitation.

The application materials for this project are available online at:
<http://www.cityofberkeley.info/zoningapplications>

¹ Pursuant to BMC Section 23B.32.090, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION
NOTICE OF DECISION
City Landmark designation status - #LMIN2020-0003
1915 Berryman Street – The Payson House
September 28, 2020
Page 2 of 4

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 7-2-0-0

YES: ABRANCHES DA SILVA, ADAMS, CRANDALL, ENCHILL, JOHNSON,
MONTGOMERY, SCHWARTZ

NO: ALLEN, FINACOM

ABSTAIN: None

ABSENT: None

Note New Methods for Submitting Appeals during Shelter-In-Place Order

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 during the 2020 City Council Shelter-In-Place Order, you must:

1. Mail a letter clearly and concisely setting forth the grounds for the appeal with a check or money order for required fees to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley, 94704. The City Clerk's telephone number is (510) 981-6900.

OR

Alternatively, you may email your complete appeal and all attachments to the Planning Department at planning@cityofberkeley.info and include a telephone number where you can be reached during the day. Planning Department staff will call you within three business days to obtain payment information for the required fees by credit card *only*.

- a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. 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. Signatures collected per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual

LANDMARKS PRESERVATION COMMISSION

NOTICE OF DECISION

City Landmark designation status - #LMIN2020-0003

1915 Berryman Street – The Payson House

September 28, 2020

Page 3 of 4

filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.

- 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.
3. 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).

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 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.

LANDMARKS PRESERVATION COMMISSION
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- 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.

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 or lpc@cityofberkeley.info

ATTACHMENTS:

- 1. Findings for Denial
- 2. Landmark application



ATTEST: _____
Fatema Crane, Secretary
Landmarks Preservation Commission

Cc: City Clerk
Daniella Thompson, application author
Deborah Kropp, representative of 64 Berkeley resident applicants
Alon and Ravit Danino, property owners

FINDINGS FOR DENIAL

AUGUST 6, 2020

1915 Berryman Street – The Payson House

Landmark application #LMIN2020-0003 for the consideration of City Landmark or Structure of Merit designation status for a residential property.

PROJECT DESCRIPTION

City Landmark designation of the property 1915 Berryman Street

CEQA FINDINGS

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.4 of the CEQA Guidelines (the project will be rejected or disapproved by the public agency).

LANDMARK PRESERVATION ORDINANCE FINDINGS

2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A and B of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the subject property and extant main building: possess insufficient architectural merit; lack necessary aspects of integrity; and do not represent the more significant contributions of persons important to local history. As such, the property and main building do not warrant designation as a City Landmark or Structure of Merit either individually or as a member of a group of related sites. Therefore, the Commission disapproves the application for designation status.

Land Use Planning
Received
June 8, 2020

CITY OF BERKELEY
Ordinance #4694 N.S.
LANDMARK APPLICATION

William H. & Esther L. Payson House
1915 Berryman Street
Berkeley, CA 94709



Figure 1. Payson House, front façade (Alon Danino)

1. **Street Address:** 1915 Berryman Street
County: Alameda **City:** Berkeley **ZIP:** 94709
2. **Assessor's Parcel Number:** 60-2449-13 (Berkeley Villa Association, Block 16, Lot 9)
Dimensions: 141.5 feet (west) x 75 feet (north) x 136 feet (east) x 75 feet (south)
Cross Street: Bonita Avenue
3. **Is property on the State Historic Resource Inventory?** No
Is property on the Berkeley Urban Conservation Survey? No
Form #: N/A
4. **Application for Landmark Includes:**
 - a. **Building(s):** Yes **Garden:** N/A **Other Feature(s):**
 - b. **Landscape or Open Space:** Yes
 - c. **Historic Site:** No
 - d. **District:** No
 - e. **Other:** Entire property
5. **Historic Name:** Payson House
Commonly Known Name: Miller House; "Old farm house"
6. **Date of Construction:** 1889 **Factual:** Yes
Source of Information: *Berkeley Herald*, 2 January 1890; 1889 city directory
7. **Designer:** Unknown
8. **Builder:** Lord & Boynton
9. **Style:** Rustic Victorian
10. **Original Owners:** William Hawes Payson & Esther L. "Etta" (Tripp) Payson
Original Use: Single-family residence
11. **Present Owner:**
Ravit & Alon Danino
1493 Firebird Way
Sunnyvale, CA 94087-3450

Present Occupant: Unoccupied
12. **Present Use:** Residential (3 units per Alameda County Assessor's Office; sold as two units)
Current Zoning: R-2A **Adjacent Property Zoning:** R-2, R-2A
13. **Present Condition of Property:**
Exterior: Fair **Interior:** Fair **Grounds:** Wooded

Has the property's exterior been altered? Yes, in 1925 and mid-1940s.

Executive Summary

The William H. & Esther L. Payson House is a Victorian-era house built in 1889 by the important but short-lived construction firm of Lord & Boynton, founded by the two Berkeley pioneers Carlos Reuben Lord (1831–1914) and Ira Alton Boynton (1844–1921). Both partners arrived in Berkeley in 1877 and made their respective names in the civic life of the town as elected officials, leaders of fraternal organizations, and bank founders.

In a little over a year, Lord & Boynton constructed many major buildings in Berkeley, including Maurice B. Curtis's fabled Peralta Park Hotel, Curtis's own home, and the Niehaus Brothers' West Berkeley Planing Mill, to name a few.

The Payson House is one of only five surviving buildings constructed by Lord & Boynton. It was one of the first houses built north of Berryman Street—an area that wasn't even mapped by the Sanborn Map Company before 1911—and the first house on Block 16 of the Berkeley Villa Association tract.

The Payson House is the oldest surviving building north of Rose Street and south of Hopkins Street between Shattuck and San Pablo avenues. The only houses north of Hopkins Street that are the same age are three Peralta Park houses built by Lord & Boynton in the same year.

The house was built for William Hawes Payson (1855–1914), a lawyer who co-founded the First Unitarian Church of Berkeley in 1891. Payson continued to be one of the foremost American Unitarian leaders for the rest of his life, serving as president of the church and its various offshoots multiple times. He was also a well-known political reformer, fighting for fair voter representation and active in the anti-graft movement that brought down corrupt San Francisco Mayor Eugene Schmitz and political boss Abe Ruef after the 1906 Earthquake and Fire.

The Payson House retains integrity of location, setting, feeling, and association. Despite some exterior alterations carried out in 1925 and the mid-1940s, anyone who knew the house in its early days would still recognize it today.

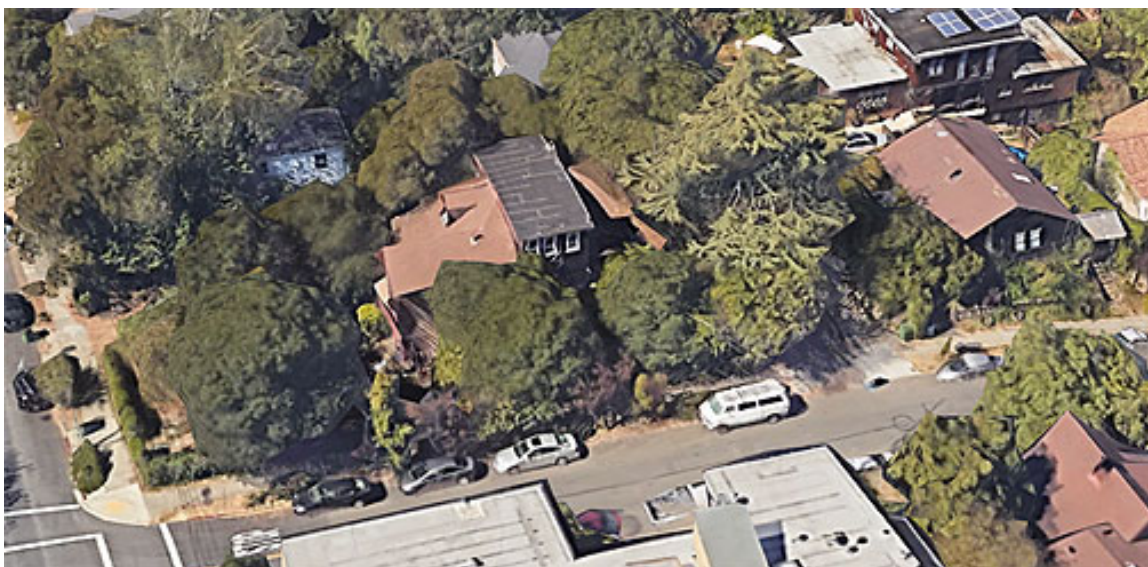


Figure 2. The Payson House parcel, seen from the east (Google Earth)

14. Description

The William & Etta Payson House is a one- and two-story wood-frame dwelling constructed in 1889. It is located on the northwest corner of Berryman Street and Bonita Avenue, in the center of a large lot, amid several coast live oaks.

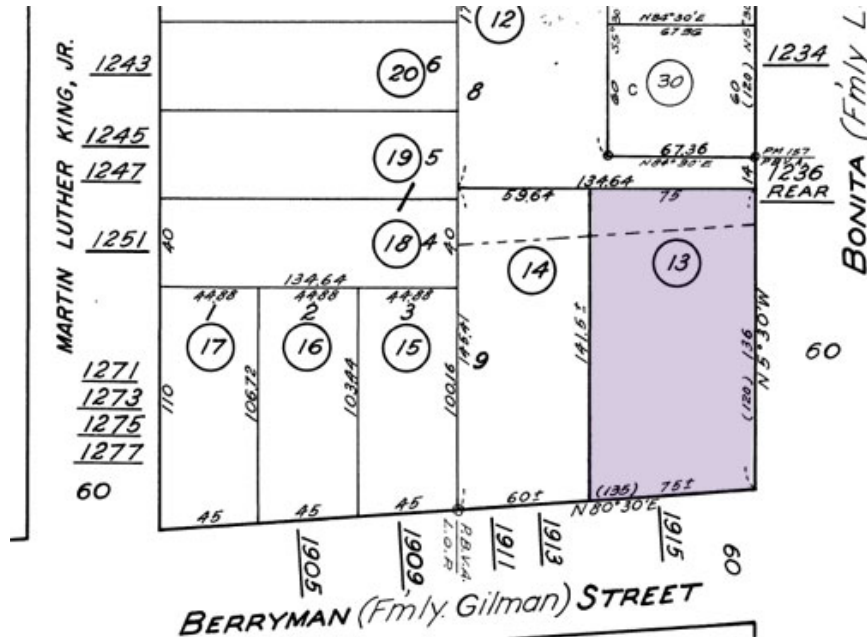


Figure 3. The subject property in the Assessor's Map of Block 2449

The house used to stand on a much larger parcel that included a still extant cottage (now 1234 Bonita Avenue), built c. 1892–93 for Mrs. Payson's sister.

The plan of the Payson House is irregular. The earliest outline available dates from a 1911 Sanborn map (Figs. 4, 5), since the neighborhood north of Berryman Street wasn't sufficiently developed in 1903 to warrant a Sanborn map.

Despite some modifications to the exterior, the 1911 outline is still easily recognizable today. Originally, the house comprised a central rectangular mass surmounted by a hip roof; a projecting gable-roofed front wing at the southeast corner; and a service wing at the northwest corner.

A bay window in the center of the west façade mirrored a square projection on the opposite side.

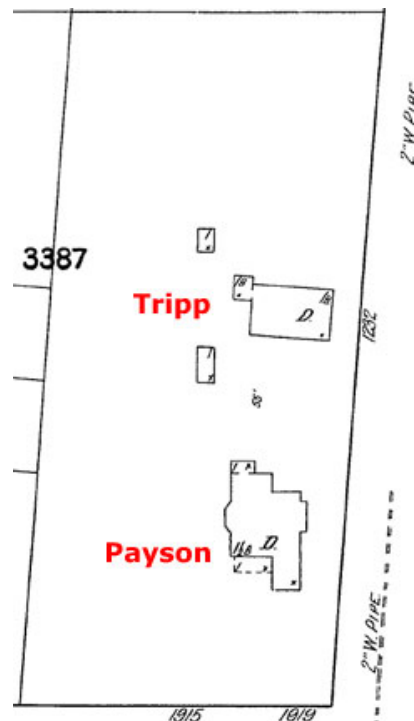


Figure 4. Sanborn map, 1911



Figure 5. House outline in 1911 (Sanborn map)

As built, the Payson House was one-and-a-half stories high with a basement. The small, south-facing dormer in the hip roof (Fig. 8) marks the front half of the original attic. In 1925, then-owner Katherine Olden Easton (1863–1940), an artist and playwright, created a second story above the central portion of the house, surmounted by a new shallow-pitched roof that sheds over the projections in the east and west walls.¹ That roof is shown in the 1929 Sanborn map below.



Figure 6. The 1889 hip roof, surmounted by the shallow-pitched roof built in 1925.

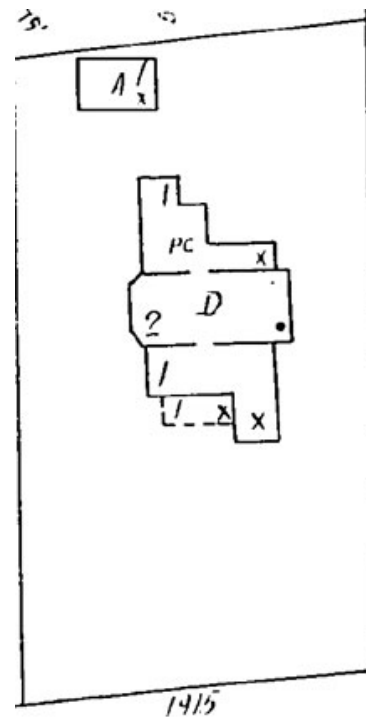


Figure 7. Sanborn map, 1929

¹ Building permit #20766. BAHA archives.

The photo below shows the front of the original hip roof, with the 1925 second-story addition behind. The dormer features a small gable roof with a pediment eave framed in ogee molding, and a double-hung window whose upper sash is divided into 3-over-2 lights.



Figure 8. Front dormer in the original hip roof. Behind is the second story created in 1925.

The Payson House is clad in unpainted wood shingles. A shingled skirt flares out over the water table above the basement level, where horizontal V-grooved rustic siding runs along all four sides of the house. The shingle cladding is not original to the house (had it been, it would have made this house the oldest shingled structure in Berkeley). The date of the shingled exterior is unknown; the shingles may have been applied under the influence of Bernard Maybeck, a close neighbor since 1892, or in conjunction with the shingling of the adjacent Tripp-Wollenberg cottage, on which Maybeck is said to have done some work in the first decade of the 20th century.

It is assumed that the original exterior was clad in rustic siding of the type seen on the basement-level exteriors. Rustic was the cladding applied to at least one other house constructed by Lord & Boynton in the same year they built the Payson House.

A known example is the James & Cecilia Luttrell House (Ira Boynton, designer; Lord & Boynton, builders, 1889) at 2328 Channing Way.



Figure 9. Rustic siding, Luttrell House

South (front) façade



Figure 10. Front façade

The front façade is asymmetrical, with a gable-roofed wing on the right, projecting south from the main, hip-roofed mass. The roof eaves are closed and shallow. A flight of open wooden stairs leads to the front entrance, which is reached via an opening in an enclosed porch. A horizontal window, apparently aluminum-framed, is embedded flush within the south wall of the porch.



Figure 11. A view from the south

A small horizontal wood-framed window faces west from the projecting front wing (Fig. 10). On its south façade, this wing features a pair of attached double-

hung, wood-framed windows whose upper panes are bordered by rows of small, square, plain-glass lights.



Figure 12. Front wing



Figure 13. Windows in front wing



Figure 14. Enclosed porch, southwest corner

As built, the entrance to the house was located within an open porch on the left side of the south façade (Fig. 5). That porch was enclosed in 1946 by then-owner Harry V. Miller, who added a fixed, multi-paned wooden window to the porch's west side (Fig. 15).²



Figure 15. West-facing window in front porch

² Building permit #58971. BAHA archives.



Figure 16. West façade, seen from the northwest

West façade

The west façade is the least altered side, with the marked exception of the 1925 second-story addition that rides on top of the central bay window.

This façade is symmetrical, with the central bay flanked by walls of fairly equal length on either side.



Figure 17. West façade

A series of wood-framed windows, all of which appear to be original, lines the main-level walls. From north to south, these include a small double-hung window in the northern service wing; a pair of attached double-hung windows; a central three-sided bay containing four double-hung windows; and a horizontal double-hung window with a 5-over-3 multipaned lower sash (Fig. 21).



Figure 18. Windows on main level, west façade

Three sides of the second story have wood-framed windows: casements facing north and south, and a double-hung pair facing west. A red-brick chimney rises from the hip roof, hugging the second-story wall.



Figure 19. Upper story above west façade



Figure 20. West façade, southern end



Figure 21. West façade, seen from the south
(Mark Hulbert)



Figure 22. West façade toward the north



Figure 23. Bay window & second story,
west façade

East façade

The east façade is the most altered side of the house. By 1950, a one-story addition had been attached to the east wall of the front wing (Fig. 24). This addition appears to have a shed roof and is entered via an external staircase, presumably serving one of the former apartments. The addition was most likely built in the 1940s, possibly during World War II. No specific building permit has been found for this addition.

A wood-framed, double-hung window in the addition's wall appears to be original and may have been transferred from the front wing's wall.

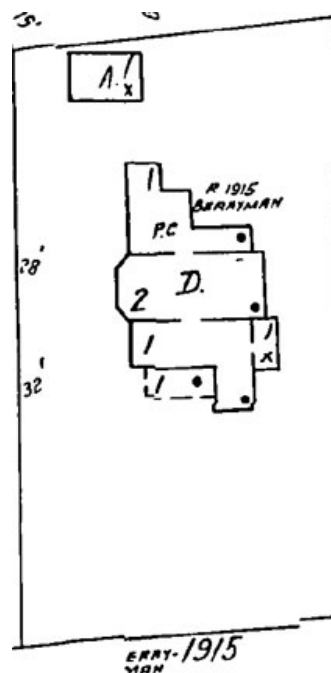


Figure 24. Sanborn map, 1950



Figure 25. Circa 1940s addition, east façade

The 1925 second story extends over the main story's square projection in the center of the east façade. The window on the first story appears to retain its original frame minus the sill, but the sash itself has been replaced with aluminum. The upper story features three east-facing windows, all of vinyl.



Figure 26. East façade, front & central sections



Figure 27. East façade, central section

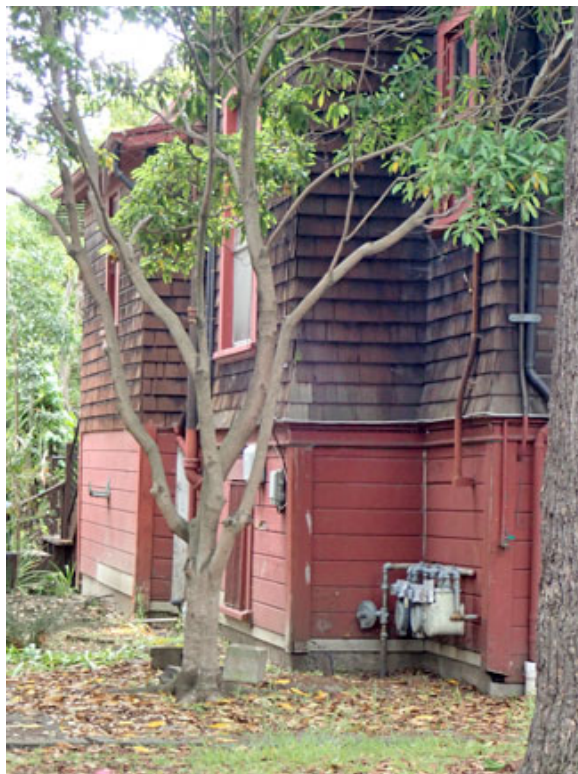


Figure 28. East façade, seen from the north

The northern section of the east façade includes a wood-framed, double-hung window of the same proportions as seen on the first story of the west façade.



Figure 29. East façade toward the rear & garage

North (rear) façade

The north side of the house contains the projecting service wing under its own hip roof. It is entered through an east-facing door with a glazed upper third, reached via a flight of wooden steps. To the left of the door, a narrow wood-framed, double-hung window faces north. A smaller, single-paned window is positioned above the cellar entrance.



Figure 30. North façade

On the second story, two double casement windows with 2-over-3 glazed sashes face the rear. Between the service wing and the upper story rises a second brick chimney.



Figure 31. Brick chimney, north side



Figure 32. Cellar & service entrances



Figure 33. Windows, north façade

A one-car garage, clad in $\frac{3}{4}$ rustic siding, stands in the northwest corner of the property, facing east along a driveway that opens to Bonita Avenue.

The garage was built in 1925 for then-owner Katherine Olden Easton by contractor J.P. Wood,³ who built the second story at the same time.

Alterations to the house

The most significant alteration was made in 1925, when contractor James P. Wood raised the central portion of the roof to create a second story with bathroom facilities but no kitchen. The house remained a single-family residence at that time. Owner Katherine O. Easton, whose contractor husband died that year, may have built the second story to give her artist daughter her own space.

By 1945, when owner Harry V. Miller hired contractor George G. Sgritta to make alterations, the house was indicated in the building permit as serving two families. The work was described as follows:



Figure 34. Garage, built in 1925

³ Building permit #20767. BAHA archives.

Back outside stair to be fix [sic] up.
~~and a lot more inside work to be done to improve the Bldg.~~
Inside stairway to be changed.

In 1946, Harry Miller enclosed the front porch, changing the side window. It was during Miller's ownership that the house was divided into apartments, and the small addition with its private entrance at the southeast corner no doubt served that purpose, but no building permit has been found for the separation. By 1955, when Miller applied for a permit to lower the kitchen ceiling, the house was described as a three-family apartment building.⁴

The recent listing of the house, which sold on 18 March 2020, included the following description:

Two story craftsman with a full walk-in basement. Floor plan was 3 units, previous owners removed the common wall between the two main level units to create one large living area to accommodate their large family. Third unit is upstairs.

Features to be preserved

The distinguishing features of the Payson House include the following:

- Rectangular mass with projecting wings at southeast and northwest, and central bays at east and west sides
- Main hip roof; gable roof over southeast wing; gable roof over south dormer; accessory hip roof over northwest wing; shed roofs in rear
- South-facing, gable-roofed dormer with pediment eave
- Ogee molding on roof eaves
- Shingle cladding (or, preferably, original cladding underneath the shingles)
- V-groove Rustic siding on basement-level exteriors
- Water table on all four sides
- Wood-sash windows (double-hung, casement, and fixed; with divided and undivided lights) in flat wood board casings, and projecting window sills with molded apron trim
- Wooden exterior doors
- The remaining six coast live oaks (two trees were cut down in March 2020)

⁴ Building permit #77177. City of Berkeley.

15. History



Figure 35. Plots 84 & 85 (shaded) in Kellersberger's Map

The Berkeley Villa Association tract, in which the Payson House is located, was part of Rancho San Antonio, a 44,800-acre Spanish land grant given in 1820 to Sergeant Luís María Peralta (1759–1851) by the last Spanish governor, Don Pablo Vicente de Sol, in recognition of Peralta's forty years of military service to the Spanish king. The rancho included lands that form Oakland, Alameda, Piedmont, Emeryville, Berkeley, and parts of San Leandro and Albany.

In 1842, Luís Peralta divided the rancho among his four sons. Domingo and José Vicente were given the land that now comprises Oakland and Berkeley.

Within less than a decade, squatters overran the Peraltas' properties, stole their cattle, and sold it in San Francisco. Worse, parcels of rancho land were sold without legal title. Domingo and Vicente Peralta fought the appropriations in the courts. In 1856, the U.S. Supreme Court confirmed their title, but by then the brothers had been forced to sell most of their lands to cover legal costs and taxes. The various buyers engaged cartographer Julius Kellersberger⁵ to map the Peralta Ranchos for subdivision purposes.

As related in *Berkeley, the First Seventy-Five Years*, "during the late 1850s and early 1860s Domingo Peralta's former property was the subject of almost continuous parcelings, mortgagings, and transfers. Most of the transactions were

⁵ Map of the Ranchos of Vincente & Domingo Peralta. Containing 16970.68 Acres. Surveyed by Julius Kellersberger. Surveyed 1853. Partitioned 1854. Filed Jan. 21st 1857. Courtesy of Barry Lawrence Ruderman Antique Maps, Inc. <http://www.raremaps.com/gallery/enlarge/39956>

made for speculation or investment; a few, to provide homes and ranches for new settlers.”⁶



Figure 36. Napoleon Bonaparte Byrne
(Berkeley Historical Society)

Napoleon Bonaparte Byrne

One of the new settlers was Napoleon Bonaparte Byrne (1817–1905), a prosperous plantation owner from New Madrid, Missouri, where he raised thoroughbred horses and cattle.⁷

In the 1850s, malaria was rampant along the Mississippi and Missouri Valleys.⁸ Byrne, whose plantation was located by the Mississippi River, decided to move his family to California. He sold the plantation, freed his slaves, and undertook a six-month journey across the plains in a covered wagon, arriving in Oakland in the fall of 1859.

In addition to the Byrne family, the overland party included two freed slaves, Peter and Hannah Byrne, the first African-Americans to settle in Berkeley.

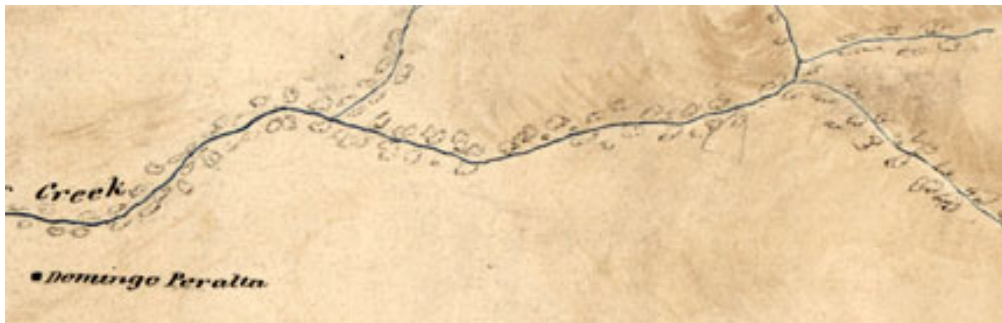


Figure 37. Codornices Creek in March 1861 (detail from James G. Stratton's land case map, Bancroft Library, U.C. Berkeley)

In March 1860, Napoleon Byrne began purchasing land along Codornices Creek. In June 1860, the U.S. Census enumerated the Byrne household in Oakland (Berkeley was not yet named). The household included ten persons: Napoleon and Mary Byrne; their four children; two white laborers, and two African-Americans—Peter, a laborer, and Hannah, a nurse. Byrne's real estate was valued at \$7,000, and his personal estate at \$4,000.

⁶ *Berkeley, the First Seventy-Five Years*. Writers Program of the WPA in Northern California. Berkeley: The Gillick Press, 1941.

⁷ Mary Tennent Carleton. *The Byrnes of Berkeley, From Letters of Mary Tanner Byrne and Other Sources*. *California Historical Society Quarterly*. San Francisco, 1938. Vol. 17, No. 1, pp. 41–48.

⁸ Sok Chul Hong. *The Burden of Early Exposure to Malaria in the United States, 1850–1860: Malnutrition and Immune Disorders*. *J Econ Hist.* 2007 Dec; 67(4): 1001–1035.

Napoleon Byrne continued to acquire land from four different sellers; by April 1861, he was in possession of 827 acres in plots 84 and 85 of Kellersberger's Map.

In 1868, the Byrnes built an elegant Italianate villa surrounded by a large garden, located at what is now 1301 Oxford Street. In 1870, the U.S. Census recorded the value of Byrne's real estate at \$100,000, and his personal estate at \$10,000. The household numbered 12 persons, including three new Byrne children, a Canadian-born laborer, an Irish-born woman servant, and a Chinese waiter. The former slaves were no longer part of the household; Peter Byrne changed his surname to Wilson and established himself as a whitewasher in Oakland.



Figure 38. The Byrne house, built in 1868 (Pettitt: Berkeley, the Town and Gown of It)

Although the farm was "good enough to pay for itself with one or two crops," Napoleon Byrne was not pleased with the soil, feeling that it was "not of the first class," as Mary Byrne wrote to relatives in Missouri. He had begun to sell portions of his land in 1868. Having heard of the enormous crops that could be raised in the Sacramento-San Joaquin River Delta, Byrne joined three friends in 1873 and purchased the marshy, 3,100-acre Venice Island, where he moved with his family. He financed the purchase by selling the final large chunk of his Berkeley land to businessmen Henry Berryman and Felix Chappellet for \$49,000, reserving for himself the family house and the surrounding 11 acres. The Byrnes would never again occupy their villa.

Berryman, Chappellet and the Berkeley Villa Association

Henry Burpee Berryman (c. 1842–1903) was born in New Brunswick, Canada. As a young man, he moved to San Francisco and began working for another New Brunswicker, a wealthy coal merchant named James R. Doyle. Doyle died

in 1872, leaving a sizable estate. Shortly thereafter, his widow, Louisa McKevo Doyle, married Henry Berryman, who “took entire charge of the affairs of her husband’s estate.”⁹

The Doyle estate enabled Berryman to join the French-born merchant and former mining operator Felix Chappellet (1828–1902) in purchasing Napoleon Bonaparte Byrne’s land in 1873.

Berryman and Chappellet had the land surveyed in October 1873. On 27 July 1875, a subdivision map of the Berkeley Villa Association tract (Fig. 40) was filed in the Alameda County Recorder’s Office. The tract occupied the northern half of Plots 84 and 85 in Kellersberger’s map (Fig. 35).

As drawn in the 1875 map, the tract was a grid comprising 32 rectangular city blocks bounded by Rose Street to the south, Josephine Street to the west, and Eunice (then Durant) Street to the north. East of Arch Street, eight blocks stretched deep into the hills, ending with the imagined East Street. The eight eastern blocks were never realized as drawn.

Blocks 22 and 23 remained Napoleon Bonaparte Byrne’s property. However, Byrne soon ran into financial difficulties on Venice Island, as the cost of employing Chinese labor to build levees and reclaim the marsh proved prohibitive. In 1877, Byrne sold his Berkeley house to Henry and Louisa Berryman, who made it their home.



Figure 39. Felix Chappellet

⁹ Mrs. Louisa Berryman’s deposition in a trust court case brought against the Berrymans. *Daily Alta California*, 26 January 1890, page 8, column 1.

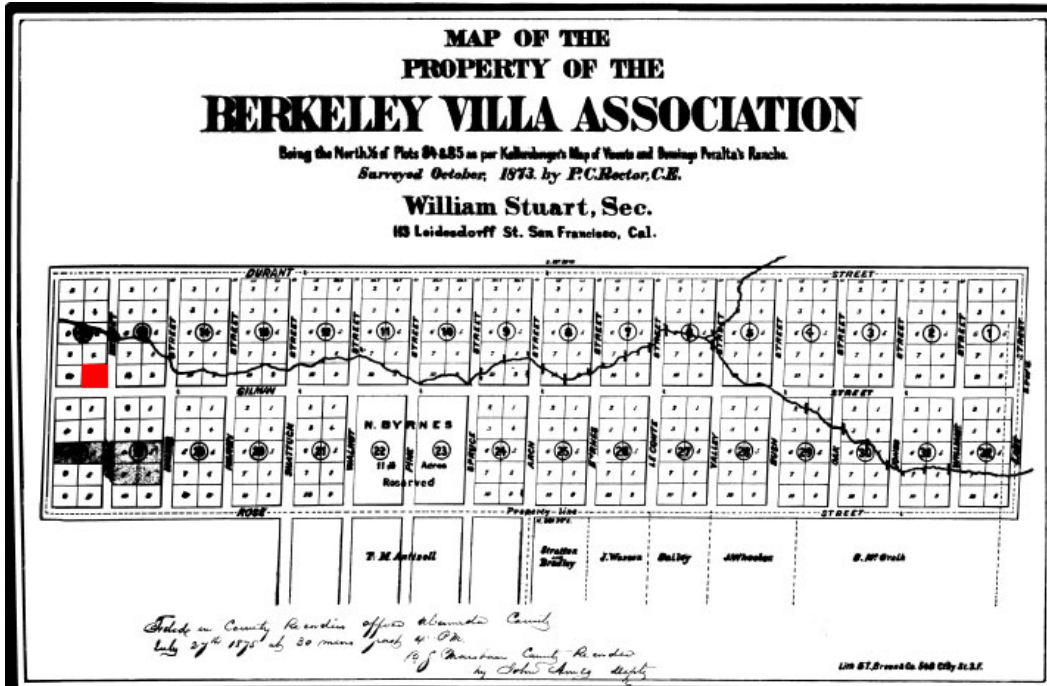


Figure 40. Berkeley Villa Association tract map, filed in 1875. Lot 9 in Block 16 is marked in red.

In June 1878, the Oakland real estate agent G.F.E. Brinckmann filed a map of the Berryman Tract that advertised select lots for sale at auction. This map showed a more realistic view of the terrain, with the area east of Spruce Street no longer laid out in a uniform grid but with parcels of various shapes and sizes set along meandering streets. The old Byrne house and grounds were marked "H.B. Berryman" (Fig. 41).

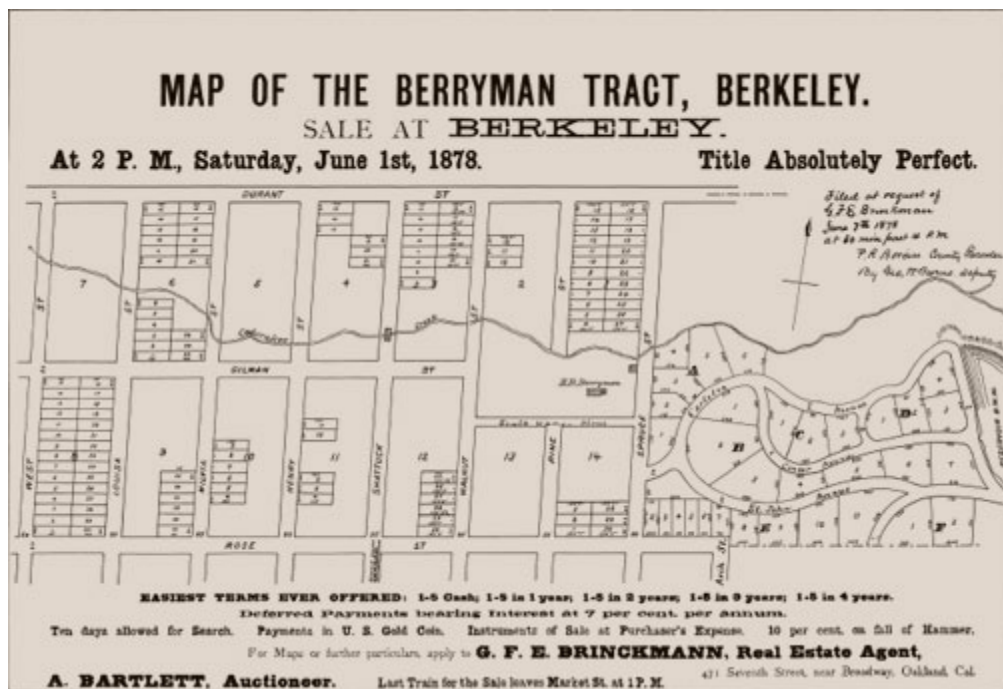


Figure 41. Map of the Berryman Tract filed by G.F.E. Brinckmann, June 1878

In 1880, the map published by Berkeley realtors Carnall & Eyre (Fig. 42) revealed a more modest subdivision. The Byrne property was now called the Berryman Reserve.

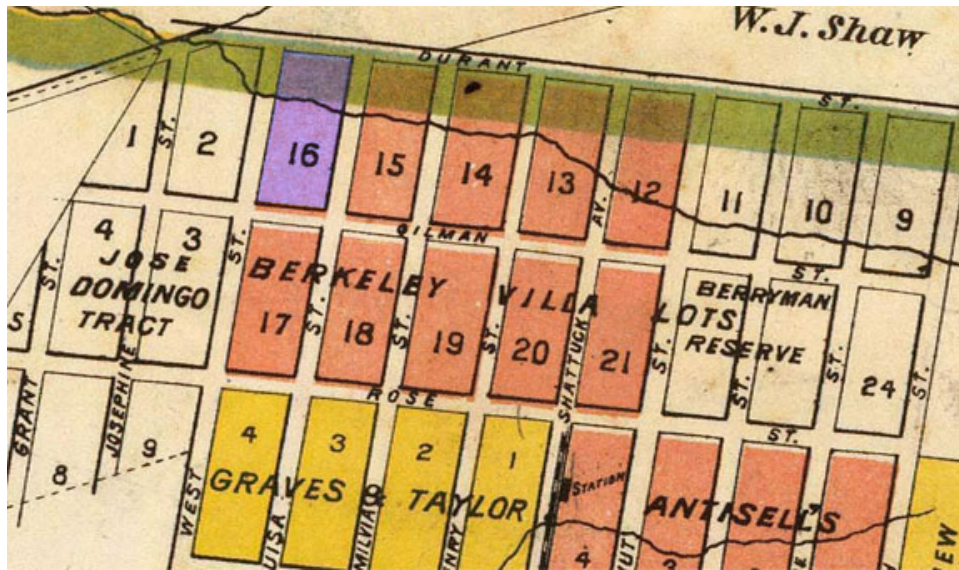


Figure 42. Block 16, Berkeley Villa Association tract (Carnall & Eyre map of Berkeley, 1880)¹⁰

Even before the first subdivision map of the Berkeley Villa Association tract was filed, Chappellet and Berryman began selling lots, as evidenced by a newspaper advertisement (Fig. 43) published in June 1875.

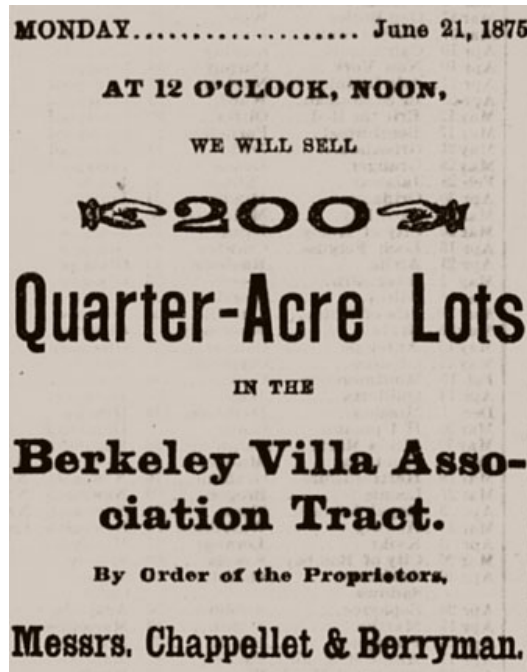


Figure 43. Detail from an ad by Olney & Middleton (Daily Alta California, 4 June 1875, page 3)

¹⁰ David Rumsey Map Collection.

The nearly full-column ad, taken by the real estate auctioneers Olney & Middleton in the *Daily Alta California* on 4 June 1875, promised unsurpassed views, comprising “a panorama extending from Petaluma on the north to Santa Clara on the south, and including the Bay and its Islands, the Golden Gate, Redwood City and San Mateo, together with New Saucelito [sic] and San Rafael on the west.”

The ad further announced:

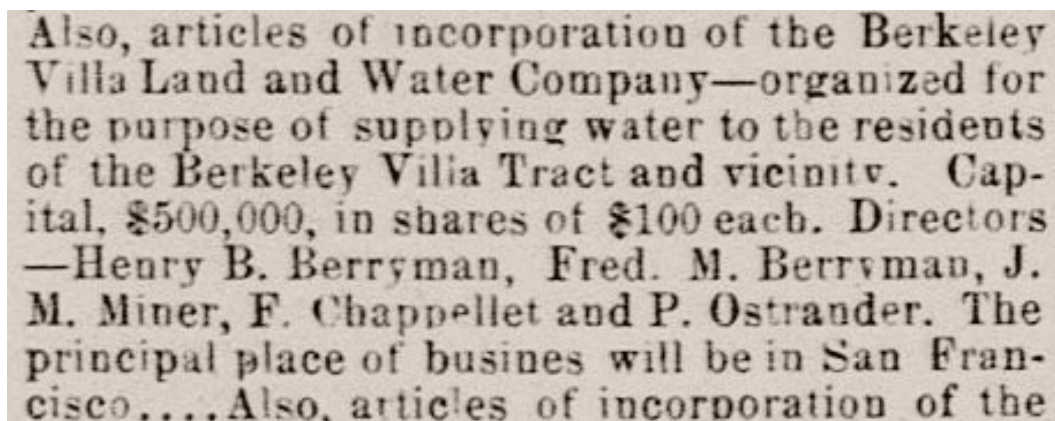
This property connects to Oakland by HORSE CARS to the University, which run every seven minutes, and to within a quarter mile of the Tract, and shortly will be extended to it. It connects to San Francisco by the BERKELEY FERRY BOAT, which makes eight trips a day, the landing being at the foot of University Avenue, distant one mile and a quarter from the property. Arrangements are in progress for a railroad from the landing to the University, and on its completion the time from San Francisco to this Tract will not exceed one hour. [...] The route of the Central Pacific (Bantas) Overland Railroad passes within a half-mile of this Tract.

Just as important as transportation was the question of the water supply, and here, too, the ad made bold claims:

UNSURPASSED WATER FACILITIES are secured to the Tract; first, by a never-failing stream of flowing water running through the centre of the Property, and second, by the incorporation of the BERKELEY VILLA WATER COMPANY, organized for the purpose of constructing a RESERVOIR of sufficient capacity to furnish any quantity of water that may be required for irrigation as well as home use.

Purchasers of lots at the auction sale were guaranteed a 15% discount off the regular water rate in perpetuity.

Perhaps the most extravagant promise made in the Olney & Middleton auction ad was that 12 blocks, containing 60 acres, would be set aside as a “magnificent park and garden,” and that a “commodious hotel” would be erected “at once.”



Also, articles of incorporation of the Berkeley Villa Land and Water Company—organized for the purpose of supplying water to the residents of the Berkeley Villa Tract and vicinity. Capital, \$500,000, in shares of \$100 each. Directors—Henry B. Berryman, Fred. M. Berryman, J. M. Miner, F. Chappellet and P. Ostrander. The principal place of business will be in San Francisco.... Also, articles of incorporation of the

Figure 44. Incorporation notice in the *Sacramento Daily Union*, 27 October 1875

In August 1877, Berryman bought out Chappellet's interest in the water company¹¹ and built Berryman Reservoir on Codornices Creek. When the Central Pacific Railroad extended its Berkeley Branch Line from downtown Berkeley to Shattuck and Vine Street, the new train depot became known as Berryman Station. Chappellet, in his turn, took over the sixteen western blocks of the Berkeley Villa Association tract. By the spring of 1877, he had subdivided many of the lots into smaller ones, each a third of the original parcels' size.

In May 1877, Chappellet put 150 lots on the auction block. The announcement of the upcoming sale promised:

The particular location of this property, its proximity to San Francisco, fine climate, the easy terms upon which it will be offered, commend it to particular favor and attention of the public.

The announcement provided the time table of the Berkeley Branch Railroad, with nine daily departures from San Francisco to Berkeley and nine in the opposite direction (Fig. 45).

MAURICE DORE. H. A. COBB.

Map of the BERKELEY VILLA TRACT,

150 Large Lots to be sold at Auction,

On TUESDAY, May 15th, 1877, on the Grounds, at 1 o'clock P. M.

TERMS: One thousand dollars, or over, one-fifth Cash, balance in one, two and three years, secured by Mortgage, with Eight per cent. per annum interest. Under one thousand dollars, one-quarter Cash, and balance same as above.

Time Table Berkeley Branch.

<table border="0"> <tr> <td style="padding-right: 10px;">From</td> <td style="padding-right: 10px;">7.30 a. m.</td> <td style="padding-right: 10px;">From</td> <td style="padding-right: 10px;">7.30 a. m.</td> </tr> <tr> <td></td> <td>8.30</td> <td style="padding-right: 10px;">Berkeley</td> <td>8.30</td> </tr> <tr> <td style="padding-right: 10px;">San Francisco</td> <td>9.30</td> <td></td> <td>9.30</td> </tr> <tr> <td></td> <td>10.30</td> <td style="padding-right: 10px;">to</td> <td>10.30</td> </tr> <tr> <td></td> <td>11.30</td> <td style="padding-right: 10px;">Berkeley.</td> <td>11.30</td> </tr> <tr> <td></td> <td>1.00 p. m.</td> <td style="padding-right: 10px;">San Francisco.</td> <td>1.00 p. m.</td> </tr> <tr> <td></td> <td>4.00</td> <td></td> <td>4.00</td> </tr> <tr> <td></td> <td>5.00</td> <td></td> <td>5.00</td> </tr> <tr> <td></td> <td>6.00</td> <td></td> <td>6.00</td> </tr> </table>	From	7.30 a. m.	From	7.30 a. m.		8.30	Berkeley	8.30	San Francisco	9.30		9.30		10.30	to	10.30		11.30	Berkeley.	11.30		1.00 p. m.	San Francisco.	1.00 p. m.		4.00		4.00		5.00		5.00		6.00		6.00	<p>N. E. Title to the above property perfect. For particulars and Maps, apply at our office. The particular location of this property, its proximity to San Francisco, fine climate, the easy terms upon which it will be offered, commend it to particular favor and attention of the public.</p> <p style="text-align: center;">MAURICE DORE & CO., Real Estate Auctioneers, Or F. CHAPPELLET, Berkeley, C.P.R.R. Terminus. 410 Pine Street, San Francisco.</p>
From	7.30 a. m.	From	7.30 a. m.																																		
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	5.00		5.00																																		
	6.00		6.00																																		

Figure 45. Lot 9 (red), Block 16 in auction announcement, May 1877

¹¹ William Warren Ferrier. *Berkeley, California: The Story of the Evolution of a Hamlet into a City of Culture and Commerce*. Berkeley: William Warren Ferrier. 1933

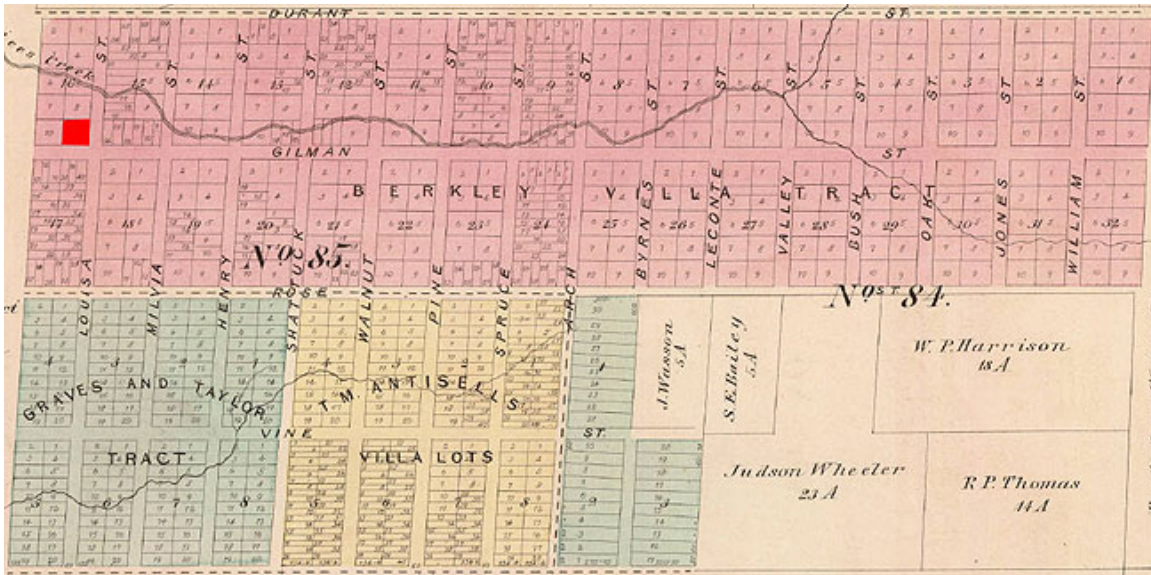


Figure 46. Future Payson parcel (red), Berkeley Villa Association tract (Thompson & West Map No. 18, 1878, David Rumsey Map Collection)

Early settlers in the neighborhood

The blocks situated around the intersection of Berryman Street and Bonita Avenue—originally named Gilman (for U.C. president Daniel Coit Gilman) and Louisa (for Henry Berryman’s wife)—saw their first lot purchases in the latter half of the 1870s, but most of those lots remained vacant, and the area retained its rural character.

The earliest structure, a one-story house, built c. 1878 by the French-born cook James Souffrain and his wife Caroline, stood on the northern bank of Codornices Creek, at 1221 (today’s 1227) Bonita Avenue. That house was replaced in 1916.

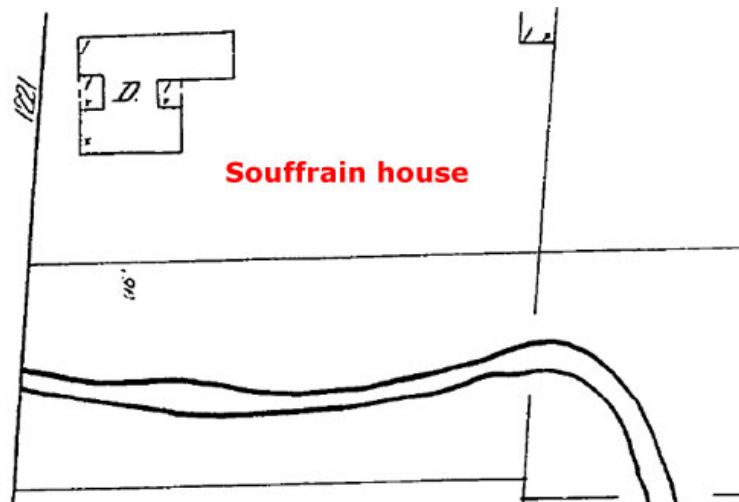


Figure 47. Sanborn map, 1911

As early as 1880, Henry and Louisa Berryman, who owned the entire block south of Berryman Street and west of Bonita Avenue, were assessed \$500 for a structure that stood on a parcel comprising today's 1308 to 1312 Bonita. This structure was joined in 1888 by a larger Berryman-owned house on the southwest corner of Louisa and Gilman streets, later 1304 Bonita Avenue. The corner house was home to Henry Berryman's brother, **Frederick Miles Berryman**, and his wife Susan, who acquired it circa 1900. The house was still standing in the late 1960s, albeit on a much-reduced lot, but has since been demolished and replaced in 1972 with a three-story, 24-unit apartment building.



Figure 48. Fallen Leaf Lake, by R.J. Waters, 1886 (University of Nevada, Reno)

In 1881, a third house was built on the southeast corner of Gilman and Louisa (today's 1301 Bonita Avenue). This house was the home of California pioneer George Gilbert Waters who, with his wife Lydia Milner Waters, crossed the Plains to California in 1855.¹²

Lydia died in Monterey in 1881, and George settled in Berkeley.

By 1885, the house belonged to his famous son, **Raper James Waters** (1856–1937), a photographer who established a successful studio in San Francisco and is known for his artistic landscapes (e.g., Lake Tahoe Series); images of gold-mining towns (e.g., Comstock Series);¹³ and San Francisco before, during, and after the 1906 Earthquake and Fire. Much of his pre-1906 work perished, but four of his early shots of U.C. Berkeley landmarks survive in the University Archives.¹⁴

¹² Lydia Milner Waters. "Account of a Trip across the Plains in 1855." *Quarterly of the Society of California Pioneers*, March 1929, pp. 59–79.

¹³ Many early photographs by R.J. Waters & Co. are in the Special Collections Department of the University of Nevada, Reno Library.

¹⁴ <https://oac.cdlib.org/findaid/ark:/13030/kt429003bb/dsc/>

The Waters house stood on a very large lot that remained undivided in 1911, as shown in the Sanborn map to the right.

Beginning in 1913, the Waters parcel was subdivided, and houses were built on it, numbered 1301 to 1325 Bonita Avenue. The corner building, an attractive Mediterranean-style fourplex at 1301 Bonita, was constructed in 1922 by investor Gilbert B. Ocheltree, who made his own home in a duplex at 1307–09 Bonita.

In later years, a notable owner of the Ocheltree duplex was famed botanist **Dr. Mary Leolin Bowerman** (1908–2005), co-author of *The Flowering Plants and Ferns of Mount Diablo, California; Their Distribution and Association into Plant Communities*, and co-founder of Save Mount Diablo.



Figure 49. Sanborn map, 1911



Figure 50. Mary Bowerman in her Nash Junior car at the top of Mount Diablo, June 1930
(courtesy of Save Mount Diablo)

The Sanborn map below shows outlines of the houses that were built between 1880 and 1903 on the blocks directly south of Berryman Street, between Grove (MLK Jr. Way) and Milvia streets. Because the area north of Berryman Street was still sparsely developed, the Sanborn Map Company did not survey it until the 1911 edition.

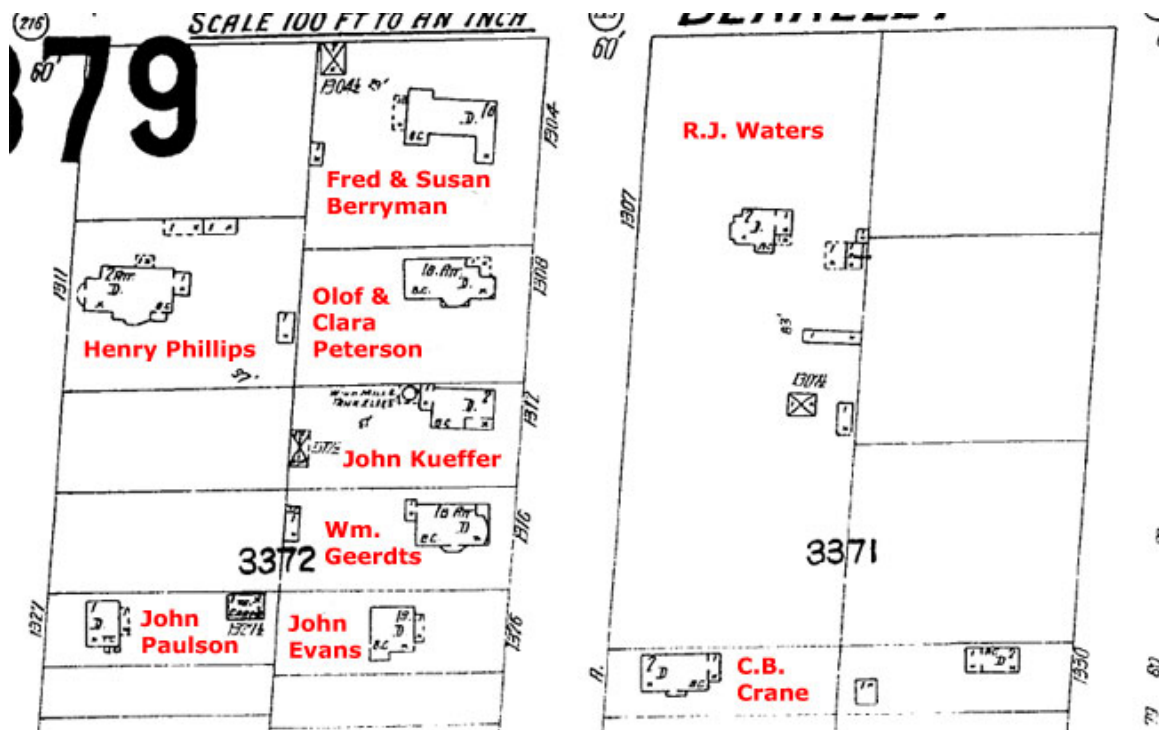


Figure 51. Early houses in Blocks 17 (left) & 18, south of Berryman Street and east of Grove Street (Sanborn map, 1903)

William H. & Esther L. "Etta" Payson

The Payson House was the fourth dwelling erected in the neighborhood, and the first on its block. Prior to building this house, the Paysons, who married in 1885, resided for two years on Fulton Street, between Dwight and Channing ways.

William Hawes Payson (1855–1914) was born in Boston and grew up in Fairmount, a predecessor to Hyde Park, Massachusetts. His father, Jesse Wentworth Payson (1815–1899), was the nation's foremost penmanship expert. At a time when handwriting was the means by which most documents were created, Jesse W. Payson's copybooks were used in schools throughout the United States. Head of the Payson, Dunton & Scribner publishing house and author of *The Payson, Dunton, & Scribner Manual of Penmanship* (still in print today), Jesse Payson was one of Fairmount's 20 founders in 1855. His biography in the *Fairmount Bulletin* recounts:

Jesse W. Payson was born Nov. 6, 1815, in Hope, Me., and died in Hyde Park Sept. 17, 1889. He was educated in the common schools of that town, and in the Waterville Institute. As an author of writing books his name became a household word in this country. He it was who first gave to students a scientific analysis of script writing, and he originated the lithograph copy for common school writing books. From 1861–1877 Mr. Payson was a member of the Faculty at the Polytechnic Institute, Brooklyn, N. Y. As professor of penmanship and bookkeeping he taught thousands of pupils, among them many of the distinguished men of the

country, including President Eliot of Harvard College, and ex-Mayor Seth Low of New York. He was the Secretary and one of the Directors of the Park Bank in Brooklyn for several years. Mr. Payson was the author of a popular series of works on bookkeeping, and was called as an expert to adjust accounts in important cases. Mr. Payson's skill in writing brought him many medals, including one given at the Centennial in Philadelphia. He was a man of generous impulses, and advanced in his christian [sic] views. At the twentieth celebration of Hyde Park anniversary in 1888, he responded to the toast "The Twenty Associates." Mr. Payson's first wife died at Union, Me. His second wife, well known in the world of letters, died in Hyde Park in 1906. He had two children, W. H. Payson, now of San Francisco, and Mrs. Matilda Cushing, a former Fairmount school teacher, who married again, moved to Maine and is now deceased.¹⁵



Figure 52. Jesse Payson (in "Hyde Park")¹⁶



Figure 53. Early view of Fairmount (The Fairmount Bulletin, 1906)

Young William attended the Boston Public Latin School in the class of 1870. He went on to the Brooklyn Collegiate and Technical Institute while his father was teaching there and obtained his B.A. in 1876. Returning to Massachusetts, he enrolled at the Boston University School of Law, receiving his LL.B. degree in 1880. Poor health compelled him to move to California, where he practiced law, co-founded the First Unitarian Church of Berkeley, and fought against corruption in politics. The following obituary and a eulogy by Professor William Carey Jones were published in the *Pacific Unitarian* shortly after Payson's death:

William H. Payson.

Among the most faithful Unitarian workers of the Pacific Coast, Mr. William H. Payson of Berkeley has long been prominent. He served as President of the Berkeley Church, President of the Unitarian Club, and Secretary and director of

¹⁵ "Twenty Associates" in *The Fairmount Bulletin*, Vol. II, No. 1, April 1906, p. 12.

¹⁶ Anthony Mitchell Sammarco. *Hyde Park*. Arcadia Publishing, 1996.

the Pacific Coast Conference. He was also a member of the Board of Trustees of the Divinity School, and in season and out of season, was ready to give of his time or counsel for any good cause of church or state.

He was born February 16, 1855, in Boston, his father being the head of the old publishing firm of Payson, Dutton [sic] & Scribner. He obtained his education in Boston, studied law, and was admitted to the Bar in Boston before he came to California.

Owing to ill health and threatened tuberculosis, he was compelled to leave that climate, and came to California in a sailing ship around the Horn, arriving here in 1881. This voyage dissipated the germs of tuberculosis, but he never was a robust man, in fact it is remarkable how much work he was able to accomplish with his weakened constitution. He was married in San Francisco on August 12, 1885, to Ella [sic] L. Tripp, who survives him.

He was deeply interested in all public matters, always as a reformer, and social problems always had his best thought. He was a quiet, persistent worker, always contending for right, truth and justice, and he abhorred fraud, oppression and wrong, but he never was bitter, nor did he ever create any antagonism, but as was said by Frank J. Heney,¹⁷ in a letter just received by Mrs. Payson, "he was a gentle but courageous soul."

His death was wholly unexpected and preceded by no illness that kept him from his work. The end came without warning from heart failure, on the morning of September 5th.

The funeral service from the church at Berkeley was particularly impressive and tender. It was conducted by the minister, Rev. Arthur Maxson Smith. Rev. F. L. Hosmer spoke with tender feeling, voicing his respect and debt of gratitude, and Professor William Carey Jones, a long-time friend and co-worker, paid this well-merited tribute to his worth and character.

"William H. Payson, good lawyer, good citizen, good church member, good friend, good man, was directed in all the relations of life by the spirit of righteousness. An able and successful lawyer, he was well grounded in the principles of human right, and pursued his calling to the end of attaining justice and never more than justice. Litigiousness was ever far from his field of thought. A satisfactory, permanent and human adjustment of conflicting claims was always his aim. His fine soul abhorred vice and wrongdoing, but his generous spirit was tolerant of the shortcomings of his fellow men.

"He was an active participant in the Commonwealth Club of California, of the City Club of Berkeley, of the Unitarian Club of California, and of the Berkeley Unitarian Club. He was zealously concerned in all the broader civic purposes fostered by these organizations. The improvement of the machinery of both civil and criminal procedure; the sanitation, both material and moral, of our communities; the unbuilding of our schools—these were but a few of the civic problems in whose solution he participated. A more congenial sphere, it seems to me, however, was within the field of politics. He did not wait for the presence of the spiritual movement manifest in the present century, which is bringing about a nobler view of political obligation. His work, his constant, though unobtrusive endeavor during thirty years, was with and of those who have produced the

¹⁷ Francis J. Heney was the District Attorney who prosecuted corrupt San Francisco Mayor Eugene Schmitz and political boss Abe Ruef following the 1906 Earthquake and Fire.

conditions resulting in the purer political atmosphere of today. The wisdom of his counsel and the safety of his leadership were apparent on all occasions.

"His energetic promotion of the League of Justice and his high position therein, contributed to the sounder morals of civic, political and business consciousness in the State of California. Herein Mr. Payson's singleness of aim, high-mindedness, humaneness and generosity, were most abundantly exemplified. Among the many who joined that crusade, some became self-seekers, some were drained dry of the milk of human kindness, some became embittered, envious, vindictive, venomous. But never for a moment did he lose his high ideals, and while seeking to encompass the great purpose of the crusade looked with pity or sympathy upon his less sincere and noble fellow men.

"He was one of the founders of the First Unitarian Church of Berkeley, and during many years was a trustee thereof—being frequently the President of the Board. Eminently practical in all his counsels for the development of our society, there was a piety and a religiousness of spirit that animated all his work. He was the wise adviser in the progress of the church from its first beginnings in the room underneath Odd Fellows Hall on Addison Street, to its temporary lodgment in Stiles Hall, and its final settlement in its present house of worship. He has been President of Unity Hall Association, and has been one of the leading agents in enlarging the scope of the church's work through the acquisition of the Unity Hall property. His promotion of the objects of the Unitarian Clubs in San Francisco and Berkeley have been inspired partly by his interest in civic improvement and partly by his earnest intent to advance a simple and sincere religious tone through the community. His fostering of the Unitarian School for the Ministry, and his participation in both local and national conferences of the Unitarian fellowship speak for his devotion to the general cause of liberal Christianity.

"As friend and man, his sympathies and relations were no different from what they were in various social groups. In the closest intimacies of friendship; in the church board meetings; in the congregation, whether in business or social gathering, or on formal occasions; in club meetings, civic, political, religious, he was always just the same simple, upright soul. There were with him never two ways of looking at conduct—a social and a personal. His was always the conduct of man to man.

"Good friend, noble man—your memory shall linger with us as an inspiration and a benediction."¹⁸

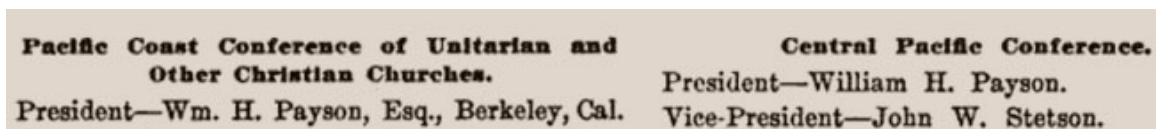


Figure 54. *The Pacific Unitarian*, October 1907

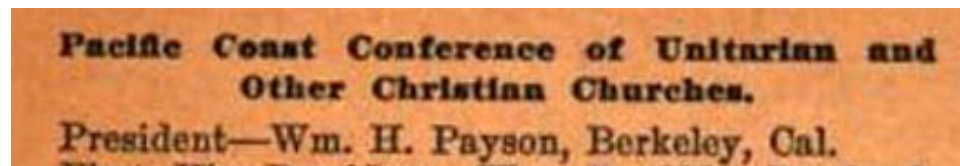


Figure 55. *The Pacific Unitarian*, October 1910

¹⁸ *The Pacific Unitarian*, Vol. XXII, No. 12, October 1914, pp. 320–321.
<https://archive.org/details/pacificunitarian2219131914wilb/page/n369/mode/2up>



Figure 56. Isaac Tripp (courtesy of Bob Waldman)¹⁹



Figure 57. Etta Tripp (Rieman & Co., San Francisco)²⁰

Esther L. “Etta” Tripp (1863–1947), the daughter of California pioneers, was born on a farm in Butte City, near Jackson, Amador County. Her father, Isaac Tripp (1829–1870), was a founding member of the Amador Agricultural Society and an award-winning fruit grower. At the first Amador County Fair, held in October 1862, Isaac Tripp exhibited the following varieties:

Grapes—Black Hamburg, Black Morocco (very large), White Muscat of Alexandria
 Apples—Baldwin, King, Pelton Smith cider; Roxbury russet, Rambo, twenty ounce
 Pears—Bartlett, Winter Nellis, Stevens’ Genessee
 Quince—Orange
 Blackberry wine; elderberry wine.²¹

At the second annual fair, it was reported,

The largest number and variety was the contribution of Isaac Tripp, consisting of no less than thirteen varieties of apples, five of pears, eighteen of grapes (as fine as any we have ever seen) and some fine quinces. [...]

Mr. Tripp also contributed specimens of blackberry wine and grape wine, which our taster pronounced unexceptionable, even to a Templar, being the “pure juice” unadulterated — such as “maketh the heart glad.”²²

¹⁹ <https://www.findagrave.com/memorial/21719868/>

²⁰ <https://www.ancestry.com/family-tree/person/tree/71374321/person/350146103944>

²¹ “Amador Agricultural Fair.” *Sacramento Daily Union*, 14 October 1862, page. 1.

²² *California Farmer and Journal of Useful Sciences*, 2 October 1863.

Isaac Tripp died prematurely while working his mining claim. On 28 May 1870, the *Jackson Ledger* reported:

On Friday, the 20th inst., our citizens were shocked to hear that Isaac Tripp, one of our most estimable citizens, had been killed. He was mining in the Butte Basin, and while working under a bank with a hydraulic pipe a large mass of earth became detached, and without a moment's warning, fell, burying him under it. The only person near him was a Chinaman, who immediately gave the alarm, when parties went to his relief, and arriving at the spot could see nothing but a mass of earth. The hydraulic pipe was immediately turned on, and in about ten minutes his lifeless remains were unearthed. The Chinaman, being a few feet below him at the time, escaped uninjured, though the dirt came around him pretty thick.

Isaac's widow, Irene (Park) Tripp, remarried in January 1875, when Etta was twelve years old. The new husband, a pioneer Siskiyou County farmer named Edward White Conner, was a widower with five sons aged six to 16. Irene brought her youngest child, Helen, to her new home, where both were enumerated in the 1880 U.S. Census. The other Tripp children appear to have been scattered. Etta was informally adopted by Judge Harmon J. Tilden (1824–1916) and his wife, Mary Jane (1830–1911), of San Francisco. The 1880 U.S. Census enumerated Etta as an adopted daughter of the Tildens, residing with them at 1132 Valencia Street, along with the Tildens' son, Charles Lee Tilden (1857–1950), who would become first president of the East Bay Regional Park District. It is not clear whether there was a blood connection between the Tripps and the Tildens, but Etta's older brother's middle name was Tilden.

William Payson and Etta Tripp were married on 12 August 1885 and built their house in 1889. The contracting firm was Lord & Boynton, one of Berkeley's most prominent at the time. During the same year, Lord & Boynton built the Peralta Park Hotel for famed actor Maurice B. Curtis, as well as Curtis's own home and other prestigious projects.²³

On 12 July 1891, two years after moving into the new house, William Payson co-founded the First Unitarian Church of Berkeley. Two weeks later, when the church's first board of trustees was elected, Payson was voted in as the first secretary.

Another member of that first board of trustees was Prof. Henry Senger, for whom another noted Unitarian, Bernard Maybeck, would design a house in 1907.

Bernard and Annie Maybeck soon followed the Paysons to their remote neighborhood.²⁴ In April 1892, the Maybecks were reported to be building a cottage on the corner of Gilman and West streets (now Berryman and Martin Luther King, Jr., Way).²⁵ The Maybeck house, which Charles Keeler described as "a distinctly hand-made home," must have made an impression on the neighbors and influenced them to shingle the exteriors of their own homes.

²³ Daniella Thompson. "Peralta Park Grew in the Shade of Giants." 2006. http://berkeleyheritage.com/eastbay_then_now/peralta_park1.html

²⁴ Daniella Thompson. "Maybeck's First House Was a Design Laboratory." 2007. http://berkeleyheritage.com/berkeley_landmarks/maybeck_on_grove.html

²⁵ *Berkeley Daily Advocate*, 28 April 1892.

Like the Paysons, the Maybecks were the only residents on their block for a number of years.



Figure 58. Bernard & Annie Maybeck House in 1902
(Dimitri Shipounoff collection, BAHA archives)

In January 1894, the *San Francisco Morning Call* reported that the trustees of the First Unitarian Church were about to “raise funds for the erection of a new church edifice by the issue of bonds at a low rate of interest.”

A short time ago a fine lot, 150 by 170 feet on the corner of Bancroft way and Dana street was purchased. It is on this site that the new church edifice will be erected. It will be of stone and as fine in its way as the Unitarian Church of Oakland. The cost will not be less than \$20,000. Architect Maybeck is now at work on plans and designs for the new church, and they will be considered by the trustees in the immediate future.²⁶



Figure 59. First Unitarian Church (A.C. Schweinfurth, architect, 1898)

²⁶ “A New Church.” *The San Francisco Morning Call*, 29 January 1894, page 3.

The \$20,000 was never raised, and Maybeck's plans were not executed. When the new church, designed by Albert Cicero Schweinfurth, was finally built in 1898, the estimated cost was reported to be a modest \$3,695.²⁷

William Payson fostered the Pacific Unitarian School for the Ministry (later renamed Starr King School for the Ministry), founded in 1906, and acted as trustee on the school's first board.²⁸

In addition to his leadership of numerous Unitarian organizations and endeavors, William Payson was a tireless political reformer, fighting for fair voter representation²⁹ and active in the anti-graft movement that led to the prosecution of corrupt San Francisco Mayor Eugene Schmitz and powerful political boss Abe Ruef.³⁰ Francis J. Heney, who prosecuted Schmitz and Ruef for bribery, called Payson "a gentle but courageous soul."³¹

In about 1892 or '93, Etta's mother, Irene A. Conner (1831–19??), and the latter's youngest daughter, Helen S. Tripp (1870–1903), arrived in Berkeley. Helen was assessed in 1893 on a cottage adjacent to the Payson House. The shingled one-story cottage still stands at 1234 Bonita Avenue. Irene and Helen were first listed in the Berkeley directory in 1894. The 1900 U.S. Census enumerated them as residing in the Payson household.

Helen Tripp, who worked as a stenographer, died on 26 March 1903 in a homeopathic sanatorium. The cause of death was acute nephritis, brought about by diabetes mellitus. A few weeks before her death, Helen's cottage was sold to Ernestine Wollenberg, daughter of San Francisco merchant Louis Wollenberg and his wife Fanny. The Wollenbergs brought their five children to Berkeley so that they could be educated here. The family lived at 1234 Bonita Avenue until 1912.

Louis Wollenberg (1841–1910) is best known today as the great-grandfather of Berkeley historian Charles Wollenberg, who recounted an oft-heard story in a recent e-mail:

I believe the Maybecks lived around the corner, and they became friendly with my great grandfather. Bernard Maybeck apparently helped him do some carpentry on the cottage. My great-grandfather had immigrated from Germany in the late 1850s and, during the next 40 years or so, failed in several business ventures in the West. But he had a reputation for telling good stories of his real or imagined western adventures to the neighborhood kids. There's a legend in both the Maybeck and Wollenberg families that when their son was born, Annie and Bernard refused to name him, allowing him to choose his own name when he was 6 or 7. When the time came, "Boy" Maybeck said he'd like to be named Wollenberg, after the old man who told such neat stories. This was a bit too much for his parents, but they compromised and agreed to the name Wallen. I guess the fact that the story is told in both families gives it some credibility.³²

²⁷ *The San Francisco Call*, 27 May 1898, page 9.

²⁸ "Berkeley to Have School for Unitarian Ministry." *The San Francisco Call*, 13 May 1906, page 12.

²⁹ "Citizens Denounce Courthouse Ring." *The San Francisco Call*, 18 July 1908, page 5.

³⁰ "Flays Nieto for Shielding Ruef." *The San Francisco Call*, 2 February 1908, page 32.

³¹ In a condolence letter to Etta Payson, quoted in Payson's obituary published by *The Pacific Unitarian*.

³² Charles Wollenberg in an e-mail sent to the recorder on 19 May 2020.



Figure 60, Tripp-Wollenberg cottage, 1234 Bonita Avenue (Google Street View)

In 1904, there was no listing for the Paysons in the Berkeley directory. Instead, the occupants of 1915 Berryman Street were Ross Morgan (1867–1917), a civil engineer, and his wife, the artist Charlotte Elizabeth Bodwell Morgan (1867–1947), a noteworthy member of the Carmel and Berkeley art colonies.³³



Figure 61. Carmel Mission by Charlotte Morgan (Bodega Bay Heritage Gallery)

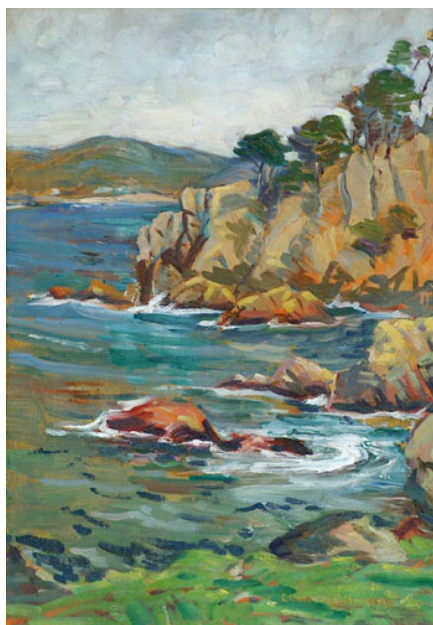


Figure 62. Carmel Coast by Charlotte Morgan (Bodega Bay Heritage Gallery)

³³ Charlotte Morgan's biography was published in Jennie V. Cannon: *The Untold History of the Carmel and Berkeley Art Colonies, Vol. 1* by Robert W. Edwards (Oakland: East Bay Heritage Project, 2012). <http://www.tfaoi.com/cm/10cm/10cm111.pdf>

William Payson died on 5 September 1914, aged 59. After his death, Etta went to live with the misses Katherine and Bertha Brehm in their house at 2709 Benvenue Avenue. Bertha Brehm, a music teacher, was the Unitarian Church's first organist.



Figure 63. The organ at First Unitarian Church (BAHA archives)

By 1920, Etta Payson had moved again. She was now living with the Charles Lee Tilden family in their villa at 1031 San Antonio Avenue, Alameda. Later in that decade, she settled in Alaska, where her elder brother, Herman Tilden Tripp (1859–1939), a mining engineer and politician, had been living since 1898. Following Herman's death, Etta returned to Berkeley, where she spent her last years in an apartment at 2649 Benvenue Avenue.

Neighborhood growth

As late as 1906, the Paysons and the Wollenbergs were the only residents on Block 2449. Limited public transportation to the area delayed development of northwest Berkeley.

In 1899, William J. Dingee's Map of Oakland and Vicinity (Fig. 64), which showed real estate and electric railways of the Realty Syndicate, revealed a single train track on Shattuck Avenue that terminated at Rose Street.

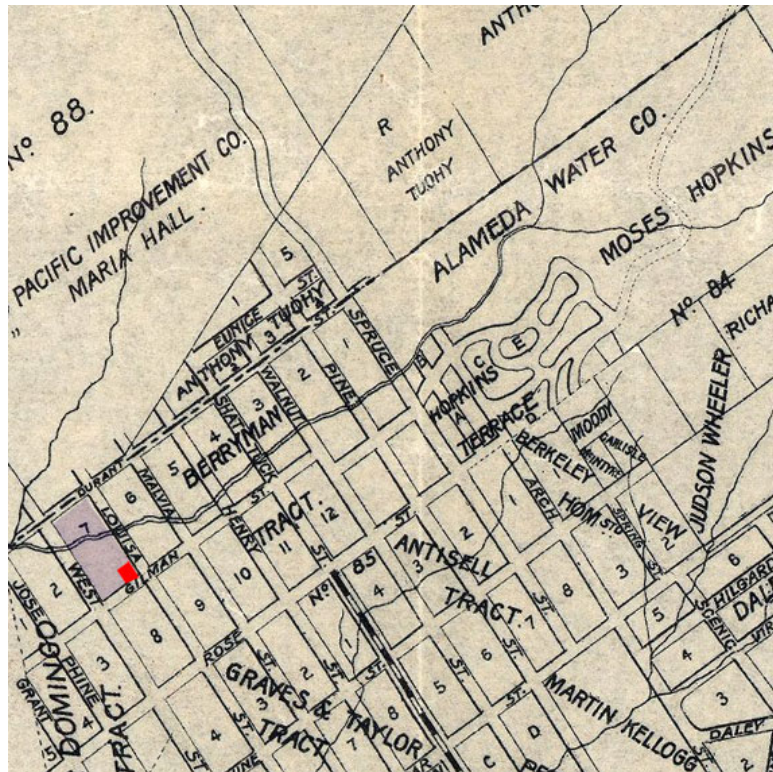


Figure 64. Dingee's Map of Oakland & Vicinity, 1899³⁴

It wasn't until 1903, when the Key System of electric streetcars was introduced in Berkeley, that building in the Berkeley Villa Association tract gained momentum. Mass migration of San Franciscans to the East Bay in the wake of the 1906 Earthquake and Fire accelerated building activities, as Berkeley's population tripled from 13,214 in 1900 to 40,434 in 1910.



Figure 65. Kelly Flats (c. 1904), 1939-45 Berryman Street at Milvia

³⁴ David Rumsey Map Collection.

In January 1912, the opening of the Northbrae Tunnel for service enabled Southern Pacific electric trains to run north beyond Rose Street, providing an additional transport option for the growing suburban districts.



Figure 66. The neighborhood in 1911 (Sanborn map)

A real-estate map published by Lederer, Street & Zeus in 1914 (Fig. 67) shows three commuter transport lines in the vicinity of the Payson House.

The orange line running along Sacramento and Hopkins streets represented the Key Route's commuter line; The red line running on Grove Street and The Alameda stood for the local streetcar lines that crisscrossed Berkeley; and the green line, which ran on Shattuck Avenue, Sutter Street, and through the Northbrae Tunnel, represented the Southern Pacific Railway.

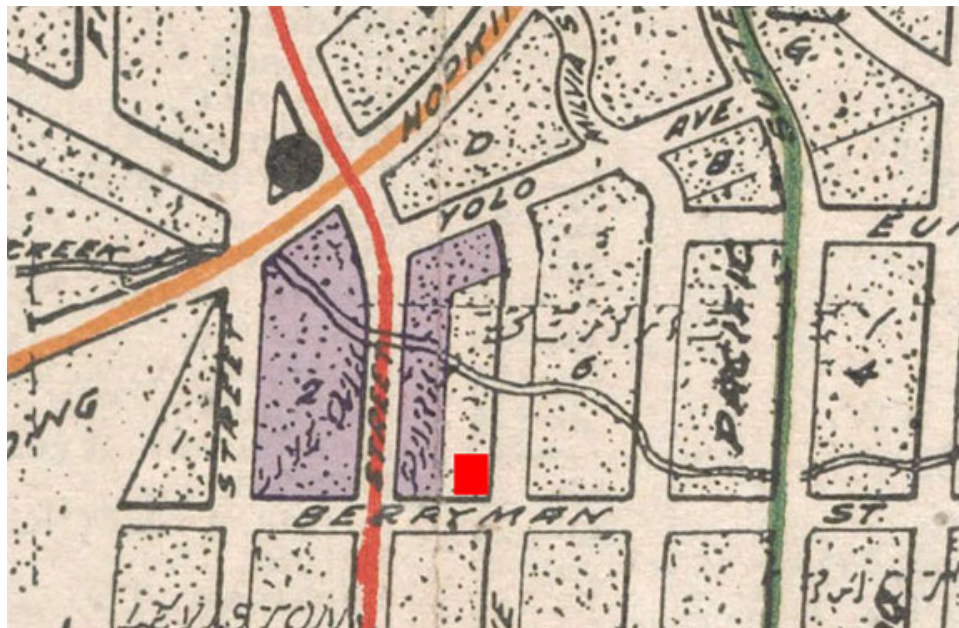


Figure 67. Public transport lines and proposed Live Oak Park site near the Payson House (Lederer, Street & Zeus Map of Berkeley & Vicinity, 1914)

An interesting detail in the Lederer, Street & Zeus map is the siting of the proposed Live Oak Park directly to the west of the Payson House,³⁵ or three blocks away from where the park would actually be established after the city purchased the O'Toole and Penniman estates in 1914.³⁶

The 1920s saw the neighborhood become almost fully built up. The 1929 Sanborn map shows mostly single-family residences but also half a dozen flats, the largest of which remained the Catherine & Francisco Kelly Flats, a Mission Revival structure, built c. 1904 on the northwest corner of Berryman and Milvia streets (Fig. 65).



Figure 68. The area in 1929 (Sanborn map)

Lord & Boynton, builders of the Payson House

The construction firm of Lord & Boynton was short-lived, but it managed to make a deep impact during its brief existence. This company was created when two pioneer Berkeley builders—both civic leaders—came together to undertake a gigantic number of projects that no single contractor could have handled.

Carlos Reuben Lord (1831–1914) was born in Aurora, Ohio, where his parents had come from New England. His father was a well-to-do farmer, but by the age of 18, Carlos was no longer living at home, possibly because there were six younger siblings in the house. The 1850 U.S. Census enumerated him as having attended school within that year and residing with an Aurora farming couple in their early twenties.

In 1854, Carlos Lord married Lucia Almira Stocking (1832–1928). By 1860, the couple had moved to Jefferson, Missouri, where Carlos was listed as a wagon

³⁵ The park plan shown in the map included Block 2 in the adjacent Jose Domingo Tract.

³⁶ Susan Schwartz. A History of Berkeley's Live Oak Park. 2014. <http://www.bpfp.org/wp-content/uploads/LiveOakPark.pdf>

maker. The Lords now had a son, 4, and a daughter, 2. In 1870, now living in Cameron, Missouri, Carlos worked as a clerk in a store and was a father to five children aged 2 to 14.

Carlos Lord was first registered to vote in Berkeley on 18 February 1878. That year, he was listed in the Berkeley city directory as Charles R. Lord, carpenter, resident on the north side of Vine Street, between Spruce and Pine (now Oxford) streets.

The following sketch of Lord's life was published in the *San Francisco Morning Call* in November 1894. Running for the office of Justice of the Peace in Berkeley Lord was nominated by the Alameda County Non-Partisan Convention, whose candidates the newspaper called "a splendid list," "good men all," and "animated by unselfish sentiments."³⁷

C. R. LORD.

A Citizen of Berkeley Who Commands Confidence.

C. R. Lord, past commander of Lookout Mountain Post, G. A. R. of Berkeley, was born in Ohio, December 12, 1831, and was educated in the public schools of that place. At the call of President Lincoln he enlisted in the First Missouri Cavalry, U. S. A., and served about two years and was honorably discharged for disability. After the war he was appointed Postmaster under President Lincoln. He was elected Justice of the Peace at Alta Vista, Davis County, Mo. He came to California in 1874, remained in San Francisco for three years, and came to Berkeley in 1877, one year before Berkeley was incorporated, having resided there since. He has served the town as Justice of the Peace six years, as Marshal and Tax Collector, ex-officio Superintendent of streets, two years, as Trustee three years, and at this time is the nominee of the Non-Partisan convention of Alameda County for the office of Justice of the Peace for the town of Berkeley.



Figure 69. Carlos Reuben Lord
(*SF Morning Call*, 5 Nov. 1894)

Carlos Lord became involved with the nationally famous stage actor Maurice B. Curtis ("Sam'l of Posen") when the latter was beginning to develop the Peralta Park tract. In May 1888, Lord was named one of the directors of the just-incorporated Peralta Park Hotel Company.

The Peralta Park Hotel Company has incorporated to purchase an eligible site in Peralta Park tract in Oakland township, near Berkeley, and to erect and maintain a hotel to be known as the Hotel de Peralta, and also to deal in property connected with the enterprise. The Directors are: M. B. Curtis, A. P. Gunn, C. R. Lord, A. H. Emery, C. A. Goodwin. The

³⁷ "Good Men All." *The San Francisco Morning Call*, 5 November 1894, page 4.

capital stock subscribed is \$37,775. There are sixty-nine subscribers to the enterprise.³⁸

In July 1888, Lord was awarded the hotel's construction contract:

The contract has been signed by C. R. Lord and the Peralta Park Hotel Company for the construction of the hotel. Mr. Lord will commence work at once, and hopes to have the building completed by January 1, 1889.³⁹

It was in the latter half of 1888 that Carlos Lord and Ira Boynton joined forces to construct an impressive number of large projects that included not only the hotel but several large residences in Peralta Park, various houses in other parts of town, and buildings for the town's two lumber mills. In early December of 1888, the *Berkeley Herald* announced:

Mssrs. Lord & Boynton have their hands full. They have commenced the erection of a ten-room house in Peralta Park for Alfred Lueders of San Francisco. It will cost \$4,500. For Joseph Hume also they will build a \$2,500 dwelling on Dwight Way.⁴⁰

Ira Alton Boynton (1844–1921) was born in Jefferson, Maine to Amos and Rachel (Decker) Boynton. His father was a Baptist clergyman. In 1868, Ira married Canadian-born Margaret Salmon Fielding in Chelsea, Massachusetts. Their first child, Emma, was born in Illinois the following year.

According to his obituary in the *Berkeley Daily Gazette*, Ira Boynton came to Berkeley in 1877, but records show that he was already in Alameda County on 5 April 1875, when his second child, Laura, was born. In 1876, he was registered to vote in Alameda County's Fourth Ward, listed as a draughtsman. In 1878, he was listed in the Berkeley city directory as a carpenter living on Berkeley Way near Shattuck Avenue. By the following year, the Boyntons had moved to a new home, situated one block north, at 2032 College Way (now Hearst Avenue). Here they lived until 1895.



Figure 70. Ira A. Boynton

Like Carlos Lord, Ira Boynton was active in Berkeley's finance, municipal politics, and fraternal circles. In 1886, along with several other leading Berkeley businessmen, Lord and Boynton founded a bank.

³⁸ *Daily Alta California*, 21 May 1888, page 5.

³⁹ *Daily Alta California*, 23 July 1888, page 5.

⁴⁰ *Berkeley Herald*, 6 December 1888.

The Homestead Loan Association of Berkeley has filed articles of incorporation with the County Clerk. The Directors are C. R. Lord, John K. Stewart, Philip Monroe, Walter E. Sell, Otto Nichaws [Niehaus], M. M. Rhorer, George A. Embury, Ira A. Boynton and Clarence M. Hunt — all of Berkeley—and the capital stock is \$1,000,000, divided into 5,000 shares, of which 100 have been subscribed.⁴¹

Boynton also served as an elected official. In 1879, he was listed in the city directory as one of Berkeley's two Justices of the Peace. He ran again in 1886, but this time he fell short by two votes after a recount.

A. H. Morris, candidate of the Peoples' party for the office of Justice of the Peace of Berkeley, was dissatisfied at the announced result of the recent election, which gave the office to his opponent, Ira A. Boynton, by a majority of seven votes. Morris appealed to the Town Trustees, who sat as a Returning Board Wednesday evening and recounted the ballots, a privilege accorded by a section of the town charter. President Henley and Trustees Shattuck and Whitney were present. The result was that four votes were changed to Morris' account from Boynton's, thus giving Morris the office by a majority of two votes. Boynton was the candidate of the Citizens' Reform party.⁴²

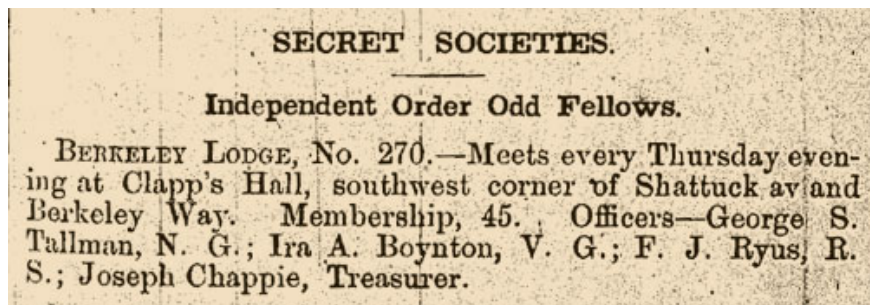


Figure 71. Bishop's Berkeley Directory, 1879-80

Boynton was a charter member of the Independent Order of Odd Fellows, Berkeley Lodge, No. 270 and also served as Chief Patriarch of the Oakland Encampment, No. 64 in the mid-1880s.⁴³ Members of the Berkeley Lodge met weekly at Clapp Hall, located around the corner from the Boynton residence. In 1884, the chapter incorporated a hall association in order to raise funds for a building of its own. Boynton was one of the five directors.

Articles of incorporation of the Berkeley Odd Fellows' Hall Association have been filed with the County Clerk. The capital stock is \$10,000, divided into 10,000 shares of \$1 each. The Directors are Frederick M. Husted, Walter Powell, Thomas Hann, Ira A. Boynton and Philip Sheridan, all of Berkeley.⁴⁴

⁴¹ *Daily Alta California*, 3 March 1866, page 5.

⁴² *Daily Alta California*, 15 May 1886, page 4.

⁴³ *Daily Alta California*, 26 July 1885, page 2.

⁴⁴ *Daily Alta California*, 16 April 1884, page 4.

By 1885, the Berkeley chapter of the I.O.O.F. had erected its new building on the southeast corner of Shattuck Avenue and Addison Street, across the street from Berkeley Station. Other fraternal societies, including the Free Masons, the American Legion, and the Grand Army of the Republic, also met at the Odd Fellows' Hall, as did the First Unitarian Church in its early days.



Figure 72. Odd Fellows' Hall (1885), Shattuck Avenue & Addison Street

Although he was a prolific builder, no records of Ira Boynton's building activities prior to 1884 have been found. In his obituary,⁴⁵ for which information was furnished by his daughter, Laura Durgin, it was claimed that Boynton had been associated with A.H. Broad. An oral history conducted by BAHA staff in the 1970s with Boynton's granddaughter, Muriel Durgin Backman, points out his association with Horace Kidder. Neither claim appears to have been documented in print during Boynton's life. The earliest contemporaneous records found of his work date from May 1884. These show a house for his neighbor S.C. Clark (presumably on Berkeley Way); another for Boynton himself; and a third for Professor Eugene W. Hilgard at the latter's agricultural experiment station in Mission San José (now Fremont).⁴⁶

Boynton's name began appearing more regularly in contract and completion notices after he teamed up with Carlos R. Lord in 1888.

By the end of 1889, Lord & Boynton could boast a long list of prestigious Berkeley projects completed that year. Published on 2 January 1890 in the *Berkeley Herald*, the list was peppered with top-drawer clients and included the construction of the Peralta Park Hotel at a cost of \$85,000.

⁴⁵ "Berkeley Pioneer Dies in Seattle." *Berkeley Daily Gazette*, 4 January 1921.

⁴⁶ *California Architect & Building News*, May 1884, page 91.



Figure 73. Peralta Park Hotel (Cheney Photo Advertising Agency)

LORD & BOYNTON, BUILDERS

Niehaus Bros. & Co. Mill, West Berkeley	15,000
Geo. C. Pape Mill, East Berkeley	2,500
Mrs. R. G. Lewis, Peralta Park, 8-room house	4,000
M. B. Curtis, Peralta Park, 8-room house and improvements	4,500
Dr. Robert Macbeth, Peralta Park, 10-room house and improvements	6,900
Harry S. Thompson, Peralta Park, 9-room house and improvements	3,000
J. A. Luders [sic], Peralta Park, 10-room house and improvements	4,900
Miss Anita Fallon, Peralta Park, 7-room house and improvements	4,000
Jos. Hume, 5-room cottage, Fulton and Channing way	1,800
Jos. Hume, 2-story house, Haste street	2,300
Jos. Hume, Dwight way, 9 rooms	3,200
Jos. Hume, Walnut street, 5 rooms	2,000
N. S. Trowbridge, Durant avenue	3,300
W. A. Ristenpart, Bancroft way, 7 rooms	3,000
T. M. [sic] Luttrell, Channing way, 7 rooms	2,150
L. H. [sic] Payson, Gilman street, 6 rooms	2,000
W. T. Lingard, Walnut street, 5 rooms	1,800
J. L. Barker, Cedar street, 7 rooms	2,100
L. Gottshall, Center street, 2 stores, 8 rooms	4,000
Daniel McMahan, University avenue, 7 rooms, barn and improvements	3,400
Geo. C. Pape, University avenue, 8 rooms	4,000
Lord & Boynton, Berkeley way, 8 rooms	2,800
Fritz Meyer, Seventh and Bancroft way, 5 rooms	1,500
Chris Johnson, Fourth and Addison, 4 rooms	1,000
Dr. Cook, Peralta Park improvements	3,600
I. A. Boynton, College way, 6 rooms	2,000
H. W. Taylor, lumber yard office	500

Mrs DeLorme's improvements to house
Peralta Park Hotel

500
85,000

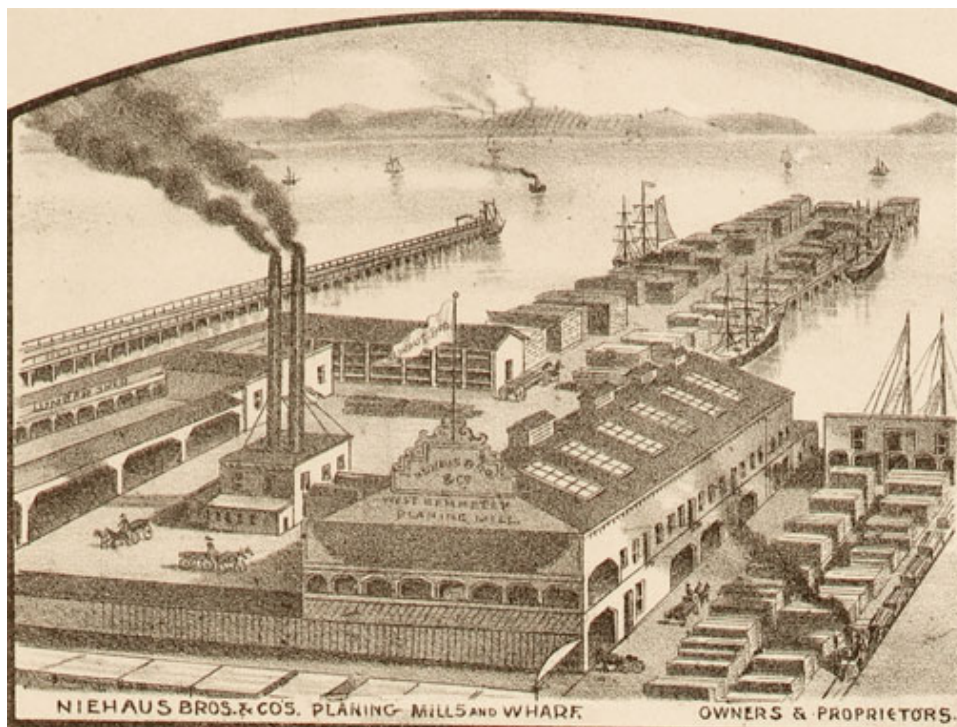


Figure 74. Niehaus Bros.' West Berkeley Planing Mill
(Irwin & Johnson's *Birdseye View of Berkeley, California*, 1891)⁴⁷

Despite their joint success, the Lord & Boynton partnership was short-lived. In 1890, the partners went their separate ways. That year, *Edwards Transcript of Records* published four projects carried out by Boynton without Lord.

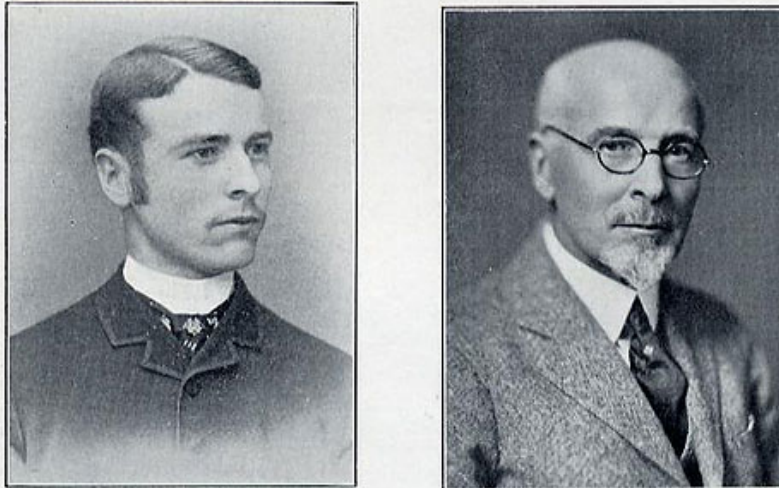
Of the houses Lord & Boynton built together, only five, including the Payson House, are known to have survived. The other four are the Julius Alfred Lueders House, 1330 Albina Avenue; the Anita Fallon House, 1307 Acton Street; the Harry S. Thompson House, 1491 Hopkins Street; and the James & Cecilia Luttrell House, 2328 Channing Way. No two of these surviving houses are alike.

Later owners of the Payson House

Kimball G. Easton & Katherine O. Easton

In 1919, Etta Payson sold the house to Kimball Gushee Easton (1865–1925) and his wife, Katherine Olden Easton (1863–1940). The Eastons and their daughter, Esther Katherine, then a student at the University of California, were listed in the 1922 directory as residing at 1915 Berryman Street.

⁴⁷ Edwin S. Moore, publisher. Bancroft Library.
<https://oac.cdlib.org/ark:/13030/tf9t1nc0rn/?brand=oac4>



KIMBALL GUSHEE EASTON

Figure 75. Kimball Gushee Easton as a student and in later life
(*The Class of 1886 in 1926*)⁴⁸

A biography of Kimball Easton appeared in the *California Historical Society Quarterly* shortly after his death.⁴⁹ The author was none other than Anson Stiles Blake, who wrote:

IN MEMORIAM

Kimball Gushee Easton

Kimball Gushee Easton, son of the reverend Giles A. Easton and Mary Gushee Easton, was born in San Francisco, September 25, 1865, and died suddenly in Berkeley, March 21, 1925. He spent his early boyhood in Benicia and attended the Episcopal School there. Later, when the family moved to Berkeley, he attended the Berkeley Gymnasium up to the time of entering the University of California. He earned the money to put himself through the University by working as a printer's devil and other odd jobs. While in the University he was active in journalism and was co-editor of the campus paper that developed into the "Blue and Gold." The first "Blue and Gold" to appear in book form was issued by his class and under his direction.

He graduated from the University in 1886. After graduation he went into the employ of The Oakland Paving Company, supervising as his first work the first pavement laid in Berkeley, on Dwight Way. A few years later, the late C. T. H. Palmer sought his assistance to rescue a paving company he had started in Los Angeles, and he removed there. After a few years he returned to Berkeley to live and formed a partnership with Arthur R. Wilson to carry on a general contracting business. When this partnership was dissolved he became associated with the firm of Bates, Borland and Ayer and continued with them until the time of his death.

He was married on October 4, 1892, to Katherine Olden who survives him. Three children were born of this union. Olden Alexander Easton who

⁴⁸ <http://freepages.rootsweb.com/~npmelton/genealogy/cal26inx.htm>

⁴⁹ <https://online.ucpress.edu/ch/article/4/2/214/30220>

died in infancy, Dorothea Alice Easton, now Mrs. Robert Harter, and Esther Katherine Easton.

Mr. Easton was an ardent lover of his native country and enjoyed the outdoor life it affords most thoroughly. He spent all of the time he could spare from his busy life in the cities, in the Sierra, where his little mountain ranch was the point of departure for many expeditions. He was also a student all his life and was well versed in the poetry of the English and French languages. He was one of the few in his generation who continued to read Latin and Greek literature for enjoyment only.

He was a member of the Society of California Pioneers and took a great interest in their affairs; and was, at the time of his death, one of their trustees.

ANSON S. BLAKE

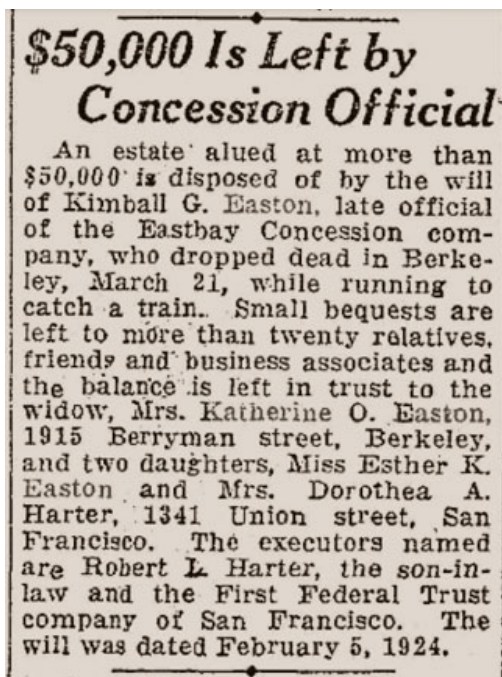


Figure 76. Oakland Tribune, 1 April 1925

Katherine Olden Easton was born in San Jose. In 1893, in San Francisco, she studied at the California School of Design, forerunner of the San Francisco Art Institute. In 1893, the school became affiliated with the University of California, was housed in the Mark Hopkins mansion atop Nob Hill, and became known as the Mark Hopkins Institute of Art.



Figure 77. Mark Hopkins Institute of Art, San Francisco

Katherine Easton is listed in Edan Hughes's *Artists in California, 1786-1940* and in *Jacobsen's Biographical Index of American Artists* (2002). In 1909, she and co-author Sadie Bowman Metcalfe, also of Berkeley, copyrighted a modern drama in three acts titled *The Upheaval*. Her daughter, Esther Katherine Easton (1900–1980), was also an artist. As a student at the University of California, she was a member of the Delta Epsilon women's art honor society⁵⁰ Like her mother, Esther is listed in *Jacobsen's Biographical Index of American Artists*.

In 1928, Katherine and Esther were living with the married Payson daughter, Dorothea Harter, in a new house the Harters had built at 797 San Luis Road (future home of architect James W. Plachek). The 1930 U.S. Census taker found mother and daughter lodging on a farm in Groveland, outside Yosemite. Edan Hughes located Katherine in Carmel in 1933. That may be where she met Hattie G. Parlett, to whom she sold the Payson House about that time.



Figure 78. Esther K. Easton
(1923 *Blue and Gold*)

Hattie G. Parlett & Adelene K. Lewison

Hattie Goodrich Parlett (1871–1971) was born in Baltimore, Maryland. Her father, Benjamin Francis Parlett (1824–1884), established B.F. Parlett & Co., a

⁵⁰ 1923 *Blue and Gold, a Record of the College Year 1921-1922*.

wholesale tobacco business, in 1843, later adding a tobacco manufacturing facility in Danville, Virginia.

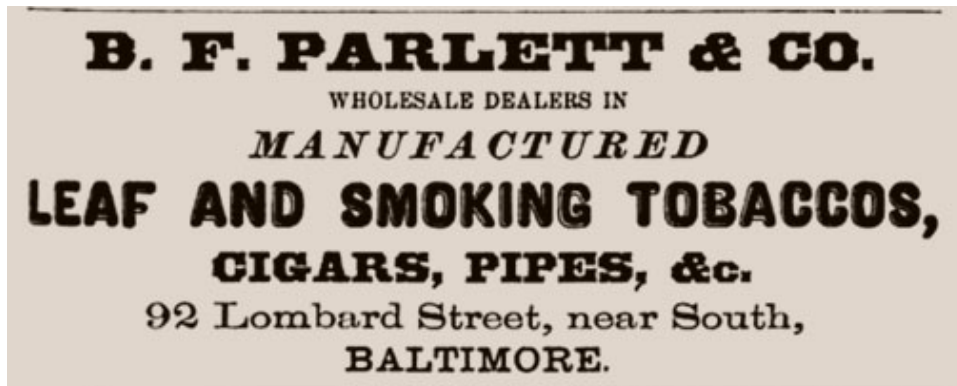


Figure 79. Ad in "The Monumental City, Its Past History and Present Resources," 1873

Shortly after the turn of the century, Hattie and her mother moved to Mount Vernon, New York, where they were enumerated in the 1905 New York State Census. Hattie bred English toy spaniels. The American Kennel Club's official stud book of 1908 listed three of her prize-winning dogs: Baltimore Belle, Baltimore Best Girl, and Rosemary Calvert.

Hattie's mother died in 1912, freeing the 41-year-old Hattie to start a new life. She moved to Hartford, Connecticut and met Adelene Kneeland Lewison (1870–1951), the woman who would become her life partner. The two traveled widely during the 1920s, and by 1930 had come to live in Carmel, where they were listed as residing on Dolores Street, between Second and Third avenues. In the 1930 U.S. Census, the occupation of both women was listed as Art Needlework.

In Carmel's small art community of the early 1930s, it was natural for Katherine Easton and Hattie Parlett to have known each other. This may explain how, by 1935, Hattie and Adelene were the occupants of the Payson House, where Adelene continued to produce art needlework.

In 1939, the two women began sharing their home with Hattie's widowed niece, Isabel Carter Todd (Smith) Knipp (1890–1968), who arrived by ship from New York. Isabel probably lived on the second-floor, which at the time was still part of the main residence. In 1942, after Hattie sold the house to Harry and Ruth Miller and moved to Hayward, Isabel was still registered to vote at 1915 Berryman Street but soon found other accommodations in Berkeley.

Harry V. & Ruth E. Miller

The Miller family and its descendants have owned the Payson House and lived in it for 78 years, beginning circa 1941–42.

Harry Vincent Miller (1891–1961) was born in Albany, New York, to a working-class family. His father was a house carpenter, and all the Miller children went to work after completing eight years of elementary school. One of Harry's elder sisters, Henrietta, worked as a clerk in a printing office, and an older brother apprenticed with a printer before becoming a house painter. Harry also went into the printing trade; at the age of 18, he was enumerated in the 1910 U.S. Census as a stereotyper, an occupation he practiced his entire working life.

During World War I, Harry served two years in the U.S. Marine Corps, exiting the service in October 1919 with excellent character. He moved to Colorado, where he married Ruth C. Earnest (1899–1986) in June 1922.

Ruth was born on a farm in Clifton, South Dakota. A year or so after her birth, the family moved to Lane County, Oregon. Ruth's father died in 1911, her mother remarried the same year and died in 1913, when Ruth was 13. Ruth was sent to live with her father's married sister, growing up on a farm in Martin, Kansas.

Harry and Ruth Miller married in Pueblo, Colorado. In 1930, they were living in Denver with their two young daughters, Betty Ruth, 7, and Helen Marie, 4. Harry was employed by the *Rocky Mountain News*. By 1940, they had relocated to Englewood, Colorado, where Harry earned \$1,800 a year from his stereotyping job at a local newspaper. The Millers' youngest child, Edward Earnest Miller, was then five years old. Harry's sister, Henrietta, was living with the family and working as a binder in a printing establishment. The family moved to the Bay Area in 1941.

In 1942, Harry Miller's World War II draft registration card documented him as living at 1915 Berryman Street and working for the *Oakland Post-Inquirer*. His obituary in the *Oakland Tribune*, however, stated that he had been a *Tribune* employee from 1941 until his retirement in 1958.

The Millers moved into their Berkeley house just as the United States entered World War II. During the war years, many houses in Berkeley were being converted into apartments in order to help house the influx of war-industry workers. That was when Harry Miller converted the house to two apartments, although the building permits leave a gap in the chronology.

Harry Miller died on 6 April 1961. The *Oakland Tribune* published his obituary the following day.

Death Takes H. V. Miller at Age 69

BERKELEY, April 7—Harry V. Miller, longtime Berkeley resident active in veterans' organizations, died yesterday in a Livermore hospital. Mr. Miller, 69, was a retired stereotyper and was an employee of The Tribune from 1941 to 1958. A World War I veteran, he was a member of the Veterans of Foreign Wars, Post 703, Berkeley; Disabled American Veterans, Chapter 7, Oakland; and American Legion Post 240, El Cerrito. He also was a member of St. Mary Magdalen Church, the Holy Name Society and the International Stereotypers and Electrotypers Union, Local 29, San Francisco. He lived for many years at 1915 Berryman St. and was a native of Albany, N.Y. Mr. Miller is survived by his widow, Ruth; daughters Mrs. Betty Ruth Geritz of Berkeley and Mrs. Helen Marie Petrash of San Lorenzo; a son, Edward E. Miller, Berkeley; sister, Henrietta Miller and brother, Frank, both of Albany, N.Y.; and 10 grandchildren. The Rosary will be recited at 8 p.m. today at the Berkeley Hills Chapel, Shattuck Ave. and Cedar St. A Requiem Mass will be said at 9:30 a.m. tomorrow at St. Mary Magdalen Church. Interment will be in St. Joseph's Cemetery, San Pablo.

On 25 October 1961, Ruth Miller deeded the property at 1915 Berryman Street to her three children, Betty Ruth Geritz (1923–2011), Helen Marie Petrash (1925–201?), and Edward Earnest Miller (1934–). Ruth died in 1986. The next principal

residents in the house were Helen Petrash and her husband John (1922–2016), an expert archer and scuba diver.

Helen Petrash died a few years before her husband. Their daughter, Paula, moved in to look after her father. In the photo below, they are shown at home a year before John's death.⁵¹



Figure 80. Paula Petrash & her father (center) at home, 2015
(courtesy of Joe Timmons, Aqua Tutus Club)

Until earlier this year, the property was jointly owned by no less than ten different trusts representing members of the extended Miller family. The heirs finally sold the family's historic home this year, to a couple from Sunnyvale whose business model entails buying old houses, razing them, and constructing multiple units on the parcels. They have done so recently at 2212 Tenth Street.

Chronology of the Payson House ownership

1889–1919	William H. & Esther L. Payson
1919–c. 1935	Kimball G. & Katherine O. Easton
c. 1935– c. 1942	Hattie G. Parlett
c. 1942–2020	Harry V. & Ruth E. Miller and descendants
2020–	Alon & Ravit Danino

⁵¹ "In Memoriam, John Petrash." Aqua Tutus, 25 October 2016.
<https://aquatutus.org/in-memoriam-john-petrash/>

16. Context



Figure 81. The neighborhood in 1950 (Sanborn map)

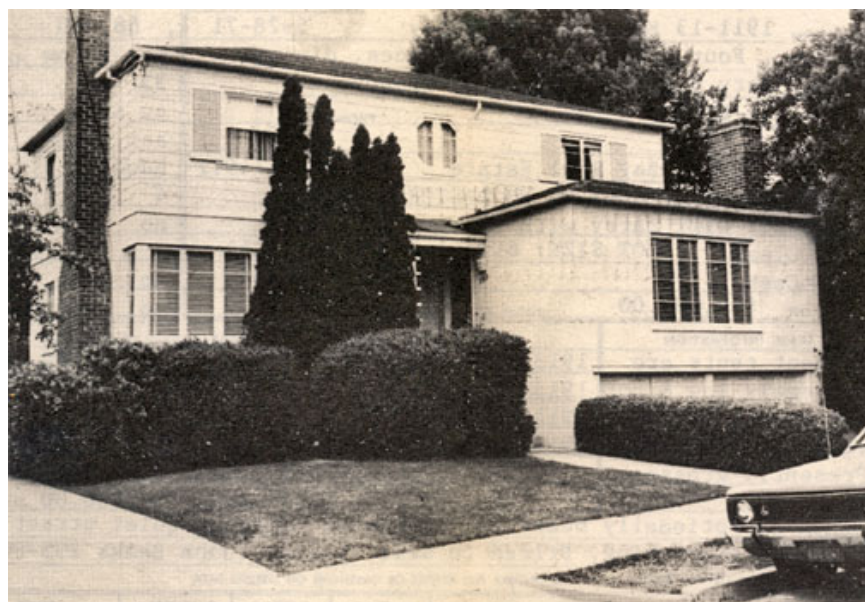


Figure 82. 1913 Berryman Street, 1971 (Donogh files, BAHA archives)

Between 1929 and 1950, there were few changes in the neighborhood. The most noticeable addition consisted of two new townhouses on the western half of the original Payson parcel, which had been subdivided prior to 1929. Each containing a pair of semi-detached units, these townhouses, 1911 and 1913 Berryman Street, were constructed in 1937 by the well-known architect Paul Hammarberg (1911–2009), who was also the owner.

The next change was more significant. In 1960, Grace Pinkerton, whose father had built the family's Colonial Revival house at 1931 Berryman Street in 1903, moved to Marin County and sold the parcel as an "excellent location for multiple units. Zoned R-3 for 8–9 units." That is exactly what was built there next.

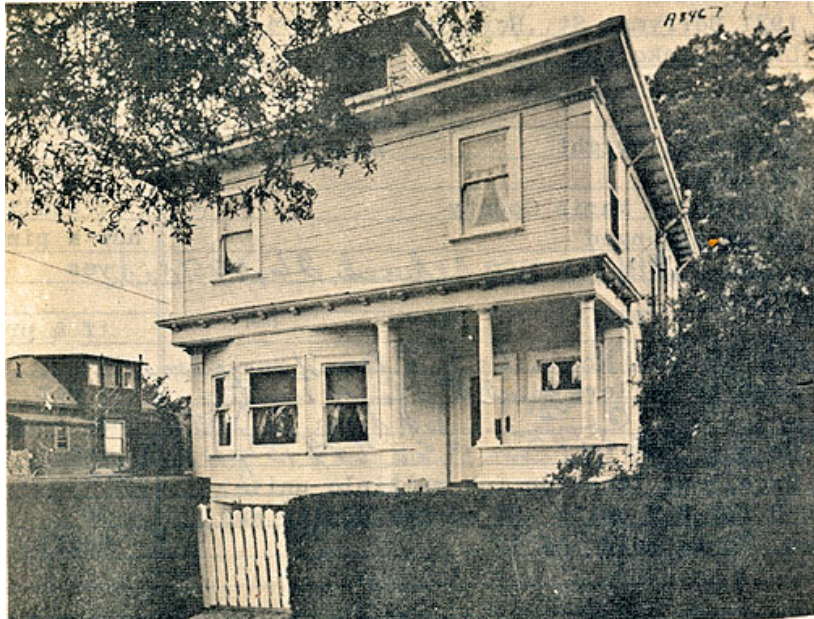


Figure 83. Pinkerton house, 1931 Berryman Street, in 1960 (Donogh files, BAHA archives)



Figure 84. Apartments, 1931 Berryman Street (Google Street View)

No photograph has been found of the historic Frederick & Susan Berryman house (1888), which stood on the southwest corner of Berryman Street and Bonita Avenue. Susan Berryman died in 1935 at the age of 84. In 1966, the Berryman house was occupied by Clark Armstrong, an insurance executive. This house was torn down, along with two others—1906 Berryman (built in 1926) and 1908 Berryman (also owned by the Berryman family)—and replaced circa 1972 with a 24-unit apartment building that has aged badly and is a blight on the streetscape.



Figure 85. 1906 Berryman Street (Donogh files, BAHA archives)



Figure 86. Raj Properties apartments, 1910 Berryman Street

With the exception of the two large apartment buildings on the northeast and southwest corners of the Berryman-Bonita intersection, the neighborhood retains much of its historic character. One- and two-story residences in various

architectural styles, an abundance of trees, and the proximity of Codornices Creek give the area a decided bucolic air.



Figure 87. 1200 block of Bonita Avenue, looking north (Google Street View)



Figure 88. 1200 block of Bonita Avenue, west side



Figure 89. 1300 block of Bonita Avenue, west side (Google Street View)



Figure 90. 1300 block of Bonita Avenue, east side (Google Street View)



Figure 91. Berryman Street east of Bonita Avenue (Google Street View)



Figure 92. The neighborhood today (Apple Map)

17. Significance

Consistent with Section 3.24.110A.1.b., the William H. & Esther L Payson House possesses architectural merit. It was built in 1889 by the important construction firm of Lord & Boynton and is one of only five surviving buildings constructed by that firm. The Payson House's appearance is unique in the firm's surviving body of work; it is the only single-story, unadorned, hip-roofed building, reflecting the Unitarian spirit of its first owners.

Consistent with Section 3.24.110A.1.c., the Payson House is worth preserving for the exceptional values it adds to the neighborhood fabric. It was one of the first houses built north of Berryman Street—an area that wasn't even mapped by the Sanborn Map Company before 1911—and the first house on Block 16 of the Berkeley Villa Association tract, which had been subdivided in 1875.

The Payson House is the oldest surviving building north of Rose Street and south of Hopkins Street between Shattuck and San Pablo avenues. The only houses north of Hopkins Street that are the same age are three Peralta Park houses built by Lord & Boynton in the same year.

In addition, the Payson House is now the only original structure still standing at the intersection of Berryman Street and Bonita Avenue. The other three

corners are occupied by apartment buildings dating from the 1920s, 1960s, and 1970s, respectively.

Consistent with Section 3.24.110A.4., the Payson House has historic value. Its builders were the Berkeley pioneers Carlos Reuben Lord (1831–1914) and Ira Alton Boynton (1844–1921), who arrived in Berkeley in 1877 and made their respective names in the civic life of the town as elected officials, leaders of fraternal organizations, and bank founders.

In a little over a year, Lord & Boynton constructed many major buildings in Berkeley, including Maurice B. Curtis’s fabled Peralta Park Hotel, Curtis’s own home, and the Niehaus Brothers’ West Berkeley Planing Mill, to name a few.

The house was built for William Hawes Payson (1855–1914), a lawyer who co-founded the First Unitarian Church of Berkeley in 1891. Payson continued to be one of the foremost American Unitarian leaders for the rest of his life, serving as president of the church and its various offshoots multiple times. He was also a well-known political reformer, fighting for fair voter representation and active in the anti-graft movement that brought down corrupt San Francisco Mayor Eugene Schmitz and political boss Abe Ruef after the 1906 Earthquake and Fire.

The Payson House retains integrity of location, setting, feeling, and association. Despite some exterior alterations carried out in 1925 and the mid-1940s, anyone who knew the house in its early days would recognize it today.

Historic Value: City Yes Neighborhood Yes
Architectural Value: Neighborhood Yes

18. Is the property endangered? Yes, a demolition permit has been applied for.

19. Reference Sources:

Alameda County assessment records. BAHA.

Berkeley and Oakland directories. BAHA, Berkeley Historical Society, Ancestry.com.

Block files. BAHA.

Tract maps & Sanborn Fire Insurance Maps. BAHA.

Assessor’s maps. Alameda County Assessor’s Office.

U.S. Census and California Voter Registration records. Ancestry.com.

Ormsby Donogh files. BAHA.

Nelson, Marie. *Surveys for Local Governments—A Context for Best Practices*. California Office of Historic Preservation, 2005. http://ohp.parks.ca.gov/pages/1054/files/Survey_Savvy_CCAPA.pps

20. Recorder:

Daniella Thompson
 2663 Le Conte Avenue
 Berkeley, CA 94709

Applicant:

Deborah Kropp
 1231 Bonita Avenue
 Berkeley, CA 94709

Date: June 2020



Office of the City Manager

INFORMATION CALENDAR

October 13, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Interim Director, Planning and Development Department
 Subject: LPO NOD: 2328 Channing Way/#LMIN2020-0001

INTRODUCTION

The attached Notice of Decision for 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 2328 Channing Way. This action is subject to a 15-day appeal period, which began on September 28, 2020.

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 September 22, 2020. 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 – #LMIN2020-001 at 2328 Channing Way



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 BOARD DECISION: July 2, 2020
DATE NOTICE MAILED: September 28, 2020
APPEAL PERIOD EXPIRATION: October 13, 2020
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): October 14, 2020¹

2328 Channing Way

The Luttrell House

Landmark application (#LMSAP2020-0002) for consideration of City Landmark or Structure of Merit designation status for a single-family residence in the Southside neighborhood – APN 055-1883-027-00.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

PERMITS REQUIRED:

- City Landmark designation status, pursuant to Berkeley Municipal Code Section 3.24.110.A

APPLICANT: Daniella Thompson, 2663 Le Conte Avenue, Berkeley

ZONING DISTRICT: Residential – Southside (R-S)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines for Historical Resource Rehabilitation.

The application materials for this project are available online at:

¹ Pursuant to BMC Section 23B.32.090, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Use Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION
NOTICE OF DECISION
City Landmark designation status - #LMIN2020-0001
2328 Channing Way – The Luttrell House
September 28, 2020
Page 2 of 4

<http://www.cityofberkeley.info/zoningapplications>

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 9-0-0-0

YES: ABRANCHES DA SILVA, ADAMS, ALLEN, CRANDALL, ENCHILL, FINACOM, JOHNSON, MONTGOMERY, SCHWARTZ

NO: None

ABSTAIN: None

ABSENT: None

Note New Methods for Submitting Appeals during Shelter-In-Place Order

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 during the 2020 City Council Shelter-In-Place Order, you must:

1. Mail a letter clearly and concisely setting forth the grounds for the appeal with a check or money order for required fees to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley, 94704. The City Clerk's telephone number is (510) 981-6900.

OR

Alternatively, you may email your complete appeal and all attachments to the Planning Department at planning@cityofberkeley.info and include a telephone number where you can be reached during the day. Planning Department staff will call you within three business days to obtain payment information for the required fees by credit card *only*.

- a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. 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. Signatures collected

LANDMARKS PRESERVATION COMMISSION

NOTICE OF DECISION

City Landmark designation status - #LMIN2020-0001

2328 Channing Way – The Luttrell House

September 28, 2020

Page 3 of 4

per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.

- 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.
3. 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).

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 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:

LANDMARKS PRESERVATION COMMISSION
NOTICE OF DECISION
City Landmark designation status - #LMIN2020-0001
2328 Channing Way – The Luttrell House
September 28, 2020
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- 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.

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 or lpc@cityofberkeley.info

ATTACHMENTS:

- 1. Findings and Conditions
- 2. Landmark application



ATTEST: _____
Fatema Crane, Secretary
Landmarks Preservation Commission

Cc: City Clerk
Daniella Thompson, applicant
Alec Sungwood, property owner

FINDINGS FOR APPROVAL

JULY 2, 2020

2328 Channing Way – The Luttrell House

Landmark application #LMIN2020-0001 for the consideration of City Landmark or Structure of Merit designation status for a single-family residence in the Southside neighborhood – APN 055-1883-027-00

PROJECT DESCRIPTION

City Landmark designation of the property at 2328 Channing Way, The Luttrell House.

CEQA FINDINGS

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

2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A.1.a of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the subject development exhibits architectural merit as one of two extant buildings of its type and only one of its style on the subject block. This development is one of the earliest and few surviving of its kind in the Southside neighborhood, the common name for what is also known as the College Homestead Tract.
3. Pursuant to BMC Section 3.24.110.A.1.b of the LPO, the Commission further finds that the subject main building exhibits architectural merit as an outstanding example of the Queen Anne architectural style that possesses several aspects of historical integrity, namely: location, design, materials, workmanship, feeling and association. In its current condition, the building retains many of the character-defining features of this style, including: a steeply-pitched cross gable roof with a finial-topped tower; a two-story, asymmetrical primary façade with a cutaway bay at the lower story; one-story, partial-width front porch with lace-like brackets; panel siding and abundant decorative trim woodwork including spindlework and shingles.
4. Pursuant to BMC Section 3.24.110.A.4 of the LPO, the Commission finds that the subject building exhibits historic value. It dates to the earliest period of development for this area of Berkeley. Owing to its design, retention of character-defining features and aspects of integrity, the main building is able to convey its historical importance and represent its connections to Berkeley's and the Southside's early history all on its own.

FEATURES TO BE PRESERVED

1. This City Landmark designation shall apply to the subject property and the following distinguishing features of the main building shall be preserved:
 - Two-story height with attic and raised basement
 - Asymmetrical, T-shaped mass with north-facing gable and turret projections
 - East-west gable roof on main wing
 - Cross-gable roof on rear wing
 - Rear wing narrower than main wing
 - Front, east, and west gables featuring boxed eaves and returns
 - Concave frieze and wide wood molding below the eaves along front, east, and west façades
 - Rustic board siding on all facades and in front porch
 - Vertical and horizontal flat wood molding along the corners, between stories, and around openings on street façade
 - Asymmetrical façade featuring a projecting gable over a two-story bay and a hexagonal turret over a polygonal entrance porch
 - Front gable that features a small triangle clad in octagonal shingles and overhanging the wall
 - Assortment of single and twin double-hung and fixed windows with flat wood casing, undivided panes, and corbels continuing the vertical frame members below the sill
 - Framed panel above twin windows under front gable that contains eight applied molded wooden circles
 - Three-sided front bay with a double-hung, wood-framed window on each facet
 - Framed wood panel above central window in front bay
 - Front façade second-floor corners overhanging the bay window and marked with a scalloped bottom edge ending on either side with a turned wood finial
 - Curved decorative brackets under front façade's second floor feature a wood appliqué in the shape of a branch
 - Hexagonal turret above the front porch is divided into upper and lower levels, separated by a belt formed by the concave frieze and molding
 - Dormer window in turret's upper part and double-hung window in its lower part
 - Polygonal corner porch with turned porch posts supporting two arched openings whose upper parts are filled with rows of vertical grooved wooden bars
 - Porch arches' ends decorated with perforated wooden circles
 - Porch railing with geometrical design consisting of alternating squares and pairs of rectangles
 - High horizontal window and door opening in front porch
 - Molded wood water table running along front, east, and west façades

CITY OF BERKELEY
Ordinance #4694 N.S.
LANDMARK APPLICATION

**Land Use Planning
Received
March 16, 2020**

Captain James F. & Cecilia M. Luttrell House
2328 Channing Way
Berkeley, CA 94704



Figure 1. The Luttrell House (BAHA calendar, 1978)

1. **Street Address:** 2328 Channing Way
County: Alameda **City:** Berkeley **ZIP:** 94704

2. **Assessor's Parcel Number:** 55-1883-27 (College Homestead Association tract, Block 5, Lot H)
Dimensions: 135 ft. x 50 ft.
Cross Streets: Dana Street & Ellsworth Street

3. **Is property on the State Historic Resource Inventory?** Yes (Code 3S)
Is property on the Berkeley Urban Conservation Survey? Yes
Form #: 18050

4. **Application for Landmark Includes:**
 - a. **Building(s):** Yes **Garden:** Front yard **Other Feature(s):**
 - b. **Landscape or Open Space:**
 - c. **Historic Site:** No
 - d. **District:** No
 - e. **Other:** Entire property

5. **Historic Names:** Captain Luttrell House
Commonly Known Name: Captain Luttrell House

6. **Date of Construction:** 1889 **Factual:** Yes
Source of Information: Contract notice in *California Architect & Building News*, 15 October 1889; announcement in the *Berkeley Herald*, 2 January 1890.

7. **Designer:** Ira Alton Boynton

8. **Builder:** Lord & Boynton

9. **Style:** Queen Anne

10. **Original Owners:** James Franklin Luttrell & Cecilia Miranda (Brown) Luttrell

Original Use: Single-family residence

11. **Present Owners:**
Allen Jo & Yoon Hee Kim
1398 Trailside Court
San Jose, CA 95138-2742

Present Occupants: Rooming tenants

12. **Present Use:** Rooming house
Current Zoning: R-S **Adjacent Property Zoning:** R-S

13. **Present Condition of Property:**
Exterior: Good **Interior:** Good **Grounds:** Fair

Has the property's exterior been altered? C. 1990 attic windows facing east & west; front door replaced; rear addition altered various times.



Figure 2. The Luttrell House, February 2020

Executive Summary

The James & Cecilia Luttrell House is an almost perfectly preserved Queen Anne Victorian that retains the vast majority of its original façade elements. Constructed in 1889, it was the fourth house built on Block 5 of the College Homestead Association tract and is now the oldest structure standing on Assessor's Block 1883, as well as the least altered one.

The Luttrell House is one of a handful surviving local buildings attributed to or known to have been designed by Ira A. Boynton (1844–1921), a Maine-born pioneer builder who practiced in Berkeley from 1877 until 1900. In 1889, the year of construction of the Luttrell House, Boynton and his partner, Carlos Reuben Lord, built 29 structures, including the Peralta Park Hotel and six houses in the new

Peralta Park subdivision, where the Julius Alfred Lueders House¹ and the Anita Fallon House,² are still standing. In 1892–03, Boynton built the Edward A. Brakenridge House, a designated landmark at 1410 Bonita Avenue. Boynton is also said (albeit without solid evidence) to have built the landmark Samuel C. Clark Cottage,³ aka Morning Glory House (c. 1886–87) at 2009 Berkeley Way.

The present house was constructed for Captain James F. Luttrell (1858–1899) and his wife, Cecilia (1856–1934). The captain was a well-known figure in Pacific maritime circles, and his name frequently appeared in the San Francisco newspapers during the 1890s. Commanding trading ships on the South Pacific islands route, Captain Luttrell served as an important source of news about activities in the South Seas islands and reports on other captains and ships plying the Pacific Ocean. Mrs. Luttrell accompanied her husband on some of his voyages.

The Luttrell House is listed in the State Historic Resources Inventory with the status code 3S (Appears eligible for the National Register as an individual property through survey evaluation). It retains integrity of location, design, materials, setting, feeling, and association.

14. Description

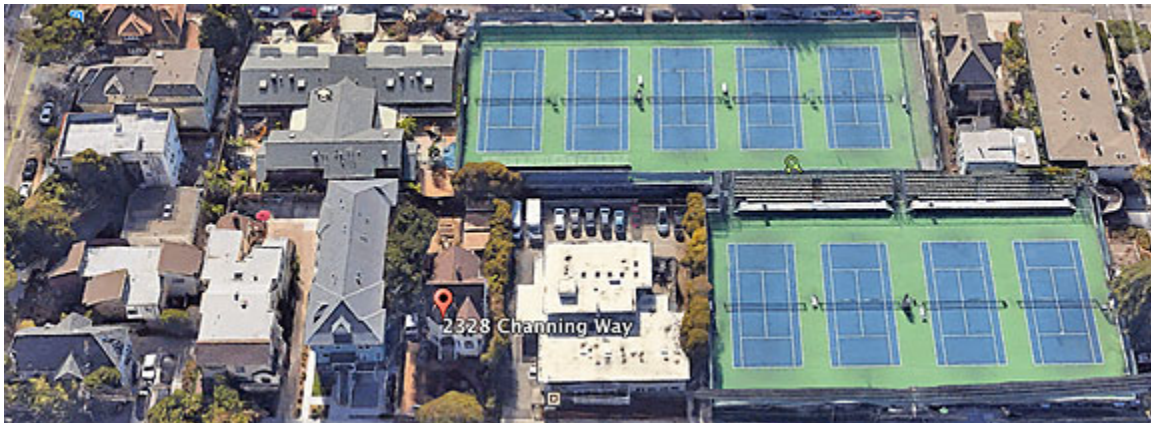


Figure 3. Assessor's Block 1883 (Google Earth)

The Captain James F. & Cecilia M. Luttrell House is a wood-framed, two-and-a-half story building. It is situated in the College Homestead Association tract, on Berkeley's Southside. The house is located two blocks south of the University of California campus and one-and-a-half blocks west of Telegraph Avenue. At least two-thirds of the block are occupied by institutional structures, while the rest of the block comprises apartment buildings and single-family residences converted to apartments or rooming houses.

¹ Daniella Thompson. "Peralta Pak Grew in the Shade of Giants." *Berkeley Daily Planet & BAHA* website, May 2006. http://berkeleyheritage.com/eastbay_then-now/peralta_park1.html

² Daniella Thompson. "An Enchanting Country House Echoes East Coast Follies." *Berkeley Daily Planet & BAHA* website, June 2006. http://berkeleyheritage.com/eastbay_then-now/peralta_park3.html

³ Daniella Thompson. "Samuel C. Clark Cottage." *Berkeley Landmarks*, BAHA website, June 2017. http://berkeleyheritage.com/berkeley_landmarks/samuel_clark_cottage.html

Constructed in 1889 and designed in the Queen Anne style, the house is set back from the street, half-hidden behind a tall wooden fence and gate.

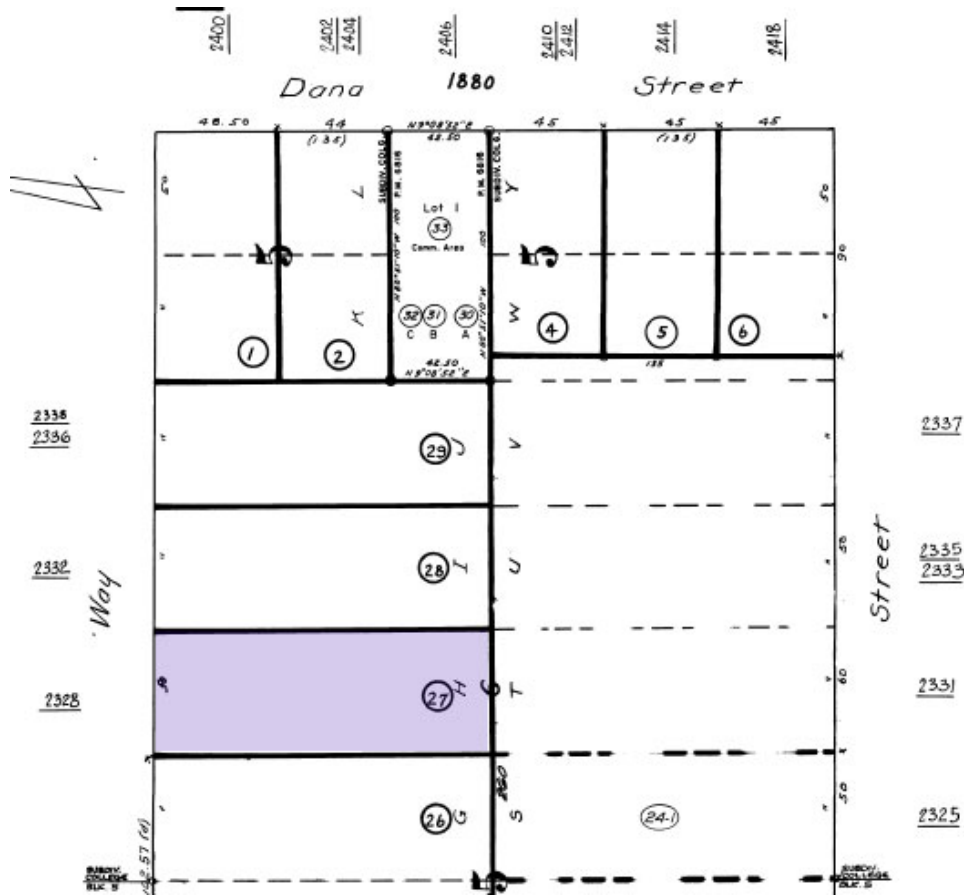


Figure 4. Eastern portion of Assessor' Block 1883

Massing, Roofs, and Cladding

The main mass of the house is T-shaped. The northern (front) wing features a main gable roof running parallel to the street. A cross-gable roof surmounts the southern (rear) wing, which is narrower than the main body of the building. Projecting north from the main gable roof is a lower cross gable sheltering a two-story wing with a bay on the ground floor. To the left of this wing is a hexagonal turret over a corner entrance porch.

The footprint of the main mass is shown in the 1894 Sanborn map (Fig 6). It indicates that the rear wing was originally one story in height. By 1903, a one-story addition was appended to the rear of the house, and by 1911, the rear wing (but not the addition) had grown to two stories (Fig. 7). As shown in the 1929 (Fig. 8) and 1950 Sanborn maps, this footprint remained constant with the exception of the addition, whose size was reduced in the latter years. Since 1950, however, the rear addition has grown again to the full width of the rear wing (Fig. 22).



Figure 5. Front & rear aerial views (Google Earth)

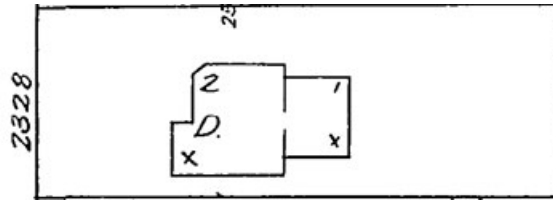


Figure 6. The house in the 1894 Sanborn map

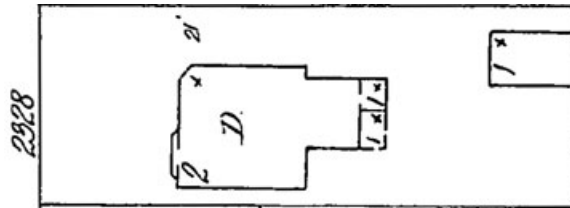


Figure 7. The house in the 1911 Sanborn map

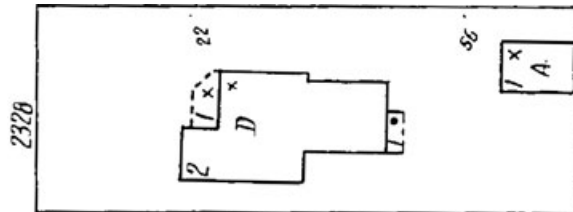


Figure 8. The house in the 1929 Sanborn map

The Luttrell House is clad in rustic board siding framed with wooden moldings along the corners, between floors, and around openings. The roof is clad in composition shingles.



Figure 9. Upper floor, front façade

Front (North) Façade—Upper Floor

The front façade is asymmetrical and divided into two vertical elements. On the right-hand side, under a projecting gable roof, a rectangular second story is positioned above a large bay window on the ground floor. The pediment features boxed-eave gable-end returns known as poor man's cornice. At the top, a small triangle clad in octagonal shingles overhangs the wall. Below it, a concave frieze wraps around the top of the windows and continues below the eave return along the entire façade. Molding separates the frieze from the wall (Figs. 9, 10).

A framed panel above the twin windows contains eight applied molded wooden circles. The narrow twin windows are double-hung wood sash, with flat wood trim and undivided panes. Three corbels are attached below the shared window sill.

The second-floor corners overhang the bay window and are marked on the north façade with a scalloped edge, ending on either side with a turned wood finial (Fig. 11). On the other side of each corner, a curved decorative bracket features a wood appliqué in the shape of a branch (Fig. 12).



Figure 10. Front gable details



Figure 11. Scalloped edge & finial over bay window



Figure 12. Ornamental bracket & finial under second story

The Turret

On the left side of the façade, positioned in the corner between the front gable and the main mass of the house, a hexagonal turret crowns the front porch. The turret is divided into two levels, the upper portion being clad in composition shingles and surmounted by a finial. Separating the upper portion from the lower one is an inward-curving horizontal band formed by the concave frieze and molding seen on the front gable (Fig. 13).

The lower portion of the turret flares out and is clad with painted shingles. It, too, terminates with an inward-curving horizontal band of concave frieze and molding that line the top of the porch.

Both upper and lower portions of the turret have windows set in their north facets. The upper window is a dormer set in plain casing, with a single, possibly fixed, glass pane. The lower window is double hung, with undivided panes. The bottom half of this window is recessed in the angle of the turret and flanked by flaring angled casing (Fig. 14).



Figure 13. Turret



Figure 14. Lower turret window



Figure 15. Ground floor, front façade

Front (North) Façade—Ground Floor

The front bay is three-sided, with a double-hung, wood-framed window on each facet. The street-facing central window is topped by a framed panel. Two corbels can be found under each window sill.

A molded wood water table runs along the bay and continues along the east façade. (The west façade is not visible, but it is assumed that the water table is also present there.)

The front entrance is located to the left of the bay. Seven wooden steps flanked by stepping wooden parapets (Fig. 16) lead to the polygonal corner porch. Three turned porch posts support two arched openings whose upper parts are filled with rows of vertical grooved wooden bars topped by horizontal green-painted wood panels (Figs. 17, 18). The bars and panels are replacements, as a 1939 photograph shows turned vertical spindles separated by a horizontal bar (Fig. 19). Each arch end is decorated with a perforated wooden circle (Fig. 17).

The porch's side opening features a wooden railing in a geometrical design consisting of alternating squares and pairs of rectangles (Fig. 18). The north-facing main opening leads into the porch, which is lined with the same rustic siding seen on the outer walls. A horizontal high window to the left of the entrance door features the same casing and corbels seen elsewhere. The current

paneled door is not original. The 1939 photo (Fig. 19) shows a door glazed at the top and featuring an applied cross on the bottom panel.



Figure 16. Stair parapet detail



Figure 17. Porch arch detail (Realtor.com)



Figure 18. Front porch



Figure 19. The porch in 1939 (Donogh files, BAHA archives)

East Façade—Main Wing

The east side of the main gable roof features the same boxed-eave, gable-end returns; concave frieze; and angled trim seen on the front gable. The water table continues here. A single double-hung window between floors and two pairs of double-hung windows, one on each floor, are framed like those at the front and feature corbels under the sills.

The lunette window in the attic is an addition from circa 1990.



Figure 20. Mid-story window on east façade



Figure 21. East façade



Figure 22. East façade & rear addition (realtor.com, 2018)

West Façade—Main Wing

The west façade is only partially visible from the street. The gable end is identical to the one on the east façade, with boxed eaves and returns, concave frieze, and angled trim (Fig. 23). The three attic windows—a lunette over two horizontal sliding windows—are additions from circa 1990.

On the second story, a single window and an attached pair, are original.

An aerial view shows an attached pair of ground-floor windows directly below those on the second floor. These, too, appear to be original.

A horizontally divided window on the second floor of the front wing cannot be evaluated based on the information available (Fig. 24).



Figure 23. Upper west façade

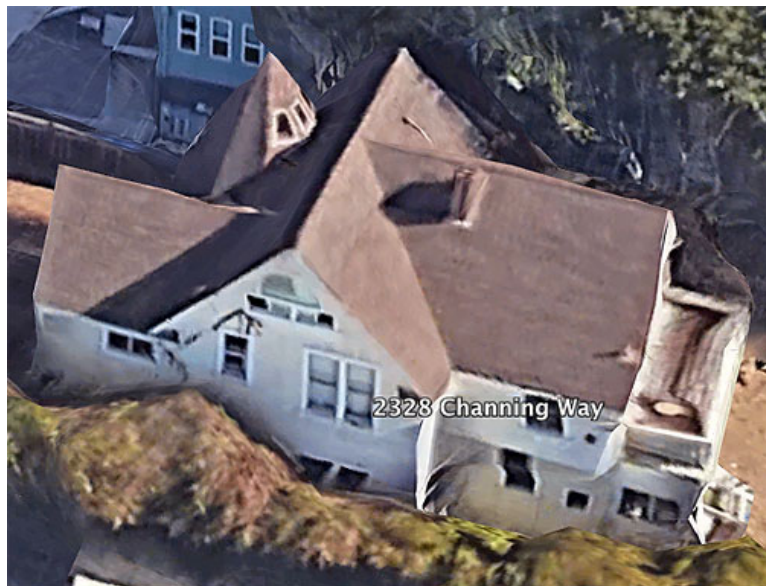


Figure 24. West façade (Google Earth)

Rear Wing & Addition

The original rear wing was constructed as a one-story mass, narrower than the main wing. The ground floor's east façade and its pair of windows (Fig. 22) represent the original 1889 construction. The second story under the north-south gable roof was built between 1903 and 1911 (see Sanborn map details on page 6). The upper window on the east façade, whose casing matches that of the original windows, may be from that 1903–1911 period.

The rear wing's south façade features an attic window and a door opening to a deck, all of indeterminate vintage.

The one-story rear addition, initially seen in the 1903 Sanborn map, has been altered repeatedly over the years.

The west façade of the rear wing is not publicly visible except in aerial views, and little can be deduced about it without on-site inspection.

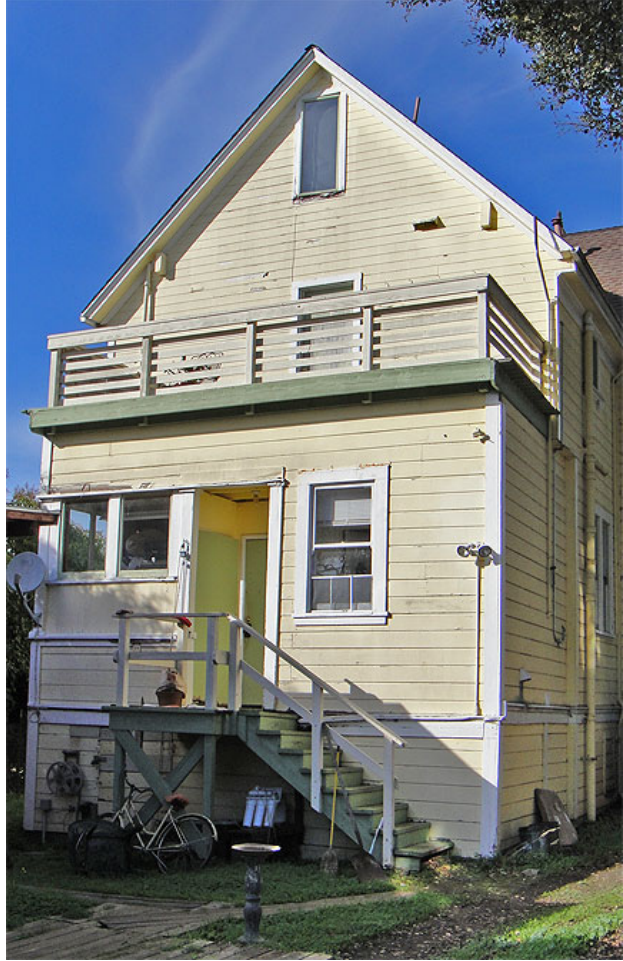


Figure 25. Rear wing & rear addition



Figure 26. Rear yard (Realtor.com, 2018)

Other Structures

Three identical non-contributing shacks stand along the western fence in the rear yard (Fig. 26). A garage that used to stand in the southeastern corner of the lot no longer exists.

Features to Be Preserved

The distinguishing features of the Luttrell House, as described in detail above, include the following:

- Asymmetrical, T-shaped mass with north-facing gable and turret projections
- East-west gable roof on main wing
- Cross-gable roof on rear wing
- Rear wing narrower than main wing
- Front, east, and west gables featuring boxed eaves and returns
- Concave frieze and wide wood molding below the eaves along front, east, and west façades
- Rustic board siding on all facades and in front porch
- Vertical and horizontal flat wood molding along the corners, between stories, and around openings on street façade
- Asymmetrical façade featuring a projecting gable over a two-story bay and a hexagonal turret over a polygonal entrance porch
- Front gable features a small triangle clad in octagonal shingles and overhanging the wall
- Assortment of single and twin double-hung and fixed windows with flat wood casing, undivided panes, and corbels continuing the vertical frame members below the sill
- Framed panel above twin windows under front gable contains eight applied molded wooden circles
- Three-sided front bay with a double-hung, wood-framed window on each facet
- Framed wood panel above central window in front bay
- Front façade second-floor corners overhanging the bay window and marked with a scalloped bottom edge ending on either side with a turned wood finial
- Curved decorative brackets under front façade's second floor feature a wood appliqué in the shape of a branch
- Hexagonal turret above the front porch is divided into upper and lower levels, separated by a belt formed by the concave frieze and molding
- Dormer window in turret's upper part and double-hung window in its lower part

- Polygonal corner porch with turned porch posts supporting two arched openings whose upper parts are filled with rows of vertical grooved wooden bars
- Porch arches' ends decorated with perforated wooden circles
- Porch railing with geometrical design consisting of alternating squares and pairs of rectangles
- High horizontal window and door opening in front porch
- Molded wood water table running along front, east, and west façades



Figure 27. Entrance Hall (Realtor.com, 2018)

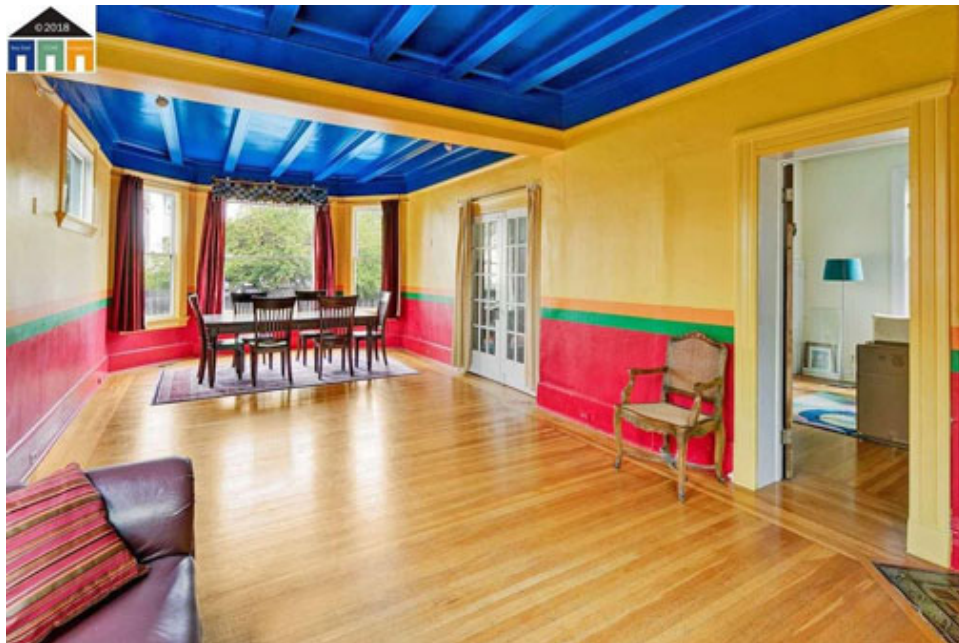


Figure 28. Front & rear parlors (Realtor.com, 2018)

15. History

The College Homestead Association tract, in which the Luttrell House is located, was part of Rancho San Antonio, a 44,800-acre Spanish land grant given to Sergeant Luís María Peralta (1759–1851) in 1820 by the last Spanish governor, Don Pablo Vicente de Sol, in recognition of Peralta's forty years of military service to the Spanish king. The rancho included lands that form Oakland, Alameda, Piedmont, Emeryville, Berkeley, and parts of San Leandro and Albany.

In 1842, Luís Peralta divided the rancho among his four sons. Domingo and José Vicente were given the land that now comprises Oakland and Berkeley.

Within less than a decade, squatters overran the Peraltas' properties, stole their cattle, and sold it in San Francisco. Worse, parcels of rancho land were sold without legal title. Domingo and Vicente Peralta fought the appropriations in the courts. In 1856, the U.S. Supreme Court confirmed their title, but by then the brothers had been forced to sell most of their lands to cover legal costs and taxes. The various buyers engaged cartographer Julius Kellersberger⁴ to map the Peralta Ranchos for subdivision purposes. The future College of California (now UC campus) and its College Homestead Association tract would be located in the northern portions of Kellersberger's plots 69, 70, and 71.



Figure 29. The future campus & College Homestead tract in Kellersberger's Map

The College of California and its Berkeley land acquisitions

The University of California campus and the residential blocks immediately to its south had their beginning with the College of California, a private institution of higher learning chartered in 1855.

⁴ Map of the Ranchos of Vincente & Domingo Peralta. Containing 16970.68 Acres. Surveyed by Julius Kellersberger. Surveyed 1853. Partitioned 1854. Filed Jan. 21st 1857. Courtesy of Barry Lawrence Ruderman Antique Maps, Inc. <http://www.raremaps.com/gallery/enlarge/39956>

dividing up the proposed property, paying for it in installments, and in a comparatively easy way acquiring a good title to a valuable homestead property. The question occurred to me at once whether we could not buy the entire property that was giving us so much trouble with respect to the water, and pay for it by the sale of lots through a homestead association organized in the same way. I proposed the question to the business men, members of the Board of Trustees, and others. They entertained it and investigated it thoroughly. There seemed to be merit in the plan. If successful it would, in the first place, remove wholly the difficulty arising from the water question. And then it would draw attention to our grounds. It would lead to the settlement of a community alongside of the College, which was an essential thing. It would tend to bring the very class of people we should want, people interested in the College.

[...]

One-half of the entire number was sold in a very short time. The remainder were sold at intervals as purchasers could be found. Besides the homestead tract, the College property then consisted of between three and four hundred acres of land, but a large portion of it was eastward of the site, back in the hills, and of little value save as it gave control of the water supply.

The first CHA subdivision map, marked "Recorded at request of J.W. Dwinelle May 15th 1866," indicated that lots were 150 feet wide by 300 feet deep. Block 5, where the Luttrell House is situated, extended from Channing Way to Dwight Way (Haste Street did not yet exist) between Dana and Ellsworth streets, comprising eight lots, each lot measuring 150 ft. by 270 ft.

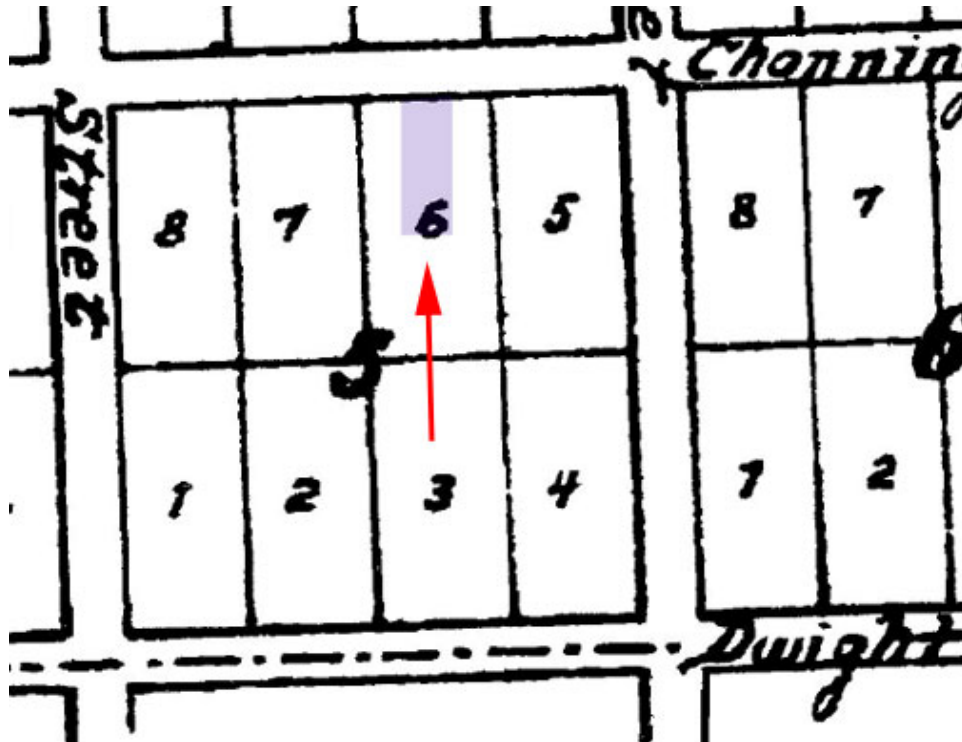


Figure 31. The Luttrell House parcel (shaded) in Lot 6, Block 5 of the College Homestead Association 1866 map

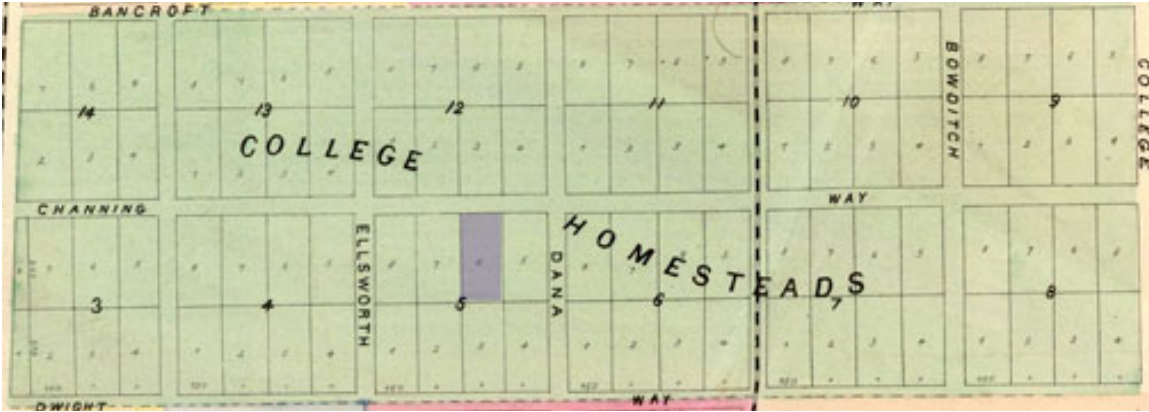


Figure 32. Lot 6 (shaded) in Block 5, CHA tract (Map No. 16, [Thompson & West Alameda County Atlas, 1878](#))

One of the speculative land purchasers in the CHA tract was Horace Henry Seaton (1842–1899); he was Colis Huntington’s nephew and a former partner in Huntington, Hopkins & Co. of Sacramento. Having moved to Oakland in the late 1870s, Seaton made sizable land investments in Berkeley, including blocks 5 and 6 in the CHA tract, acquired from College of California trustee Frederick H. Billings. On 6 October 1879, Seaton subdivided the northern halves of blocks 5 and 6 in the College Homestead tract. On Block 5, lots 5 and 6 were each split into six lots measuring 50 ft. by 135 ft. The parcel occupied by the Luttrell House represented one-sixth of Lot 6 in Block 5 of the CHA map of 1866. The future Luttrell property was now Lot H in Block 5 (Fig. 33).

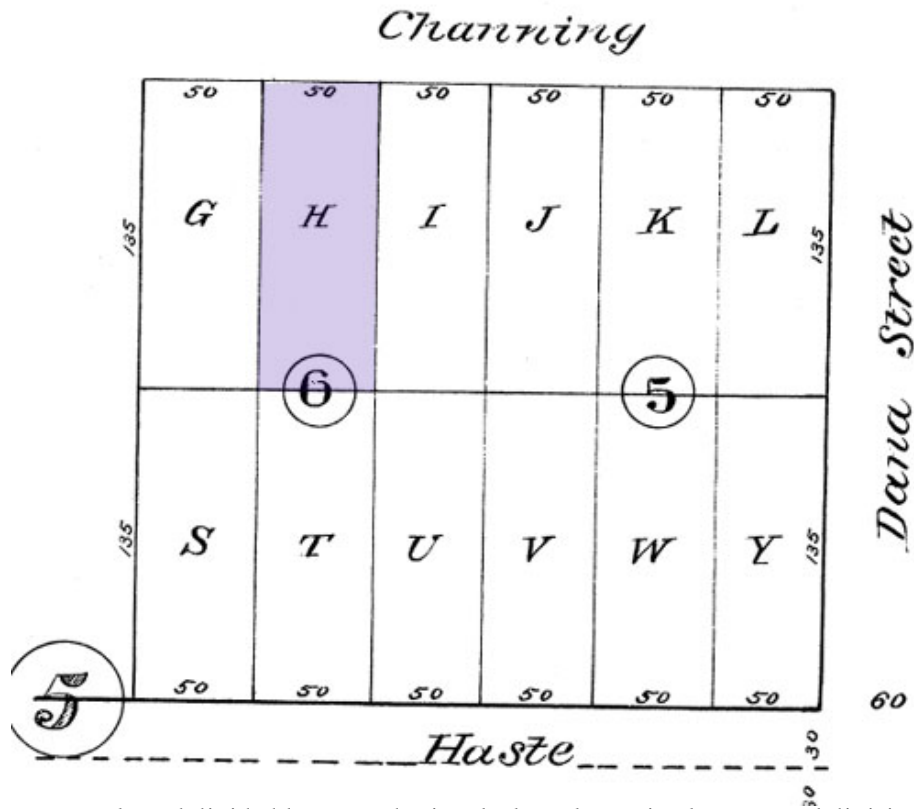


Figure 33. The subdivided lots 5 and 6 in Block 5, shown in the 1879 subdivision map

The 1879 subdivision map showed the new Haste Street cutting through Block 5, and the first two residents on that side of the block were listed in the 1883 city directory. Nevertheless, other maps of the period continued to depict the block as undivided until 1899. Carnall & Eyre's Berkeley map of 1880 (Fig. 34) shows the new Durant Avenue cut between Shattuck Avenue and Choate (Telegraph), but not Haste Street.

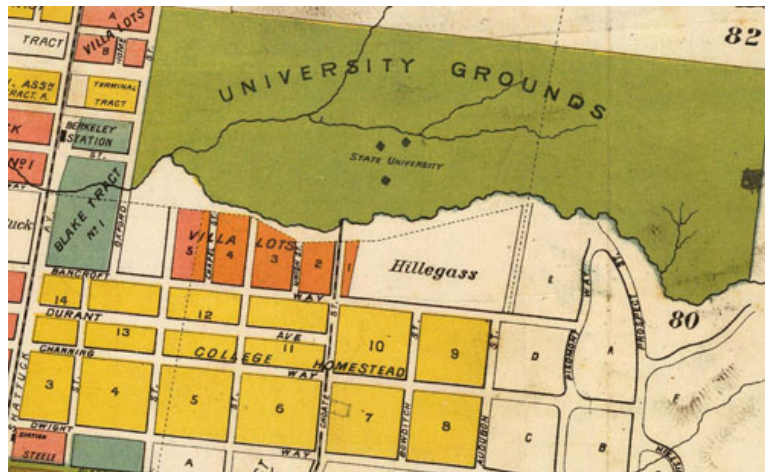


Figure 34. The tract in Carnall & Eyre map of Berkeley, 1880

Woodward & Gamble's Oakland & Vicinity map of 1888 (Fig. 35) fails to show Haste Street except in the Ryer Tract.

Haste Street is also missing from the bird's-eye pictorial map published by Irwin & Johnson in 1891 (Fig. 36), although the map shows Durant Avenue and the First Congregational Church on the Dana-Durant corner, as well as the street railroad running along Dwight Way and Dana Street between the university campus and Shattuck Avenue.

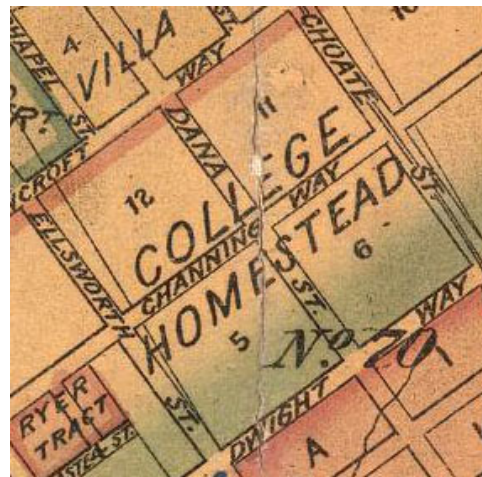


Figure 35. Detail from Woodward & Gamble's Map, 1888



Figure 36. The 2300 block of Channing Way (shaded) in Irwin & Johnson's Bird's-eye map of Berkeley, 1891

William J. Dingee's Map of Oakland and Vicinity, published in 1899 and including real estate and electric railways, showed Haste Street cutting through from Choate (Telegraph) Avenue to the middle of the block between Dana and Ellsworth streets, then picking up again mid-block between Ellsworth and Fulton streets (Fig. 37). The railway connected Berkeley and Oakland, running in a loop from Grove Street clockwise through Center, Pine (Oxford), Dana, Dwight Way, south on Shattuck Avenue to 47th Street—where other connections were available—and north again on Grove Street.

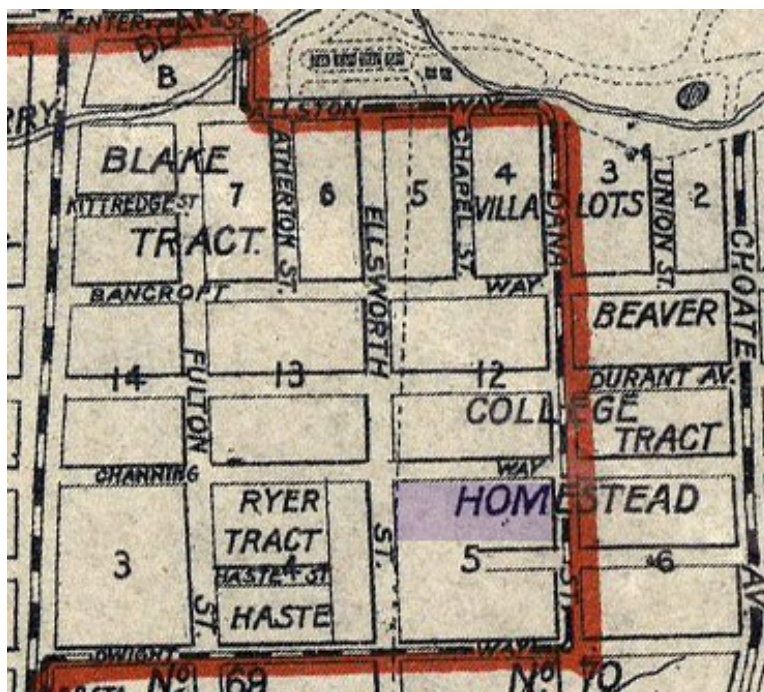


Figure 37. Dingee's 1899 Map of Oakland and Vicinity showed Haste Street cutting halfway through Block 5 (shaded).

The first residents on Block 5 of the CHA tract

The 1878 assessment records show that all eight pre-subdivision lots on Block 5 had been sold. However, only one of them, Lot 8 at the Ellsworth Street end, was improved with a dwelling. The owner-residents of this parcel were Walter Elbert Sell (1832–1905) and his wife, Martha Elizabeth, née West (1834–1919). The Sells had come from St. Louis, Missouri, and Walter took a job in San Francisco as bookkeeper to the mining millionaire Alvinza Hayward, in whose employ he remained for two decades. The Sells were well-to-do, but it appears that most of the money came from Martha's family.

In March 1878, Walter E. Sell co-founded Berkeley's third church, the First Presbyterian Church, where he served as elder and trustee. The church was located on the southwest corner of Ellsworth Street and Allston Way.

In 1878, the Sells' daughter, Nellie Porter Sell (1860–1905), was registered at the University of California as a special-course student in the literary course.



Figure 38. Lot 8, Block 5, CHA tract (Sanborn map, 1894)

The Sells remained the only residents of Block 5 until 1883, when two new houses were added to the assessment rolls. The new residents were Henry L. Whitney, a mason, at 2325 Haste Street (Fig. 77), and Adam Merz, a cabinetmaker, at 2337 Haste Street (Fig. 80). Nothing more would be built on the block until the Luttrells erected their house in 1889.

Ira A. Boynton, designer-builder of the Luttrell House

Ira Alton Boynton (1844–1921) was born in Jefferson, Maine to Amos and Rachel (Decker) Boynton. His father was a Baptist clergyman. In 1868, Ira married Canadian-born Margaret Salmon Fielding in Chelsea, Massachusetts. Their first child, Emma, was born in Illinois the following year.

According to his obituary in the *Berkeley Daily Gazette*, Ira Boynton came to Berkeley in 1877, but records show that he was already in Alameda County on 5 April 1875, when his second child, Laura, was born. In 1876, he was registered to vote in Alameda County's Fourth Ward, listed as a draughtsman. In 1878, he was listed in the Berkeley city directory as a carpenter living on Berkeley Way near Shattuck Avenue. By the following year, the Boyntons had moved to a new home, situated one block north, at 2032 College Way (now Hearst Avenue). Here they lived until 1895.



Figure 39. Ira A. Boynton

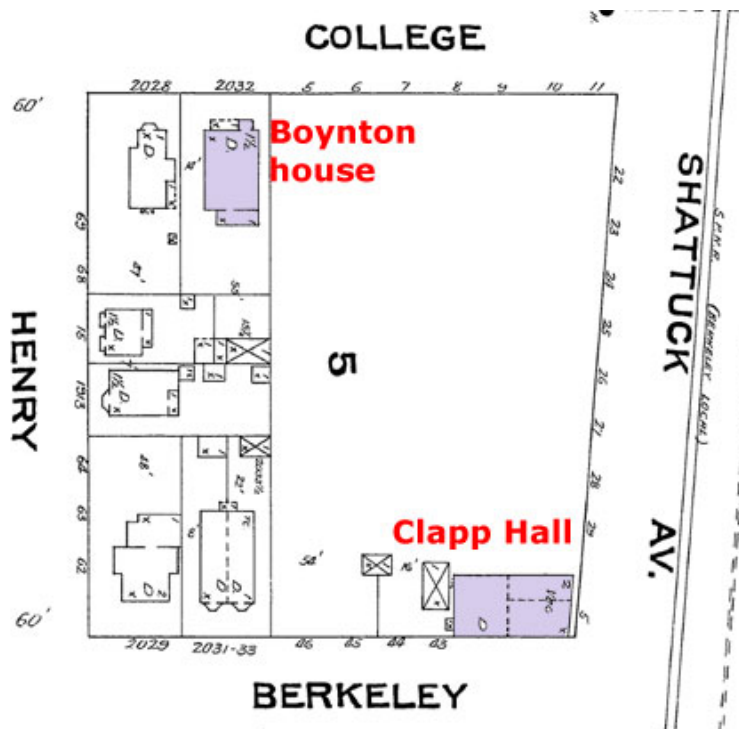


Figure 40. The Boynton residence, 2032 College Way (Sanborn map, 1894)

The youngest three Boynton children, Florence, Fred, and Clara, were born in Berkeley between 1877 and 1884.



Figure 41. The Boyntons and their five children at home on College Way, 1891 (Boynton-Durgin family album, BAHA archives)

Although he was a prolific builder, no records of Ira Boynton's building activities prior to 1884 have been found. In his obituary, for which information was furnished by his daughter, Laura Durgin, it was claimed that Boynton had been associated with A.H. Broad. An oral history conducted by BAHA staff in the 1970s with Boynton's granddaughter, Muriel Durgin Backman, points out his association with Horace Kidder. Neither claim appears to have been documented in print during Boynton's life. The earliest contemporaneous records found of his work date from May 1884. These show a house for his neighbor S.C. Clark (presumably on Berkeley Way); another for Boynton himself; and a third for Professor Eugene W. Hilgard at the latter's agricultural experiment station in Mission San José (now Fremont).⁷

Boynton's name began appearing more regularly in contract and completion notices after he teamed up with Carlos Reuben Lord (1832–1914) to form the construction firm of Lord & Boynton. At the end of 1888, the *Berkeley Herald* announced, "Mssrs. Lord & Boynton have their hands full. They have commenced the erection of a ten-room house in Peralta Park for Alfred Lueders of San Francisco. It will cost \$4,500. For Joseph Hume also they will build a \$2,500 dwelling on Dwight Way."⁸

By the end of 1889, Lord & Boynton could boast a long list of prestigious Berkeley projects completed that year. Published on 2 January 1890 in the *Berkeley Herald*, the list was peppered with top-drawer clients and included the construction of the Peralta Park Hotel at a cost of \$85,000.

LORD & BOYNTON, BUILDERS

Niehaus Bros. & Co. Mill, West Berkeley	15,000
Geo. C. Pape Mill, East Berkeley	2,500
Mrs. R. G. Lewis, Peralta Park, 8-room house	4,000
M. B. Curtis, Peralta Park, 8-room house and improvements	4,500
Dr. Robert Macbeth, Peralta Park, 10-room house and improvements	6,900
Harry S. Thompson, Peralta Park, 9-room house and improvements	3,000
J. A. Luders [sic], Peralta Park, 10-room house and improvements	4,900
Miss Anita Fallon, Peralta Park, 7-room house and improvements	4,000
Jos. Hume, 5-room cottage, Fulton and Channing way	1,800
Jos. Hume, 2-story house, Haste street	2,300
Jos. Hume, Dwight way, 9 rooms	3,200
Jos. Hume, Walnut street, 5 rooms	2,000
N. S. Trowbridge, Durant avenue	3,300
W. A. Ristenpart, Bancroft way, 7 rooms	3,000
T. M. [sic] Luttrell, Channing way, 7 rooms	2,150
L. H. Payson, Gilman street, 6 rooms	2,000
W. T. Lingard, Walnut street, 5 rooms	1,800
J. L. Barker, Cedar street, 7 rooms	2,100
L. Gottshall, Center street, 2 stores, 8 rooms	4,000
Daniel McMahan, University avenue, 7 rooms, barn and improvements	3,400
Geo. C. Pape, University avenue, 8 rooms	4,000
Lord & Boynton, Berkeley way, 8 rooms	2,800
Fritz Meyer, Seventh and Bancroft way, 5 rooms	1,500
Chris Johnson, Fourth and Addison, 4 rooms	1,000
Dr. Cook, Peralta Park improvements	3,600

⁷ *California Architect & Building News*, May 1884, page 91.

⁸ *Berkeley Herald*, 6 December 1888.

I. A. Boynton, College way, 6 rooms	2,000
H. W. Taylor, lumber yard office	500
Mrs DeLorme's improvements to house	500
Peralta Park Hotel	85,000



Figure 42. Peralta Park Hotel (Cheney Photo Advertising Agency)

Of the buildings listed in the *Berkeley Herald*, the only known survivors are the Julius Alfred Lueders House (design attributed to Boynton), 1330 Albina Avenue; the Anita Fallon House (Fred E. Wilcox, architect), 1307 Acton Street; the Harry S. Thompson House (designer unknown), 1491 Hopkins Street; and the Luttrell House on Channing Way. The Luttrell House is the only one documented as having been designed by Boynton.



Figure 43. Lueders House c. 1905 (l) & its model in Shoppell's Modern Houses, January 1887⁹

⁹ <https://archive.org/details/ShoppellsModernHousesCCA33429/page/n307/mode/2up>

Despite their joint success, the Lord & Boynton partnership was short-lived. In 1890, the partners went their separate ways. That year, *Edwards Transcript of Records* published four projects carried out by Boynton without Lord. An additional eight projects were listed in the *Berkeley Herald*. None of those twelve buildings survived. In 1891, Boynton built for lithographer Leo A. Brown a Queen Anne cottage (still extant), designed by James P. Chadwick at 1418 Bonita (then Louisa) Avenue.¹⁰

Of the buildings Boynton constructed between 1894 and 1899, three are currently known to exist. Of those, one is the Edward A. Brakenridge House (1892–93) at 1410 Bonita Avenue (Fig. 44), a designated landmark that, according to Muriel Durgin Backman, had been designed by her grandfather.

The second is the Langdon P. & Carrie S. Smith House (1894) at 2155 Vine Street (Fig. 45). This house was reported in *Edwards Transcript of Records*:

17 July 1894
North side of Vine 95' west of Oxford
\$2,275 for a 2-story frame
Owner: Carrie S. Smith
Architect & contractor: Ira A. Boynton



Figure 44. Edward A. Brakenridge House (1892–93), 1410 Bonita Avenue (courtesy of Bonita House, 1970s)

The third known surviving house from Boynton's later Berkeley period is a two-story Colonial Revival (1896) designed by Fred B. Wood.¹¹ Now two flats, it stands at 1438–1440 Milvia Street.

¹⁰ *California Architect & Building News*, June 1891.

¹¹ *Edwards Transcript of Records*, 19 March 1896.



Figure 45. Langdon & Carrie Smith House (1894), 2155 Vine Street

In addition to his building activities, Ira A. Boynton was active in finance, municipal politics, and fraternal circles. In 1886, along with several other leading Berkeley businessmen, Boynton founded a bank.

The Homestead Loan Association of Berkeley has filed articles of incorporation with the County Clerk. The Directors are C. R. Lord, John K. Stewart, Philip Monroe, Walter E. Sell, Otto Nichaws [Niehaus], M. M. Rhorer, George A. Embury, Ira A. Boynton and Clarence M. Hunt — all of Berkeley—and the capital stock is \$1,000,000, divided into 5,000 shares, of which 100 have been subscribed.¹²

In 1879, Boynton was listed in the city directory as one of Berkeley's two Justices of the Peace. He ran again in 1886, but this time he fell short by two votes after a recount.

A. H. Morris, candidate of the Peoples' party for the office of Justice of the Peace of Berkeley, was dissatisfied at the announced result of the recent election, which gave the office to his opponent, Ira A. Boynton, by a majority of seven votes. Morris appealed to the Town Trustees, who sat as a Returning Board Wednesday evening and recounted the ballots, a privilege accorded by a section of the town charter. President Henley and Trustees Shattuck and Whitney were present. The result was that four votes were changed to Morris' account from Boynton's, thus giving Morris the office by a majority of two votes. Boynton was the candidate of the Citizens' Reform party.¹³

¹² *Daily Alta California*, 3 March 1866, page 5.

¹³ *Daily Alta California*, 15 May 1886, page 4.

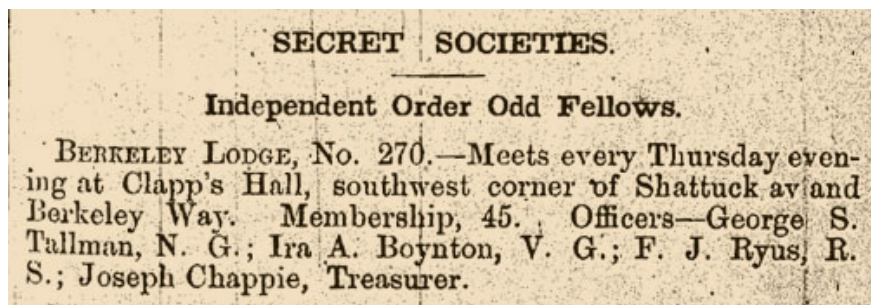


Figure 46. Bishop's Berkeley Directory, 1879-80

Boynton was a charter member of the Independent Order of Odd Fellows, Berkeley Lodge, No. 270 and also served as Chief Patriarch of the Oakland Encampment, No. 64 in the mid-1880s.¹⁴ Members of the Berkeley Lodge met weekly at Clapp Hall, located around the corner from the Boynton residence (Fig. 40). In 1884, the chapter incorporated a hall association in order to raise funds for a building of its own. Boynton was one of the five directors.

Articles of incorporation of the Berkeley Odd Fellows' Hall Association have been filed with the County Clerk. The capital stock is \$10,000. divided into 10,000 shares of \$1 each. The Directors are Frederick M. Husted, Walter Powell, Thomas Hann, Ira A. Boynton and Philip Sheridan, all of Berkeley.¹⁵

By 1885, the Berkeley chapter of the I.O.O.F. had erected its new building on the southeast corner of Shattuck Avenue and Addison Street (Fig. 47), across the street from Berkeley Station (Fig. 48). Other fraternal societies, including the Free Masons, the American Legion, and the Grand Army of the Republic, also met at the Odd Fellows' Hall. It is not known whether Ira Boynton acted as contractor for the hall, but he was very likely involved in the decision-making process.



Figure 47. Odd Fellows' Hall (1885), Shattuck Avenue & Addison Street

¹⁴ *Daily Alta California*, 26 July 1885, page 2.

¹⁵ *Daily Alta California*, 16 April 1884, page 4.



Figure 48. Odd Fellows' Hall (l) opposite Berkeley Station, c. 1906

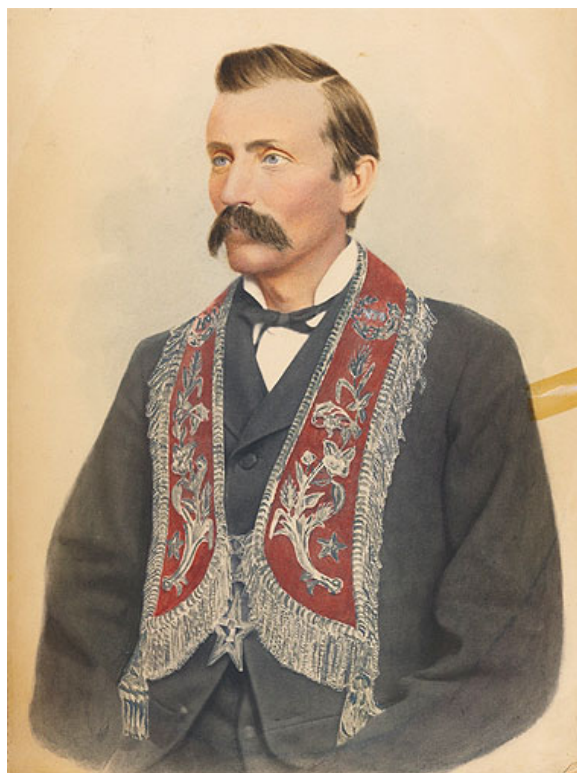


Figure 49. Ira Boynton in his I.O.O.F. regalia
(Boynton-Durgin family album, BAHA archives)

On 10 August 1896, the *Berkeley Gazette* announced, "Ira A. Boynton is moving into his new residence in Daley's Scenic Park." Located at 2435 Virginia Street, the new residence was equipped with a water tower in the rear and an adjacent vacant lot where the Boyntons' barn animals could roam. In marked

contrast with the ornamental nature of houses Boynton built for others, his own residence was characterized by severely plain design.



*Figure 50. The Boyntons' new home, 2435 Virginia Street, 1896
(Boynton-Durgin family album, BAHA archives)*



*Figure 51. West façade of the Boynton residence on Virginia Street
(Boynton-Durgin family album, BAHA archives)*

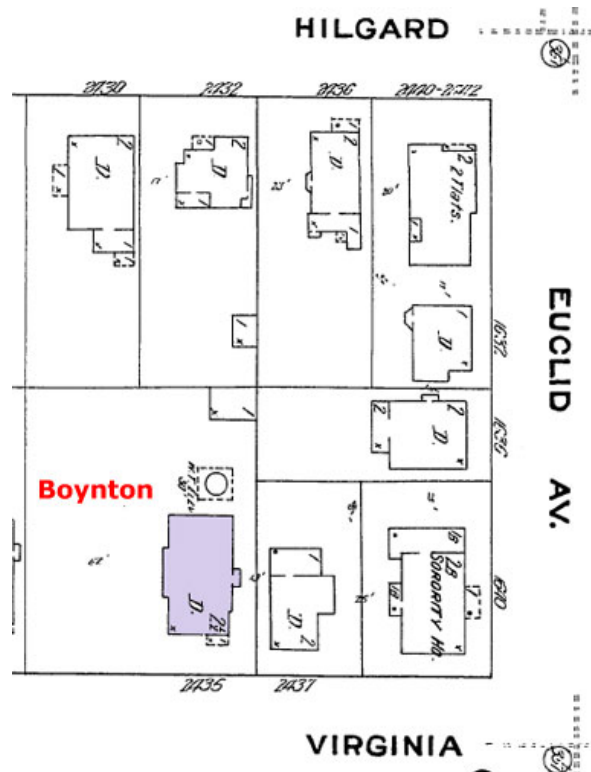


Figure 52. Sanborn map, 1911

Life in the new house came to an abrupt halt when Margaret Boynton died on 31 October 1897. In February 1898, Ira Boynton sold the property to Timothy B. Smith. Thereafter, there were no further listings for him in the Berkeley directories.

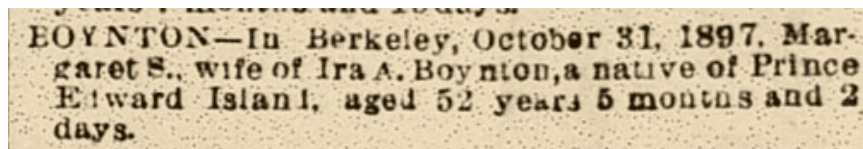


Figure 53. San Francisco Call, 1 November 1897

Soon, Boynton's attention was drawn beyond Berkeley. In 1880, gold was discovered in Juneau, Alaska, with a strike in Nome following in 1898. Boynton followed the building boom, settling first in Douglas¹⁶ and later moving to Nome, where he ran a planing mill for a number of years.¹⁷ Family lore has it that Boynton built the first Protestant church in Alaska, although the Sitka Lutheran Church (1843) predates his arrival by more than 50 years.

¹⁶ "I.A. Boynton is down from Douglas Alaska to visit relatives in Berkeley." *Berkeley World-Gazette*, 31 January 1899, page 4.

¹⁷ "Ira A. Boynton will install a planing mill at Kennewick. He brought the machinery from Nome, Alaska, where he ran a planing mill a number of years." *The Timberman*, Vol. 12, May 1911, page 24.



Figure 54. Pierce House, 2628 Durant Avenue (SF Call, 13 Oct. 1901)

The U.S. Census enumerator found Ira Boynton in Berkeley on 6 June 1900. He was staying at 2628 Durant Avenue, in the home of his eldest daughter and her husband. The son-in-law was Archie Burton Pierce, an instructor of mathematics at the university, future civil engineer, and a famed Cal football player in his student days. Boynton had built the Pierce house between March and June of 1899, with Pierce acting as architect.¹⁸ A year later, the Pierces left Berkeley and sold their house to a Chinese fraternity.¹⁹

Also enumerated in the Pierce household in 1900 were the three youngest Boynton children, Fred (now a carpenter), Florence, and Clara. Second daughter Laura had already married the well-known Berkeley undertaker Frank W. Durgin, another Maine native.

Nothing further is known about Ira Boynton's doings during the first decade of the 20th century. At some point between 1907 and 1911, he married a divorcée by the name of Sarah Metcalf Hovey, who owned an interest in Nome Beach properties.²⁰ The two were already married and living in Kennewick, Washington on 20 January 1911, when the *Kennewick Courier* reported that "Mr. and Mrs. Ira A. Boynton are making a week's visit in Los Angeles. They are expected to return to Kennewick in a short time."

By 1918, Ira and Sarah Boynton had moved to Seattle. The 1920 U.S. Census found them sharing their rented home with two young lodgers, brother who both worked as street conductors. Ira, now 75 years old, still listed himself as a self-employed carpenter and building contractor. He died in Seattle on 3 January 1921. The next day, the *Berkeley Daily Gazette* published the following obituary:

¹⁸ *Edwards Transcript of Records*, 1899.

¹⁹ "The Oddest College Fraternity." *San Francisco Call Sunday Magazine*, 13 October 1901, page 5.

²⁰ Biography of Frank Ivan Reed. <https://www.alaskahistory.org/biographies/reed-frank-ivan/>

BERKELEY PIONEER DIES IN SEATTLE

Ira A. Boynton, a pioneer of this city, passed away in Seattle yesterday, according to word received by his daughter, Mrs. F. W. Durgin, of this city. He was 76 years of age.

Coming to Berkeley in March, 1877, Boynton was closely identified with the early history of the city, which was incorporated as the town of Berkeley the following year.

He was elected justice of peace in 1879 and served for two years, and he was the last of the charter members of Berkeley lodge No. 270, I.O.O.F. of this city. Boynton was associated in business as contractor and builder with A. H. Broad and later with C. R. Lord. Mrs. Boynton passed away in this city in 1897, and three years late[r] Boynton boarded one of the first boats to go to Nome, Alaska, where he remained for several years, building up the greater part of that city. He was a native of Jefferson, Lincoln county, Maine.

Boynton is survived by five children. They are Emma B. Pierce of Eagle Rock City, Laura L. Durgin of this city, Florence E. Blanck of Oakland, Fred A. Boynton of Central America and Clara E. Anderson of Richmond.

He also leaves two brothers, George E. Boynton of this city, and Alden Boynton of Jefferson, Me., and one sister, Mrs. Charlie E. Wyatt of Saratoga.

It is noteworthy to mention that the Luttrell House, for which no model has been found in late 1890s plan books such as *Shoppell's Modern Houses*, is probably Ira Boynton's most successful and harmonious design. It even has a copy in North Berkeley. There, at 1431 Arch Street, stands a lookalike house that was built as income property nine years after the Luttrell House.



Figure 55. J.L. Donovan House (c. 1898), 1431 Arch Street

Captain James F. & Cecilia M. Luttrell



Figure 56. The newlywed Cecilia & James F. Luttrell (courtesy of Jill Duffy)

James Franklin Luttrell and Cecilia Miranda Brown, the first owners of the house at 2328 Channing Way, both came from pioneer families who had arrived in California in the early 1850s.

The Luttrells came from Missouri and eventually settled in Fort Jones, Siskiyou County, where James Franklin Luttrell was born in 1858. The family appeared to divide its time between Fort Jones and Oakland. James's father, James Monroe Luttrell (1837–1909), was a police constable and stock rancher. His uncle, John King Luttrell (1831–1893), was a rancher and lawyer who served as a Justice of the Peace in Oakland in the mid-1850s; sergeant-at-arms of the California State Assembly in the mid-1860s; and California Assembly member and U.S. Congressman in the 1870s. Two of Captain Luttrell's younger siblings also gravitated toward the law and law enforcement. Charles Edward Luttrell (1860–1938) was a guard in Folsom Prison, while Hiram Albert Luttrell (1863–1915) was an attorney and politician.

Cecilia's parents, both immigrants, married circa 1853. Her father, William M. Brown (1802–1876), a metallurgist and mining engineer, was born in England. Her mother, Agnes Regina Buchwald (1817–1892) was Hungarian. Agnes had been previously married to Odilio Küstel (1811–1852). A family genealogy site details the Kustels' origins and immigration to the United States:

The Kustel family emigrated to California, arriving via Panama in San Francisco on August 13, 1852 aboard the steamer *Columbia*. Odilio Küstel, his wife Agnes and four sons (Oscar, b. 1834; Alexis, b. 1840; Casimir, b. 1846; and Arpad, b. 1848) came from Ruszkabánya, Krassó-Szörény, in what was then the Austro-Hungarian Empire (now Rusca Montana, Caras-Severin, in Romania). They were part of the inrush of over half a million people who emigrated to California from around the world following the discovery of gold in 1848. Travelling with them was Guido

Kustel, believed to be Odilio's brother, and his wife Adele. Guido was a mining engineer and published books in San Francisco in 1863 entitled *Processes of Silver and Gold extraction*, and in 1870 *Roasting of Gold and Silver Ores and the Extraction of their respective metals without Quicksilver*. The Kustels became naturalized U.S. citizens, and Agnes remarried. By 1864, the gold rush had ended, and Odilio's four sons set out as seaman sailing from the port of San Francisco around the globe. Their adventures were numerous.²¹

After marrying William Brown, Agnes gave birth to two more children, Cecilia Miranda, who was born in Belmont, San Mateo County, on 16 January 1856, and William B. (b. 1857). The 1860 U.S. Census enumerated the Browns in Township 3 (Antioch and Pacheco), Contra Costa County. The four Kustel brothers were living with the Browns and continued to be members of the household ten years later, when the family was enumerated in Ward 9 (today's Mission Bay), San Francisco. Now in their twenties, the Kustel brothers' occupations were all listed as "at sea."

When the Brown-Kustel family was enumerated in the 1880 U.S. Census, William M. Brown was no longer alive, and his son William was also missing. The family's residence was listed at 1906 Polk Street, San Francisco. The four Kustel brothers were all sea captains, and three of them were married. Cecilia was enumerated as their step-sister, although they were half-siblings born to the same mother.

James Franklin Luttrell began his marine service in 1877, according to his biography in *Lewis & Dryden's Marine History of the Pacific Northwest*.²² He first served as a watchman on the Pacific Mail Steamship Company's S.S. *Alaska*. In 1880, the San Francisco city directory, published in April of that year, listed him as a storekeeper on the Pacific Mail Company's S.S. *Colima*. The same year, the U.S. Census enumerated him in June as a freight clerk with the Pacific Mail Steamship Company, lodging in the home of a ship's carpenter at 3 Liberty Street, San Francisco. In 1881, he worked as a draftsman in New City Hall.

During most of the 1880s, Luttrell served as a purser on a number of steamships, including the *Orizaba*, *Senator*, *Idaho*, *Mexico*, *George W. Elder*, *Eureka*, *Los Angeles*, *Queen of the Pacific*, *Corona*, *City of Chester*, and *Pueblo*.

It is not difficult to imagine how Jim Luttrell and Cecilia Brown met, given that four of her brothers were mariners. The couple was married on 16 September 1885 by Rev. George B. Clifford, pastor of the Methodist Episcopal Church of Santa Clara. Oscar Kustel's wife, Florence, acted as a witness.

In the late 1880s, before they built their house on Channing Way, the Luttrells resided at 522 East 15th Street in Oakland. James Luttrell was listed in the 1888 and 1889 Oakland directories as a purser on the steamship *Pueblo*.

²¹ "Jennie Begent and the Kustel Family." <http://www.begent.org/kustel.htm>

²² E.W. Wright, ed. *Lewis & Dryden's Marin History of the Pacific Northwest*, p. 478. Portland, Oregon: The Lewis & Dryden Printing Company, 1895.

Berkeley; owners, J. F. and C. M. Luttrell; architect, Ira L. Boynton; contractors, Lord & Boynton; cost, \$2,000; signed, August 28th; filed, September 2d; December 1, 1889; payments—\$500, frame up; \$500, brown mortar on; \$500, completed; \$500, 35 days.

Figure 57. Contract notice for the Luttrell House (*Cal. Architect & Building News*, 15 Oct. 1889)

In 1890, about the time that the Channing Way house was occupied, James Luttrell became a full-fledged master mariner. At the time, Cecilia's mother was probably living with the Luttrells, since she died in Berkeley in 1892.

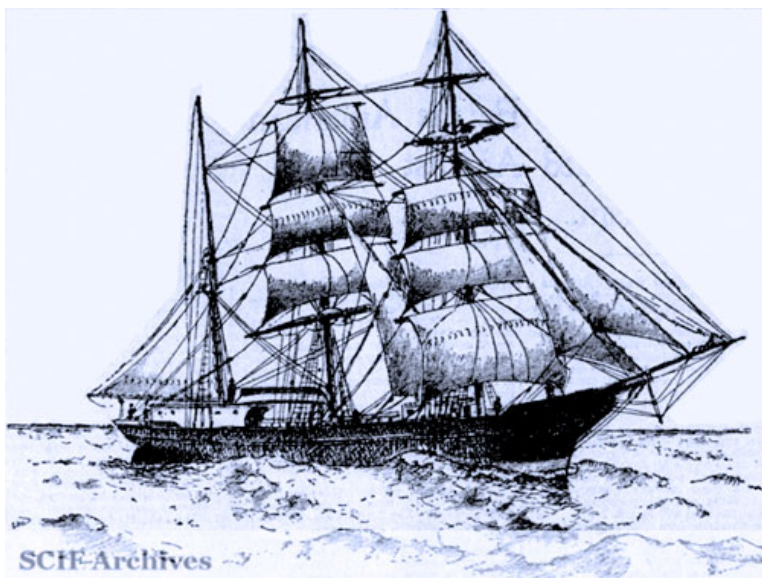


Figure 58. Captain Luttrell's first command, the bark *Helen W. Almy*

Captain Luttrell's first command was the bark *Helen W. Almy*, a ship built in the 1850s that had been recently acquired by Wightman Brothers, produce commission merchants in San Francisco. Some years earlier, the *Almy* had been "dismasted in a gale and put in here [San Francisco] leaking badly, and with her back almost broken. The *Almy* never recovered from that buffeting, and she has always been considered a risky vessel to have anything to do with after that."²³

In this ship, Captain Luttrell made several long voyages, calling at various islands in Polynesia, Micronesia, and Melanesia.

One of his earliest voyages in the *Helen W. Almy* had tragic consequences beyond the captain's control. The ship had been chartered to transport 237 contract workers from the drought-afflicted Gilbert Islands to a British-owned coffee plantation in Chiapas, Mexico, an area with scant local workforce

²³ "Forty Souls Swallowed Up by the Sea." *San Francisco Call*, 23 March 1898, page 1.

resources. Importing the Gilbertese was meant to jump-start the Chiapas economy, yet the year after their arrival, a smallpox epidemic left only 58 alive.²⁴

Other sailings produced stories of a different nature. In September 1894, the *San Francisco Call* published a long article that began as follows:

Captain Luttrell of the bark Helen W. Almy, up a few days ago from Butaritari, is a pretty good story-teller and never fails to bring back with him from the South Seas some narrative worth the reader's while to peruse. This time Captain Luttrell tells of a pretty princess, a half English and half native woman, who rules over the Manua group against her wishes, though her subjects worship her much after the fashion that the Koreans worship their king, or as the Peruvians humbled themselves before the virgins of the sun.

[...]

Captain Luttrell and his wife, who accompanied him on his last trip, were the first white people permitted to interview the Queen, and obtained from her Majesty the story that her life was one of misery in spite of the profound respect shown her by her native subjects. She is a ruler that is compelled to maintain an odious reserve, the sanctity of her dwelling being rigidly preserved by fierce warriors, who stand ready to decapitate the bold intruder who dares to enter the Queen's sacred presence, without first being especially anointed by the spirit fires and summoned by a council of chiefs. [...]²⁵

The same *Call* issue carried another article with a mention of Captain Luttrell. It reported on the effect that the Wilson-Gorman Tariff Act of 1894 had on the price of coconuts and coconut products.

Mr. Wilson, in a remote corner of his bill, has provided for an assessment of 30 per cent ad valorem on copra and 60 percent on cocoanuts. Wilkins & Co. are stuck for \$7200 duty on inbound nuts bargained for before the tariff went into effect. Captain Luttrell is in the hole for 200 tons of dutiable copra, and other traders are threatened with an avalanche of taxation that would take all the commercial spirit out of a millionaire, much less an unostentatious barterer in oil-producing staples. Nearly six months ago the new oil works²⁶ at Berkeley, scenting profit afar and giving little heed to the shadow of Democratic coming events, sent a special agent to Samoa, Tahiti and other places with instructions to buy up or contract for 100,000 tons of cocoanuts, to be shipped to San Francisco per vessels to be named thereafter by the purchasers. This concern is now in a position to have to pay to the United States something like \$70,000 in duty it did not figure on.²⁷

²⁴ Casey Marina Lurtz. *From the Grounds Up: Building an Export Economy in Southern Mexico*. Stanford University Press, 2019.

²⁵ "A Royal Captive." *San Francisco Call*, 18 September 1894, page 4.

²⁶ The El Dorado Oil Company of West Berkeley was incorporated in February 1893.

²⁷ "Nuts to Crack." *San Francisco Call*, 18 September 1894, page 11.

Line Islands

**338. TRACK CHART OF "HELEN W. ALMY"
EXPEDITION IN VICINITY OF CHRIST-
MAS, WASHINGTON, AND FANNING
ISLANDS. 1894. 1 item.**

**Manuscript chart signed by J. F. Luttrell.
1:725,000. (Filed as 582.36)**

Figure 59. U.S. Hydrographic Office Manuscript Charts record

In 1895, Captain Luttrell refused to go out in the *Helen W. Almy* again. The ship had never stopped leaking, and its hull had become worm-eaten. Luttrell determined that the bark was not likely to survive another long voyage, and that it would cost too much to make her seaworthy. He then acquired an interest in the San Francisco grocery business of J.F. Cunningham & Co., and the firm chartered the schooner *Viking* for his next run.

J. F. Cunningham & Co. have chartered the schooner *Viking* for a voyage to the Southern Seas. For several days they have been attempting to secure the schooner *Vine*, but could not come to terms. The *Vine* is now loading for Central America and the *Viking* is on her way from Mexican ports. Captain Luttrell, the well-known South Sea Island trader, will go out in command of the *Viking*.²⁸

The *Viking* left San Francisco on 15 November 1895. The following May she was given up for lost.

Another San Francisco vessel has to be numbered among the missing. The schooner *Viking* is now a month overdue and the friends of Captain J. F. Luttrell are more than anxious. "Jim," as he is known among the merchants and ship owners, is a cousin of the late Congressman Luttrell, and is one of the best-known South Sea island traders that makes San Francisco his home port.

The *Viking* left here on November 15 last with the following crew: Captain, J. F. Luttrell; mate, Joseph Peterson; second mate, Donald McNae; cook, William Sievers; boy, Kartia; seamen, Peter Anderson, John Johnson and R. Carroll.

From San Francisco the schooner went direct to Fanning Island, and there discharged a large consignment of goods for King Greig. Some copra was taken aboard and then a start was made for Samoa. On January 4 last Captain Luttrell wrote from Apia stating that the next day he would sail for Taputeouea. From that day to this nothing has been heard from either schooner or crew.

From Taputeouea the *Viking* was to have gone to Tarawa and thence to Kusaie in the Carolines. From the latter point there is a bi-monthly mail

²⁸ "Along the Waterfront." *San Francisco Call*, 31 October 1895, page 7.

service to China, and the arrival of the last two steamers has been anxiously looked for by the agents and owners of the vessel. No news came, however, and now the only hope is that the schooner has gone on a coral reef and that the crew has been saved. [...]²⁹

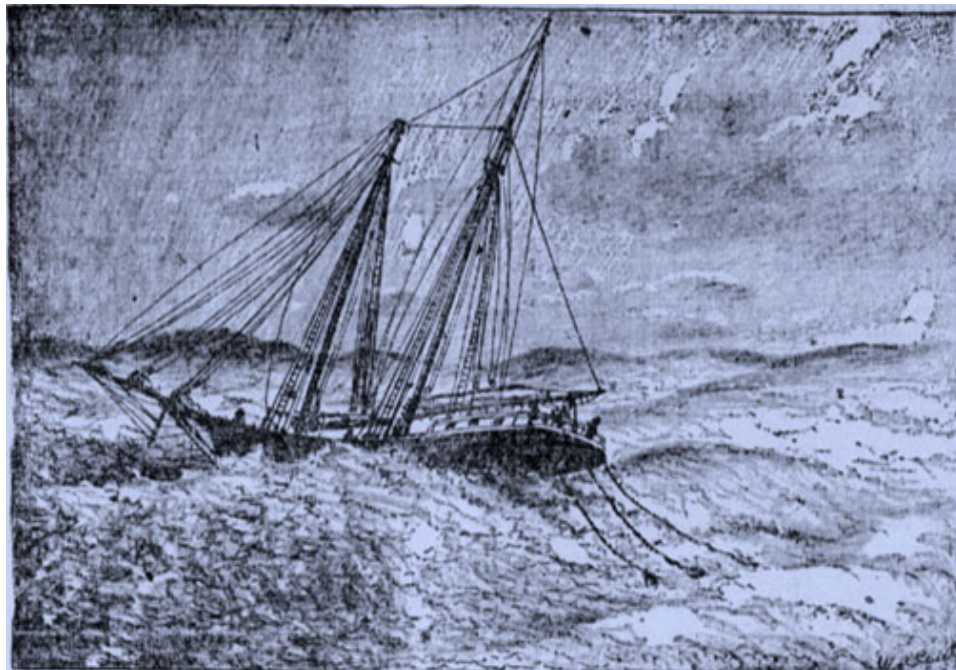


Figure 60. The schooner Viking in the hurricane (SF Call, 6 May 1896)

The *Viking* finally returned on 5 May 1896, docking at Meiggs Wharf in North Beach, where a crowd immediately gathered to welcome home the captain and his wife. The *San Francisco Call* was on hand to report at length on the ship's travails. One paragraph in the long article summarized the hardships faced by Luttrell and his crew:

The trading schooner had a terrible time. She was in three storms, went on the rocks near Kusai and was in a hurricane for three days, during which time not a stitch of canvas could be carried. The provisions began to give out and sooner than run any risks Captain Luttrell spoke the barkentine Jane A. Falkenberg and secured extra supplies from her. While the *Viking* was in the hurricane the seas broke all over her at first. Then Captain Luttrell got three oil bags out astern, and although the schooner wallowed in the trough of the sea for three days thereafter not a wave broke aboard. The hull of the vessel is patched up with canvas and the crew all show the signs of their battles with the elements, but then all are in good health and safe in port, and that is a great thing.³⁰

As was his custom, Captain Luttrell brought news from the South Pacific. He reported on the burning of a Catholic Church in the Gilbert Islands; sickness and death among the missionaries; the sudden death of two traders; the strict new

²⁹ "Lost in the Southern Seas." *San Francisco Call*, 2 May 1896, page 5.

³⁰ "Sudden Death and Disasters." *San Francisco Call*, 6 May 1896, page 7.

British High Commissioner in the Gilberts, and Captain Arpad Kustel's blowing his right hand off while fishing with dynamite in Tarawa, where he had settled in the late 1880s.

Just a little over a month following his return from the last arduous voyage, Captain Luttrell set out again, this time in the schooner *Vine*, a young ship launched at Gig Harbor, Washington in October 1890. Again, the sailing was rough. In August 1896, the *San Francisco Call* reported on a letter received from the captain:

Captain Luttrell of the *Vine* Has a Hard Experience in an Electrical Storm.

The schooner *Vine* has at last reached Central America. She left here on June 11 for the southern seas, but had considerable cargo to land at Champerico and San Jose de Guatemala. At the latter port Captain Luttrell found 5000 tons of Pacific Mail Company freight stored up in warehouses and on the wharf awaiting shipment. In consequence the *Vine* was considerably delayed in getting her consignments ashore.

On July 26 the schooner ran into a hurricane. Three waterspouts passed close to the vessel, and one of them came too close to the bowsprit to be pleasant. A lightning-storm followed, and in his letter Captain Luttrell says the mastheads were like balls of fire. Some of the crew were so affected by the electricity that for days afterward their bodies felt as though they had the prickly heat. The interior of the cabin was painted with white enamel, but the electric fluid took control and all the paneling is now a bright blue. The *Vine* did not steer well, and Captain Luttrell had considerable difficulty in making port.³¹



Figure 61. The schooner *Vine* (Washington State Historical Society)

³¹ *San Francisco Call*, 18 August 1896, page 7.

On the 27th of August, the *Call* reported that Luttrell's chronometer had broken down. Unable to borrow a replacement from one of the Pacific Mail Company's ships, the captain would have to go to Puerto San Jose de Guatemala to have his chronometer repaired. Later it transpired that the captain used his watch to navigate to Corinto (presumably in Nicaragua), where he purchased a chronometer.

Six months later, the J.F. Cunningham Company had become very anxious as to the fate of the *Vine*, which had been expected back in December but had not been heard of since leaving Central America. Some of Luttrell's friends in San Francisco suspected that the new chronometer was useless, and that the *Vine* had drifted off course.

Returning on 5 March 1897, nine months since the *Vine's* departure, Captain Luttrell again had plenty of stories to tell, including the following on a conflict between Japan and Spain in the Caroline Islands.

The long overdue schooner *Vine* got in from the Southern Seas last night. Captain Luttrell reports that Spain has another war on her hands, in the Carolines, and that Japan will demand satisfaction for the murder of several of her subjects. It appears that latterly "the little brown men" from the land of the chrysanthemum have had control of all the trade on all the islands. This angered the natives and they took their revenge on the Japanese when the opportunity came. The whole colony was wiped out and now Japanese warships have been sent to the scene of action in order to uphold the honor of the flag.

Other stories with which Captain Luttrell regaled the press were lighthearted anecdotes, such as one about the Samoans' remarkable and not altogether welcome exhibitions of hospitality toward visitors.

On 24 June 1897, the *San Francisco Call* reported that Captain Luttrell was retiring from the sea.

Captain Wirschuleit, late of the schooner *Eureka*, has purchased Captain Luttrell's interests in the J. F. Cunningham Company and will assume command of the barkentine *Sharpshooter* in a few days.

Captain Luttrell is forsaking the sea for good and all. His wife has been a very sick woman for months past, and now he has decided to remain at home and give her all his spare time.

The Luttrells had no children of their own. In the early 1890s, they adopted Cecilia's niece, Trotwood Irma Kustel (1879–1962). Trotwood was one of five children born to Oscar and Florence Ada (Hinkley) Kustel. In May 1891, Captain Kustel was granted a divorce from his wife on the ground of "willful desertion" and was given custody of Trotwood and her brother Alexis.³² The following year, 57-year-old Oscar married 24-year-old Jennie Begent. When Florence died in 1896, Oscar also assumed responsibility for his youngest child, Etelka. As Captain Kustel lived permanently on his ship, the *Hawaiian Isles*, his three surviving children were scattered to different locations for their education.

³² "Severed Ties." *San Francisco Call*, 13 May 1891, page 3.

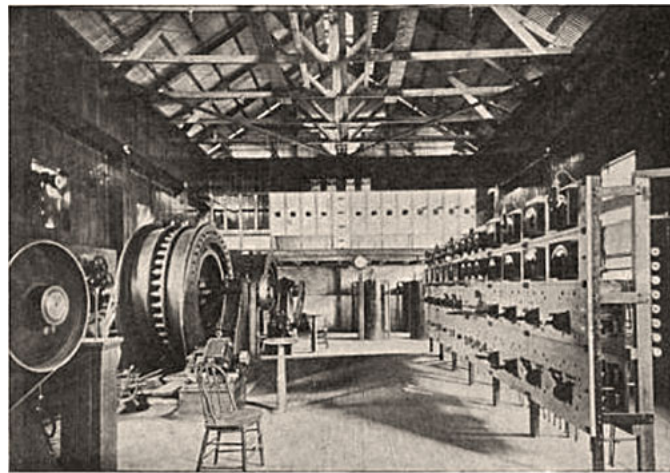
Trotwood, nicknamed “Trottie,” had been adopted by the Luttrells and presumably completed her schooling in California, although no information has been found concerning her education. The following newspaper anecdote places the 16-year-old Trottie on the *Hawaiian Isles*, bound for Australia in April 1896.

Captain Kustel of the Hawaiian Isles is a noted bicyclist. His wife and daughter vie with him in the sport, and it is whispered that Mrs. Kustel is the better rider of the two. Miss “Trotie” Kustel is also a good rider, and as all three have their bikes with them, the Australians will be treated to an exhibition of skillful riding when the Hawaiian Isles reaches Sydney. It is said along the front that during the voyage Captain Kustel will have the decks cleared for action every morning, and that he and his wife and daughter will take a spin before breakfast.³³

Although the Luttrells owned the house at 2328 Channing Way for 16 years, they did not live in it continuously. The 1895 Berkeley city directory listed James Luttrell as having moved to Patchen, in the Santa Cruz Mountains. He was absent from the 1896 and 1897 Berkeley directories but was listed again in 1898. In fact, by then he was living in Marysville, having embarked on a new career as general manager of the Yuba Power Company.

Incorporated on 27 October 1897, the Yuba Power Company built a 1,500-horsepower plant in Dry Creek Canyon, Yuba County. In April 1898, this plant began delivering electric power to the nearby Brown’s Valley mines, as well as to the City of Marysville.³⁴

In its May 1898 issue, the *Journal of Electricity* devoted 14 pages to describing the company, its capitalization, directors, facilities, and personnel, including this detail: “The commercial features of the system are handled by Captain J. F. Luttrell, local manager for the Company at Marysville.”³⁵



INTERIOR OF THE GENERATING STATION.

Figure 62. The Yuba Power Company’s generation station (*Journal of Electricity*)

³³ “Captain Kustel of the Ship Hawaiian Isles Is an Enthusiastic Bicyclist.” *San Francisco Call*, 17 April 1896, page 7.

³⁴ Historic American Engineering Record: Colgate-Oakland Transmission Line. HAER No. CA-190. National Park Service, 1998.

³⁵ “The Yuba-Marysville Transmission.” *The Journal of Electricity*, Vol. V, No. 8, May 1898, p. 117.

In addition to his other activities, James Franklin Luttrell was a high-ranking Freemason. His 1896 entry in the California Chapter No. 5 (San Francisco) indicated that he was a Mark Master. He also belonged to the Durant Lodge in Berkeley and was listed among the Masters, along with a number of other leading citizens (e.g., Samuel Heywood).

After moving to Marysville, Captain Luttrell was an officer of the Marysville Masonic Council, No. 3, where he was first listed as Captain of the Guard and later as Principal Conductor of Work. According to one of his obituaries, he attained the 30th degree of Freemasonry, known as Knight Kadosh.

Captain Luttrell died of pneumonia on 4 November 1899. He was 41 years old.

Captain Luttrell Dead

Marysville, Nov. 4.—Capt. J. F. Luttrell, manager of the Yuba Electric Power company, died here today from an attack of pneumonia. He was a nephew of ex-Congressman Luttrell of Stockton, a Thirty-degree Mason, and quite prominent in this vicinity. He leaves a widow and adopted daughter.³⁶

Obituary

CAPT. J. F. LUTTRELL died at Marysville, Cal. on November 4th, from pneumonia, after a very brief illness. At the time of his death he was general manager for the Yuba Power Company, with headquarters at Marysville, and though not generally known in electrical or engineering circles, those who were so fortunate as to have made his acquaintance will always cherish his memory as being that of one who was possessed of all that goes to make man loved and esteemed by his fellow men.³⁷

On 6 November 1899, the *Berkeley Daily Gazette* informed that Captain James F. Luttrell will be cremated the following day at the Odd Fellows Crematory in San Francisco, and that funeral services will be held at 9 am in Masonic Hall, Odd Fellows Building in Berkeley, under the auspices of Durant Lodge, No. 268. His ashes rest in the San Francisco Columbarium, in the Inner Richmond District.

In his will, which he had made in Berkeley on 11 April 1894, using his *Helen W. Almy* letterhead, Captain Luttrell left all his property to his wife Cecilia, adding, "I will nothing to my daughter Trotwood, knowing that my wife will provide for her in a manner satisfactory to me. I appoint my wife executrix of this will, without bonds."

The widowed Cecilia did not return to Berkeley after the captain's death. She and Trotwood eventually moved to Marin County. The house at 2328 Channing Way was rented to Thomas F. and Jennie McAvoy.

³⁶ *Los Angeles Herald*, 5 November 1899, page 2.

³⁷ *The Journal of Electricity, Power and Gas*, Vol. VIII, No. 6, December 1899, page 137.

Thomas F. & Jennie L. McAvoy

Thomas Francis McAvoy (1852–1945), a mining engineer, was born in Massachusetts to Michael and Margaret McAvoy, Irish immigrants. His father was a shoemaker. When Thomas was still a child, the family moved to Minnesota, where Thomas eventually met and married Jennie Lind Pride.

The McAvoy's, their daughter Minnie, and Jennie's twice-widowed mother, Minerva M. Sawyer, were enumerated in their residence at 2328 Channing Way in the 1900 U.S. Census. They were listed in the Berkeley city directories as living at this address from 1899 to 1906 and vacated the house when Cecilia Luttrell sold it to Aaron and Etta Goodfriend.

Aaron Isaac & Etta B. Goodfriend

Born in Hungary, Aaron Isaac Goodfriend (1860–1950) had an unusual life, as recounted in the following article published in the *Butte Daily Post* on 3 October 1898:

HAS AN INTERESTING HISTORY.

Rev. A. I. Goodfriend, the New Pastor of Immanuel Church

Reverend A. I. Goodfriend, the new pastor of Emmanuel Presbyterian Church, has an interesting history. He is a Hungarian by birth, American by adoption, a Hebrew by descent (of the lineage of Aaron, the first high priest, and of the tribe of Levi), and a Christian by conviction.

Since the early ages of the world few conversions of the Jews have been recorded. Rev. Mr. Goodfriend was converted at the early age of 16 years at Pittsburgh, Pa., and was ordained a minister of the gospel 12 years later. He landed in New York alone from his native Hungary. The sacrifices he was obliged to make to obtain an education would make an interesting volume. He graduated with high honors from the Grove City and Allegheny theological colleges and paid for his tuition by teaching and other pursuits. In his college days he was known as the boy preacher and long before his ordination he traveled from village to village spreading the Gospel of Christ.

After his graduation he was chosen for work in the great west and was assigned his first pastorate in the Grayton Valley, Dakota. From there he was sent to California and some years later to Goldendale, Wash. In the latter place a magnificent church stands as a monument to his unselfish and untiring efforts in the cause of Christianity. In Goldendale he also founded the Goldendale academy, a non-sectarian institution, which is today one of the leading institutions of learning in the state. [...]³⁸

GOODFRIEND, Aaron I., *White Sulphur Springs, Mont.*—Born, Tot Jesztreb, Hungary; Stud. in Europe and Ag. C., Pa.; Stud. Theol. from childhood; Ord. by Cong. Council of North Dakota; served the following Chs.: Inkster, N. D.; Drayton, N. D.; Walnut Creek, Cal.; S. S. White Sulphur Springs, Mont.—

Figure 63. Entry in the *Presbyterian Church Ministerial Directory*, 1898

³⁸ <https://www.findagrave.com/memorial/197076868>

Aaron Goodfriend married Etta Bell Miller (1864–1944), a native of Pennsylvania, on 3 July 1888. The couple had three children: Philo, Pliny, and Natalea, born in North Dakota in 1889, 1891, and 1893, respectively.

In August 1894, when Rev. Goodfriend was visiting the Bay Area for a meeting of the Presbyterian Ministerial Union, the San Francisco *Morning Call* reported that he was stationed in Klamath Falls. Rev. Goodfriend preached in Berkeley on 12 August: “Rev. A. I. Goodfriend, a Christian Jew, occupied the pulpit of the North Berkeley Congregational Church yesterday.”³⁹

The 1900 U.S. Census enumerated the Goodfriend family in Dallas, Oregon. Aaron’s occupation was listed as Minister of the Gospel.

Aaron Goodfriend first made an appearance in the Berkeley city directory in 1905 as an employee of the real-estate firm W.J. Mortimer & Co, residing in Crockett. The following year, the Goodfriends were listed as residents at 1725 Euclid Avenue, Berkeley.

A. I. Goodfriend was assessed for 2328 Channing Way from 1906 through 1910. He was listed in the Berkeley city directory at this address from 1907 through 1909. Throughout his residence in Berkeley, Goodfriend worked for Walter J. Mortimer as a real-estate salesman. By 1910, He was living in Riverside, Southern California, and running his own real-estate firm. He continued in this business in Santa Monica. Aaron and Etta Goodfriend died in Los Angeles.

Joseph & Louise Mayo

Joseph and Louise Mayo were both born in Illinois. Before coming to Berkeley about 1910, they resided in Martinez, where Mr. Mayo was the president, general manager, and purchasing agent of the Contra Costa Electric Light & Power Company, which he had incorporated in 1899. The company distributed power in Martinez, Antioch, Port Costa, Crockett, Valona, Concord, and Pacheco, and had a city contract for street lighting in Martinez. In 1910, the company was acquired by Pacific Gas & Electric Co., and Joseph Mayo became superintendent.

The Mayos had three children, two of whom, Agnes and Herbert, had reached college age by the time of the move to Berkeley. The family was first listed at 2328 Channing Way in 1911 and still resided there in 1920.

Short-Term Residents in the 1920s and '30s

During the first half of the 1920s, the Luttrell House was home to Jay W. Adams, a railroad employee, his wife Martha and their daughter Nina.

In the late 1920s, the house was home to Arthur Prisco, a commercial artist who soon went to work as a clerk for the Oakland Post Office.

During the early years of the Depression, the Luttrell House appears to have become a rooming house. In 1934, five people registered to vote at this address, of whom two were a married couple, and the other three were unrelated to the couple or to each other.

In 1935, the house was acquired by Earl and Ella Squires. It remained under Squires family ownership for 52 years.

³⁹ The San Francisco *Morning Call*, 13 August 1894, page 8.

Earl E. & Ella M. Squires

Earl Ernest Squires (1891–1976) spent his entire career working for the University of California, mostly as a stationary engineer in the campus power plant. At the age of 19, he was first enumerated in the U.S. Census as an electrician for the university. He was then living with his parents, four siblings, and maternal grandmother in a rented house at 2229 Telegraph Avenue, an area now occupied by Sproul Hall. The family was newly arrived from North Campbell, Missouri, where they had lived on a farm, and where Earl's father, Frank B. Squires, had worked as a locomotive engineer,⁴⁰ later switching to construction engineering.

In 1913, Earl Squires married Ella Brugger (1890–1970), who had also grown up in North Campbell, Missouri. By June 1917, when Earl claimed exemption from the World War I draft, the couple had two small sons, William and Robert. Their daughter, Eleanor, was born in 1919.

In the 1920s, after living in a series of rented houses, Earl and Ella purchased a bungalow at 2415 Valley Street, in South Berkeley. Earl's parents resided two doors to the north, at 2405 Valley Street. Frank Squires was now working as a stationary engineer as well, while Earl's mother, Geneva, was a Christian Science practitioner.

In 1942, when he registered for the World War II draft at age 51, Earl Squires was still working for the university. He had been there long enough to have worked in both the 1904 brick power plant designed by John Galen Howard and its replacement at the west end of the campus.

Earl and Ella Squires lived in the Luttrell House for the rest of their respective lives. Six years after his wife's death and three years before his own, Earl Squires transferred the deed to this property to his daughter, Eleanor, and her husband, Clarence Stacy. The couple held on to it until 1987, at which time they sold it to Efraim Wyeth, the son of David Apfelbaum, founder of San Francisco's famed David's Delicatessen.

In 1990, Wyeth submitted an application for a use permit and variance, proposing to raise the house to 40 feet, 6 inches by adding a third story at the ground level (see proposed elevations in Fig. 64).

The project summary included this sentence: "The structure is listed as a State Historical Resource."

Nevertheless, the Planning Department issued a proposed negative declaration stating, "It is hereby declared that the project described below will not have a significant effect on the environment based on the Initial Study prepared according to CEQA guidelines."

The Zoning Adjustments Board held a public hearing on 30 May 1991.

The proposed expansion project was never realized. Left over from the Wyeth era are the lunette windows in the attic.

Four subsequent sets of owners acquired the house between 1992 and 2019.

⁴⁰ 1900 U.S. Census.

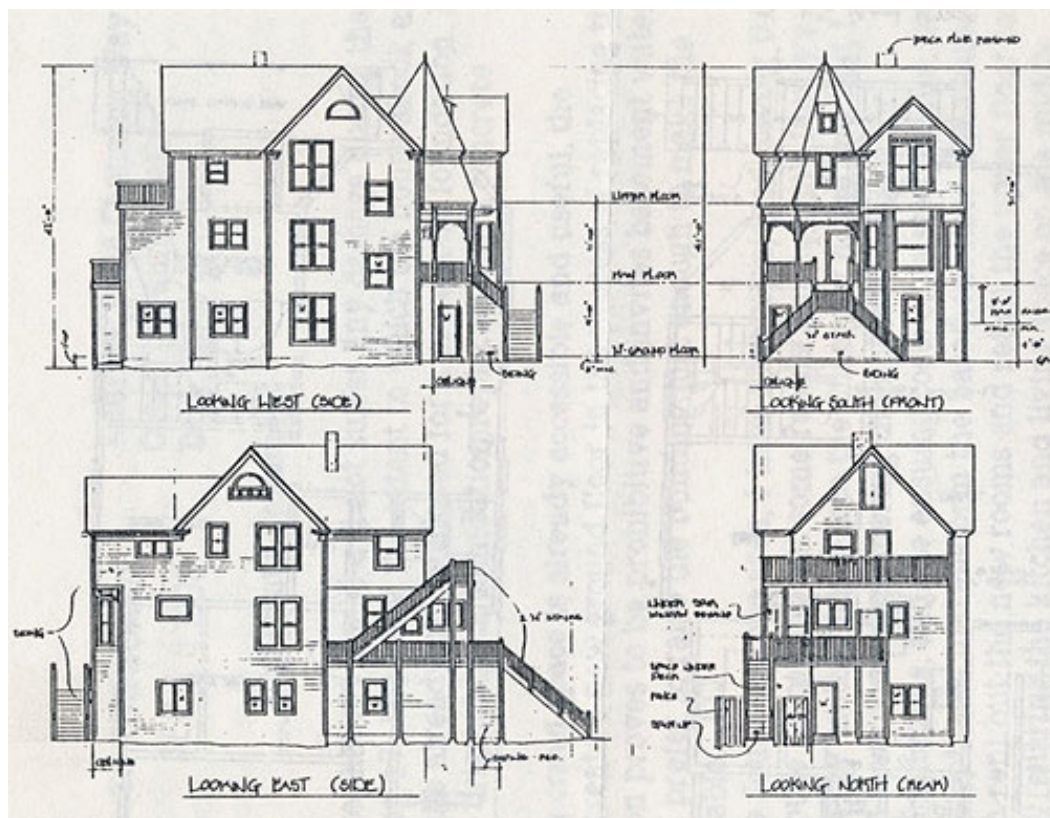


Figure 64. Wyeth expansion project elevations, 1990

16. Context

The proximity of the College Homestead Association tract to the UC campus made it an ideal location for early churches. Assessor's Block 1883, where the Luttrell House is located, faces two of those churches. First Congregational Church, founded in 1875, has been at its present location since 1884. First Presbyterian Church, founded in 1878, moved to its current location in 1906.

UC Berkeley has never provided on-campus housing for its students. The Southside's proximity to the campus turned it into a natural student-housing district. The nature of this housing has evolved over the years. In the 19th- and early 20th centuries, students usually lived with their parents in single-family residences or in fraternity and sorority chapter houses. Later, students began rooming in households not their own. Many single-family homes on the Southside were eventually converted into rooming houses, while others were turned into apartments or demolished to make way for apartment buildings, dormitories, and institutional buildings.

The ever-growing student enrollment at UC Berkeley and the resulting chronic housing shortage are exerting increasing pressure on the remaining Southside historic resources.

On Assessor's Block 1883, where the Luttrell House is located, at least two-thirds of the area are now occupied by institutional structures. These include the UC Ellsworth Parking Structure and Channing Tennis Courts, located on the

western half of the block; UC's Haste Street Child Development Center at 2339 Haste Street; and an Alzheimer Services of the East Bay adult day-care facility at 2320 Channing Way, adjacent to the Luttrell House.

The rest of the block comprises apartment buildings and single-family residences converted to apartments or rooming houses.

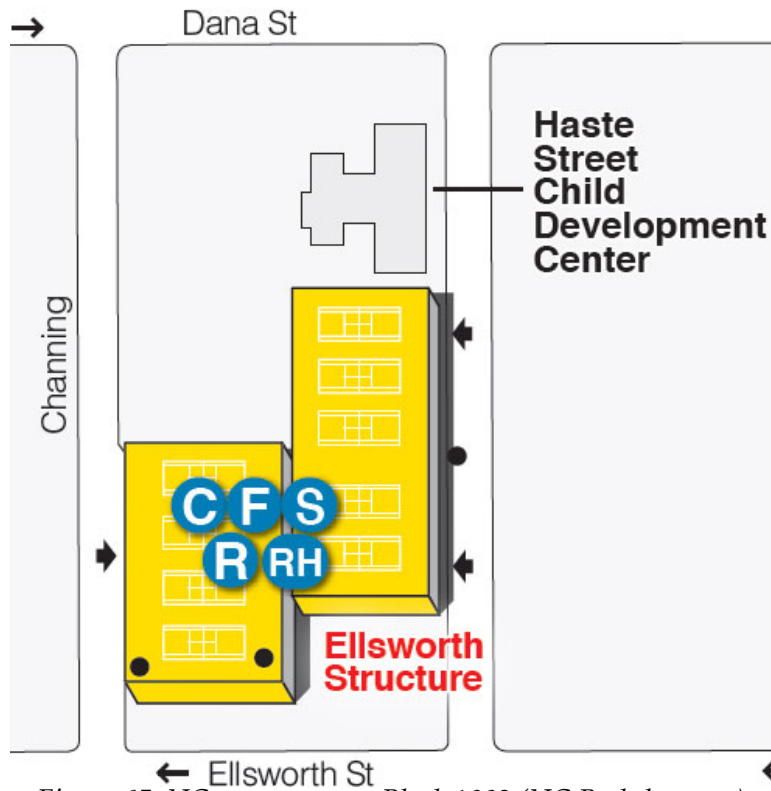


Figure 65. UC structures on Block 1883 (UC Berkeley map)

Current neighborhood streetscapes



Figure 66. Channing Way, looking east



Figure 67. Luttrell House & institutional properties to the west



Figure 68. Proposed development across Channing Way



Figure 69. Haste Street, looking east



Figure 70. Dana Street, looking south

Historic buildings replaced by UC facilities

The following photos from the Ormsby Donogh files in the BAHA archives record buildings that used to stand on the sites of the current UC facilities on the block.



Figure 71. 2300 (right) & 2308 Channing Way (Donogh)



Figure 72. 2310 Channing Way (Donogh)



Figure 73. 2318 Channing Way (Donogh)



Figure 74. 2315 Haste Street (Donogh)



Figure 75. 2317 Haste Street (Donogh)



Figure 76. 2319 Haste Street (Donogh)



Figure 77. Henry L. Whitney House (c. 1882), 2325 Haste Street (Donogh)



Figure 78. 2331 Haste Street (Donogh)



Figure 79. 2331 & 2335 Haste Street (Donogh)



Figure 80. Adam Mertz House (c. 1882), 2337 Haste Street (Donogh)

Buildings that stood on the block in 1894

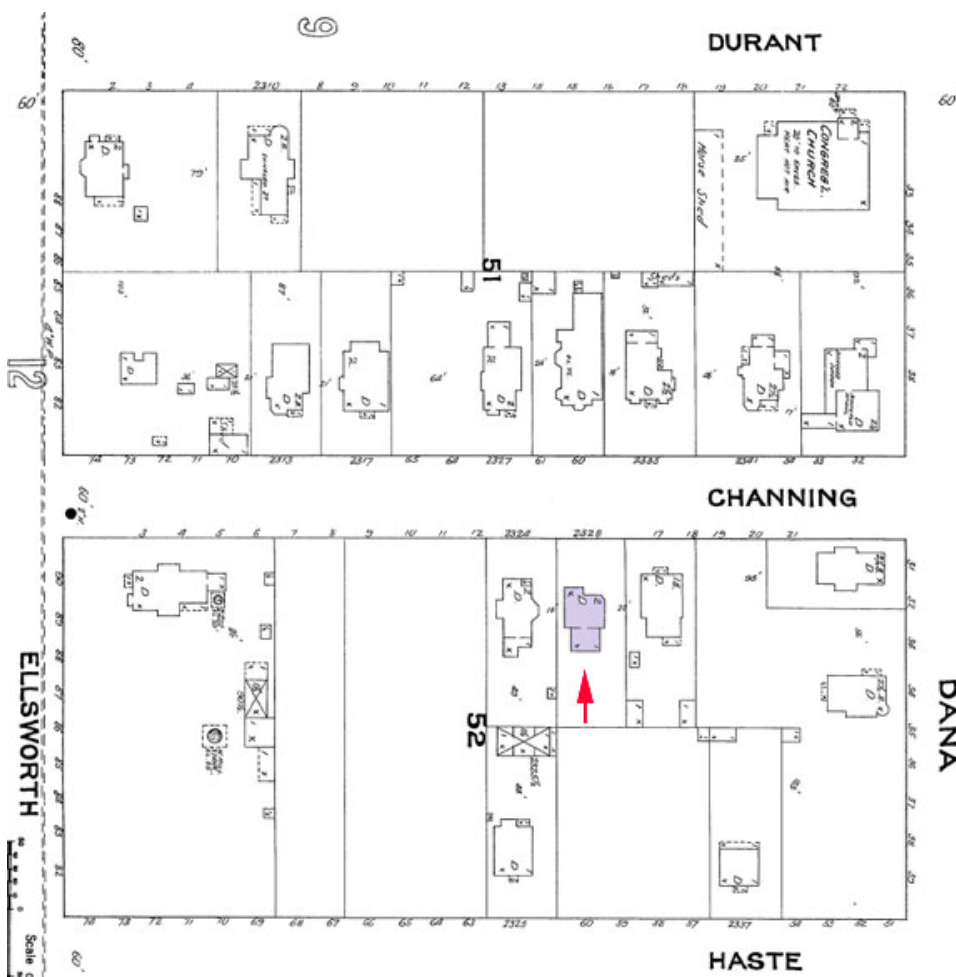


Figure 81. Sanborn map, 1894

The Sanborn map above shows the buildings that stood on Assessor's blocks 1883 and 1884 in 1894. With the exception of the First Congregational Church on

the southwest corner of Durant Avenue and Dana Street, all principal buildings were single-family homes.

A few photographs of some of those early buildings survive in the Ormsby Donogh files housed in the BAHA archives.

On the 2300 block of Haste Street, Figure 77 shows the Henry L. Whitney House (c. 1882) at 2325 Haste Street, and Figure 80 shows the Adam Mertz House (c. 1882), 2337 Haste Street.

On the 2300 block of Channing Way, Figure 82 shows the Peter & Philippina Schafer House (1890), 2332 Channing Way, in 1939. The 1894 Sanborn map shows this house as a one-story cottage. The photograph below reveals a Victorian to which a second story and portico in the Colonial Revival style were added in 1905.⁴¹



Figure 82. Schafer House (1890), 2332 Channing Way, in 1939 (Donogh)

Figure 83 below shows the Schafer House in December 2016. It had been raised but still retained some recognizable historic fabric on the two upper floors.

The Schafer House was remodeled again during the past two years. Figure 84 shows the remodeled and expanded building as it currently appears, shorn of all historic detail.

⁴¹ Information provided to BAHA staff in the 1980s by Anna Love Wucher, who grew up in the Schafer House and was still living in it. Two generations of the Love family owned and resided in this house from 1892 to 1986.

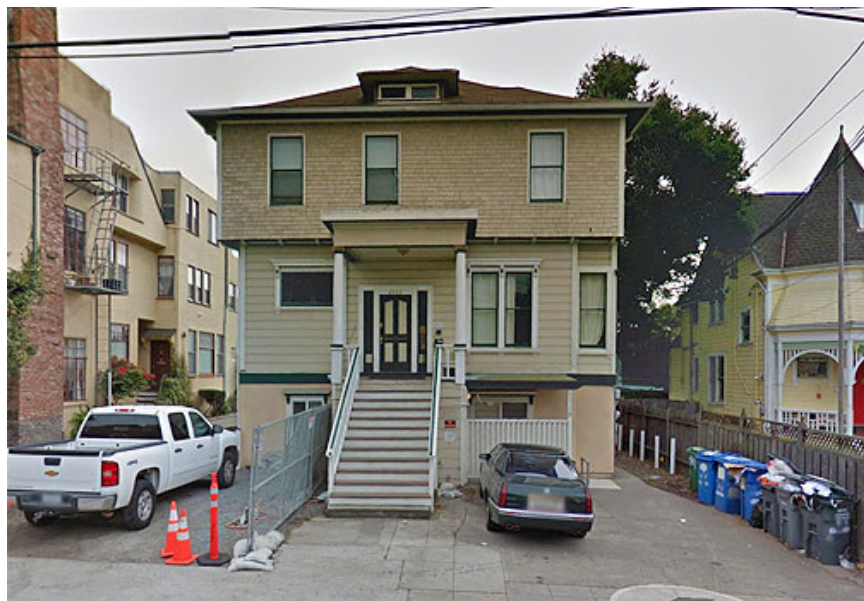


Figure 83. Schafer House (1889–90), 2332 Channing Way, in 2016 (Google Street View)



Figure 84. Schafer House (1889–90), 2332 Channing Way, in 2020

On the west side of the Luttrell House, an 1890 speculative Victorian built by Edward E. Perley at 2324 Channing Way disappeared between 1911 and 1929. The 1950 Sanborn map shows the site as a tennis court. The site is now occupied by a medical facility (Wurster, Bernardi & Emmons, architects, 1951).

On the corresponding Dana Street frontage, the James A. Squires House (1892–93) at 2400 Dana is still standing with an almost intact exterior (the interior has been divided into apartments).

Less fortunate was a remarkable house built by James A. Squires in 1894 at 2406 Dana Street (Fig. 86). It served as the first home of the Palomar Club in 1905–1909 and was later demolished and replaced with a 1975 triplex (Fig. 87).



Figure 85. James A. Squires House #1 (1892–93), 2400 Dana Street, in 1939 and 2020



Figure 86. Squires House #2 (1894), 2406 Dana Street (Donogh)



Figure 87. A 1975 triplex at 2406 Dana Street, 2020



Figure 88. 2402–2404 (r) & 2406 Dana Street

Buildings that stood on the block in 1903

The Sanborn map below (Fig. 89) shows the buildings that stood on Assessor's Block 1883 in 1903. In the nine years that elapsed since the previous map had been issued, three new structures went up on Channing Way of which only one remains—albeit in another form—at 2336 Channing Way. Constructed as a single-family dwelling for George F. Earle (George Frederick Estey, designer-builder, 1894), it was acquired by Frank and Clarilla Duffy, who divided it into six apartments in the 1920s, then transformed it in 1936 into the Francis Wood Apartments, a stucco-clad, three-story, nine-unit building (Figs. 90, 91).



Figure 89. Sanborn map, 1903



Figure 90. Francis Wood Apartments, 2336–38 Channing Way, in 1939 (Donogh)



Figure 91. Francis Wood Apartments, 2336–38 Channing Way, in 2020

James A. Squires' third building on his Dana Street property, a pair of flats constructed in 1901 at 2402–2404 Dana (no historic photo available), gave way to the 1977 townhouses shown below.



Figure 92. Townhouses at 2402–2404 Dana Street

A brown-shingle Colonial Revival house built for UC graduate Miss Muriel Eastman in 1902–03 is still standing at 2414 Dana Street, but like the Schafer House around the corner, it's been transformed in stages and has finally become unrecognizable, after a recent expansion remodel stripped away all vestiges of its original appearance (Figs. 93, 94, 95, 96).



Figure 93. Muriel Eastman House (1902–03), 2414 Dana Street (Donogh)

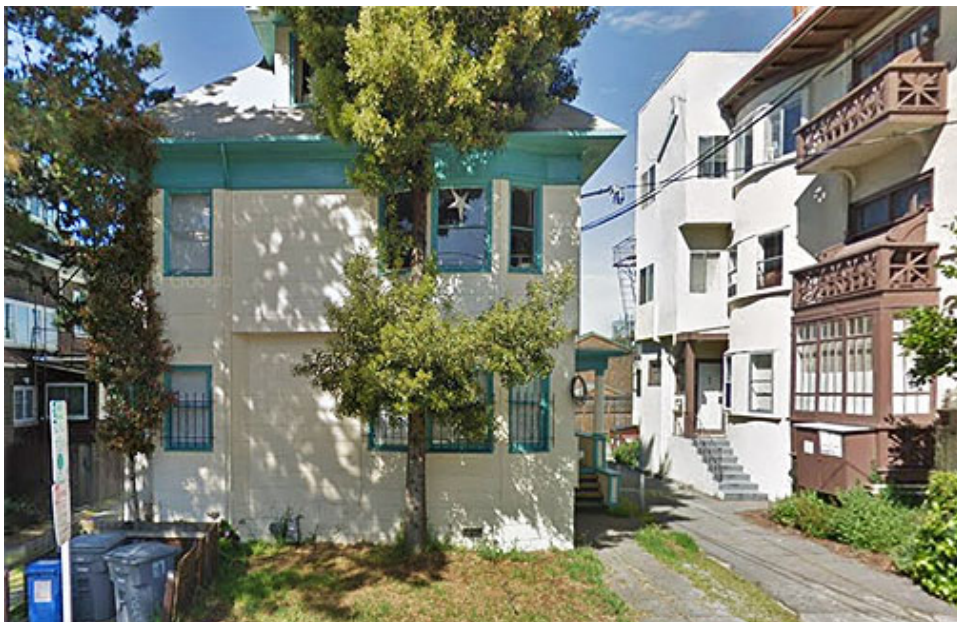


Figure 94. 2414 Dana Street in 2011



Figure 95. 2414 Dana Street in 2020



Figure 96. 2414 (left) & 2418 Dana Street, seen from Haste Street

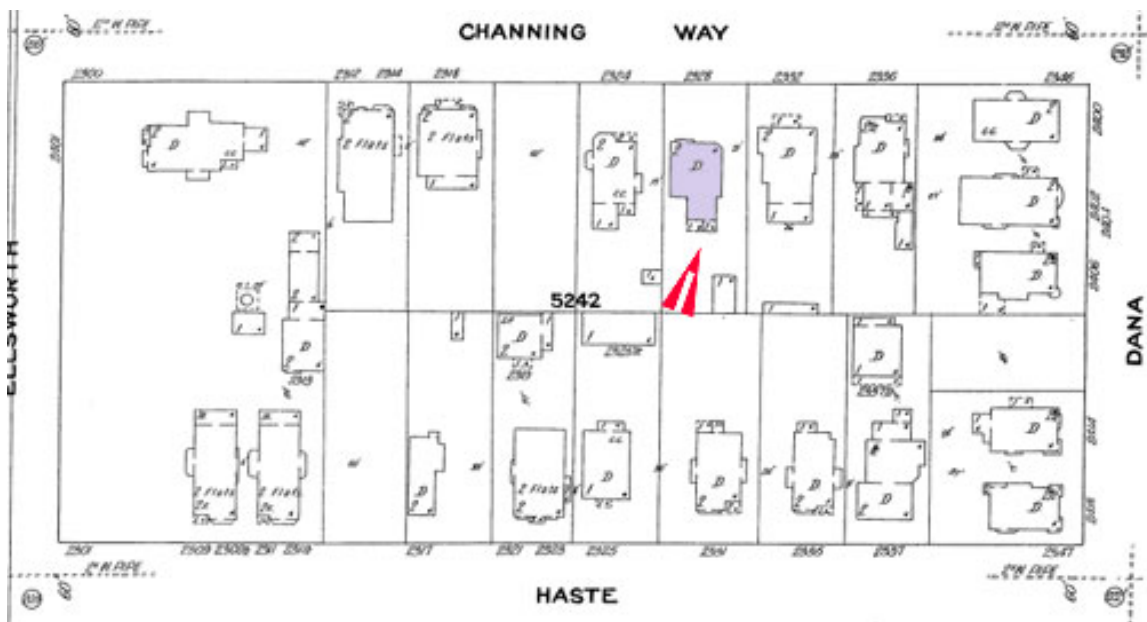


Figure 97. Sanborn map, 1911

By 1911, all but one of the surviving historic structures on Assessor's Block 1883 had been built. The Edward C. Bank residence, a brown-shingled Colonial Revival house at 2418 Dana Street (Figs. 98, 99) was first assessed in 1904.



Figure 98. Edward C. Bank House (1903–04), 2418 Dana Street, in 1939 Street (Donogh)



Figure 99. Edward C. Bank House, 2418 Dana Street, in 2020

At the other end of the block, Martha E. Sell constructed a pair of adjacent gable-roofed, brown-shingle buildings, each consisting of two flats, at the southern edge of her large parcel (Fig. 100). One of this pair has been demolished.



Figure 100. Martha E. Sell Flats, Haste Street (Donogh)

Martha E. Sell's companion brown-shingle building at 2309 Haste Street still stands between a 1940 apartment building on the corner of Ellsworth Street and the UC parking structure.



Figure 101. Martha E. Sell flats, 2309 Haste Street

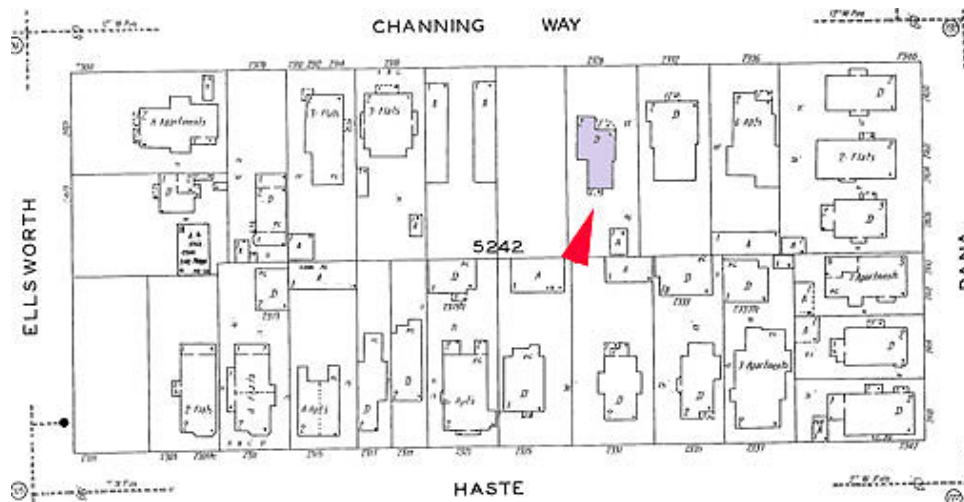


Figure 102. Sanborn map, 1929

The 1929 Sanborn map reveals a fully built-up block, minus the 1890 Victorian that used to stand at 2324 Channing Way. This map shows the last early 20th-century building erected on this block that is still standing. It is the apartment house that George W. Patton designed and built in 1913 for Eva M. Richardson at 2410 Dana Street.



Figure 103. Apartments for Eva M. Richardson (George W. Patton, 1913), 2410 Dana Street (Donogh)

The Richardson apartments feature balconies with pullout beds of the type that Patton had designed for the Treehaven Apartments (1909) at 2523 Ridge Road. Like its neighbors, this building has undergone progressive degradation, including alteration of the window profiles and the recent loss of the top balcony (Figs. 104, 105).



Figure 104. Balconies at 2410 Dana Street, 2007



Figure 105. 2410 Dana Street in 2020



Figure 106. Demolished structures in the past 70 years (Sanborn map, 1950)

The Sanborn map above shows the extent to which this historic block has been decimated since 1950. The Luttrell House stands unique among its neighbors as the least altered building, as well as the oldest surviving structure.



Figure 107. The Luttrell House in 1939 (Donogh)

17. Significance

Consistent with Section 3.24.110A.1.a., the James F. & Cecilia M. Luttrell House possesses architectural merit. Built in 1889 in the Queen Anne style, it is the earliest surviving and best-preserved building among very few documented as having been designed by Ira Alton Boynton, a pioneer Berkeley builder-contractor who was active here between 1877 and 1900, and who constructed major past landmarks, such as the Peralta Park Hotel.

The Luttrell House is an excellent example of the Queen Anne style and retains the vast majority of its original façade elements. It is distinguished by north-, east-, and west-facing gables featuring boxed eaves and returns; an asymmetrical façade with a projecting gable over a two-story bay; a two-level hexagonal turret with windows; a polygonal corner porch with arched openings; and various façade ornaments as detailed in the Features to Be Preserved section, pp. 15–16.

Consistent with Section 3.24.110A.1.c., the Luttrell House is worth preserving for the exceptional values it adds to the neighborhood fabric. It is the oldest structure standing on Block 5 of the College Homestead Association tract, as well as the least altered one. The vast majority of the historic structures on this block have been demolished, and the few remaining—with one exception—have been significantly altered. Over two-thirds of the block's area are now occupied

by institutional structures, including a large parking facility. The Luttrell House is a rare vestige of the block's early days.

Consistent with Section 3.24.110A.4., the Luttrell House has historic value. It was designed and built by Ira A. Boynton, who played a meaningful role in Berkeley's business, finance, municipal politics, and fraternal circles. In addition to his building activities, Boynton served as a Justice of the Peace, co-founded a bank, and was a charter member and leader of the local Odd Fellows' lodge.

The Luttrell House was built for Captain James Franklin Luttrell (1858–1899) and his wife, Cecilia (1856–1934). The captain was a well-known figure in Pacific maritime circles, and his name frequently appeared in the San Francisco newspapers during the 1890s. Commanding trading ships on the South Pacific islands route, Captain Luttrell served as an important source of news about activities in the South Seas islands and reports on other captains and ships plying the Pacific Ocean. Mrs. Luttrell accompanied her husband on some of his voyages.

The Luttrell House is listed in the State Historic Resources Inventory with the status code 3S (Appears eligible for the National Register as an individual property through survey evaluation). It retains integrity of location, design, materials, setting, feeling, and association.

Historic Value: City Yes Neighborhood Yes
Architectural Value: City Yes Neighborhood Yes

18. Is the property endangered? All older properties on the Southside appear to be at risk of alteration or demolition.

19. Reference Sources:

Alameda County assessment records — BAHA archives.

Berkeley & Oakland directories — BAHA archives, Berkeley Historical Society, Ancestry.com.

Block files — BAHA archives

Sanborn Fire Insurance Maps — BAHA archives.

Assessor's maps — Alameda County Assessor's Office.

U.S. Census and California Voter Registration records — Ancestry.com.

Ormsby Donogh files — BAHA. archives

Nelson, Marie. *Surveys for Local Governments—A Context for Best Practices*. California Office of Historic Preservation, 2005. [http://ohp.parks.ca.gov/pages/1054/files/Survey Savvy CCAPA.pps](http://ohp.parks.ca.gov/pages/1054/files/Survey_Savvy_CCAPA.pps)

20. Recorder:

Daniella Thompson
 2663 Le Conte Avenue
 Berkeley, CA 94709

Date: March 2020



Landmarks Preservation Commission

INFORMATION CALENDAR
October 13, 2020

To: Honorable Mayor and Members of the City Council
 From: Landmarks Preservation Commission (LPC)
 Submitted by: Christopher Adams, Chairperson, Landmarks Preservation Commission
 Subject: LPC Annual Report to City Council for the period May 2019 to May 2020

INTRODUCTION

The LPC has prepared a report on its activities during the period May 2019 through May 2020; see Attachment 1, "LPC Annual Report to the City Council." Reports on the Commission's activities are required on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 (*Annual report required*).

CURRENT SITUATION AND ITS EFFECTS

On July 2, 2020, the Commission voted to adopt the attached report and forward it to City Council (Vote: 7-0-2-0; Yes: Adams, Allen, Crandall, Finacom, Johnson, Montgomery, Schwartz; No: none; Abstain: Abranches Da Silva, Enchill; Absent: none).

The Commissioners' Manual (2019) requires that the Commission Secretary submit the Commission's report to City Council agenda process within three weeks of receiving the final document; however, due to an internal oversight, this transmittal was delayed.

BACKGROUND

On July 2, 2020, Chairperson Finacom prepared and presented a draft of the report to the LPC and the Commission voted to adopt the final version of the report and to forward it to City Council.

Among the Commission's accomplishments during the reporting period, the Executive Summary of Attachment 1 (see page 1) highlights the following Commission activities:

- Designated a total of five properties as City Landmarks or Structures of Merit;
- Granted seven requests for Structural Alteration of existing properties on the City's register;
- Studied and then recommended City Council approval of three Mills Act contracts for repair and rehabilitation of existing City Landmarks;
- Reviewed thirteen demolition referrals of non-residential buildings over forty years old and took no action to initiate these properties; and
- Hosted and participated in an on-line historic preservation training, to which the public was invited.

The report describes these and other accomplishments in detail, and it identifies issues the Commission would like to consider in the coming year(s).

ENVIRONMENTAL SUSTAINABILITY

Historic preservation practices encourage 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

Other reports on the City's historic preservation-related activities, such as a copy of the City's Certified Local Government (CLG) annual report to the State Historic Preservation Office (SHPO), could be forwarded to Council on an annual basis, in accordance with Berkeley Municipal Code Chapter 3.24.090 (*Annual report required*).

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no financial impacts associated with reporting this information to City Council.

CONTACT PERSON

Fatema Crane, Commission Secretary, Department of Planning and Development,
(510) 981-7410

Attachment:

- 1: Landmarks Preservation Commission Report to City Council on Commission Activities, adopted July 2, 2020

FINAL DRAFT
REVIEWED BY COMMISSION AT JULY 2 2019 MEETING

Landmarks Preservation Commission Annual Report to the City Council for the period May 2019 to May 2020.

Background: The Landmarks Preservation Ordinance mandates (BMC Section 3.24.090) that *“The commission shall report its actions annually to the City Council not later than June 30.”* This report covers the reporting period implied by that provision. Because of this ordinance requirement this reports meets the Governor’s standards for conducting of *“legally mandated business”* during the COVID-19 crisis.

Executive Summary: During the reporting period the Commission:

1. held eight regular Commission meetings and some subcommittee meetings. Two regularly scheduled meetings were cancelled because of the COVID-19 crisis and Shelter-in-Place orders;
2. approved five Landmark designations;
3. had under consideration two other Landmark nominations;
4. reviewed for historic significance thirteen demolition referrals of buildings over 40 years old. Considered, and took no action to initiate these properties;
5. approved three Mills Act contracts and sent them forward to the Council;
6. reviewed seven Structural Alteration Permits for existing Landmark properties. They were approved generally as proposed, with appropriate conditions;
7. placed one property on the Commission’s “Potential Initiations” list for possible Landmark consideration in the future.

These actions and activities are summarized in more detail at the end of this report.

The Commission also has several issues to raise for, and recommendations to make to, the Council as part of this report. The following pages summarize these items. Most of these are items previously raised by the Commission with the Council and most of them reflect the same wording as last year’s report. The Commission continues to believe it would be helpful, when circumstances permit, for the Council to eventually have a work session with the Commission to discuss some of these items.

Religious Exemptions: The Commission once again encourages the Council to seek changes at the State level that would clarify and reform the conditions under which a religious property owner can claim hardship exemption from landmark designation. Changes might include a requirement that the owners detail and demonstrate in writing the economic circumstances they believe would cause hardship, and that they hold the mandated public meeting to consider asserting the hardship claim in the actual community where the proposed landmark is designated. (In Berkeley’s case, owners of a religious property held the required “public meeting” in Thousand Oaks, California.)

Ordinance Review: In 2017 the City of Berkeley was sued by the owners of a recently designated Landmark building. The City prevailed in court, although the decision has been appealed. The trial judge did suggest that Berkeley should clarify some terminology in the Landmarks Preservation Ordinance. The Commission's Policies and Procedures subcommittee has been working on a suggested set of revisions but this work has been interrupted by the loss of one Commissioner who was a member of the subcommittee as well as the COVID-19 crisis.

Mills Act Fees: The Mills Act is a State law which allows designated Landmark property owners, under City review, to re-allocate a portion of their property taxes (typically the taxes that would go to the County) to a targeted program of investment in rehabilitation of their historic property. The Commission notes that all Landmark property owners who apply for State Mills Act contracts are currently charged the same, substantial, fees by the City, regardless of size or use of the property. In some cases the fees charged may exceed the property tax benefit to the owners of smaller properties such as many single family homes, while owners of large commercial properties may reap substantial benefits. The City should consider more equitable, graduated, fee levels to permit use of the Mills Act and promote preservation, particularly by owners of limited means.

Some members of the Commission also believe that the City should place a moratorium on the granting of Mills Act applications until the city has an opportunity to study the financial impact of Mills Act applications that are already in force and assess whether from a financial standpoint Mills Acts should be continued. They believe a study should evaluate the fiscal impact on the budget of the City, the School District, and other government entities.

The process for monitoring Mills Act contracts should also be reviewed and clarified to ensure that property owners follow their obligations under the Mills Act and that the City has the means to effectively monitor the contracts. The process of acting on possible violations of Mills Act contracts is not clear to the Commission.

Historic Districts: Commission members and community members have periodically noted the desirability of Berkeley updating and improving its process for creating historic overlays / districts that would provide preservation safeguards for geographically and historically related groups of buildings or sites. Many other cities with good preservation programs utilize a system of historic overlays / districts for historic neighborhoods. The Commission would like to explore this issue with the Council and seek ways to create a workable historic overlay / district program.

It is particularly important to note this year that Berkeley is deficient in historic studies identifying places, neighborhoods, and themes associated with the history of People of Color in Berkeley, including the history of Berkeley's African-American community and the history of Indigenous Peoples associated with the Berkeley area. In order to redress this, the City and Commission should work towards a program of community engagement and identification of key sites associated with this under-represented area of local history and formal Landmark designation.

Potential View Ordinance: During discussion of the Campanile Way landmark application in 2017/18, Planning Staff suggested the Commission consider proposing a view ordinance that would specifically address the protection and preservation of historic views, particularly those that are public in nature. We again urge this work be undertaken.

Certified Local Government Grant Application: The State provides annual grants (recently averaging \$40,000) to Certified Local Governments to pursue specific preservation initiatives and projects, such as neighborhood surveys. For two years Berkeley was unable to apply for this grant because a source of local matching funds has not been confirmed early enough in the application process. This year the Council had, at the request of the Vice-Chair, set aside matching funds to back a grant application. The Commission was working towards an application for the 2020/21 Fiscal Year, but the work was interrupted by the COVID-19 shutdown and crisis and the filing deadline was missed. This was understandable and, in some respects, unavoidable.

Staff and Council support will be needed for preparation and submission of an application in Spring, 2021 for the 2021/22 year. To facilitate this, we recommend the Council set aside in the budget for that year an amount equal to matching funds for one of these grants (approximately \$27,000). This money would not be committed until the Council reviewed and approved a specific grant application. Some of the matching funds might also be raised by cash or in-kind contributions from community groups or associations such as Business Improvement Districts.

The proposed 2020 application theme adopted by the Commission would have focused on a study of historic resources along two of Berkeley's major commercial avenues, San Pablo Avenue and University Avenue. These are parts of Berkeley where development pressure is intense and all parties—the City, property owners, developers, businesses, and adjacent neighborhoods—would benefit from a clear identification of potential historic resources along those streets.

Measure T-1 Properties: Measure T-1 bond funding is affecting numerous designated City Landmark properties and potential historic resources. The Commission has established a subcommittee and good working relationship with Parks & Recreation and Public Works leadership. This year is crucial as several Landmark properties, particularly those in the Civic Center, undergo Measure T studies. It remains important that the City plan comprehensively and intelligently for the future of the Civic Center historic district and all the historic designated properties in that area, especially those that are partially vacant or in need of substantial rehabilitation (including the Veterans Memorial, Maudelle Shirek Building / City Hall, and Main Berkeley Post Office). However, we are not sure at present how Measure T-1 and the scheduling of projects will be affected by the ongoing COVID-19 and associated financial and economic crisis.

Archaeological Resources: We reiterate our past recommendation that the City should review and discuss currently ambiguous procedures for identification,

documentation, management and protection of historic era and pre-historic archaeological resources in Berkeley. The City should identify and review State laws pertaining to archaeological resources and ensure that the City is in compliance; otherwise, Berkeley's CLG status could be endangered. The City should also ask the State Legislature to clarify the wording of new state laws that have created ambiguities in the definition of local historic resources and needless conflict and confusion.

Relations with Exempt Property Owners: The Commission has continued to work with owners of properties exempt from direct City regulation (including the University of California, and Berkeley Unified School District) to bring their projects involving historic properties to the Commission for courtesy reviews and comment. This process should be continued and strengthened. It is noted that the University has not come to the Commission in the past year, despite the fact that the University has announced plans to demolish and/or purchase a number of prominent City of Berkeley Landmarks.

Inclusion in Landmark Designation: Earlier in 2019 the Commission approved a proposal from the Chair that the LPC hold one or more community listening sessions or workshops to hear from the public, and discuss, what types of historic resources or areas of Berkeley's architectural or cultural history are under-represented in landmark designations to date. This did not take place, and further action is understandably complicated by the ongoing COVID-19 crisis. Still, we hope to pursue some form of community engagement in the coming year.

Processing of Landmark Appeals: In 2018 the Commission wrote to the Council regarding the improper processing of two appeal petitions submitted to the City. Both were appeals of landmark designations submitted by parties with no standing under the BMC to make appeals of landmark designations. The Council has made no response to this letter so we reiterate the issues in this year's report.

Those who have standing under the Ordinance to make an appeal are 50 or more residents of Berkeley, the Civic Arts Commission, the Planning Commission, or the owner of the property that is under consideration for Landmark designation. This is more restrictive than the appeal process for ZAB decisions. The City Council may also independently set a landmark designation for appeal.

Relevant excerpt from the LPO:

3.24.300 Appeals--Procedures required--City Council authority.

A. 1. An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Despite the fact that one appeal was filed by one individual who stated he represented an Oakland-based organization and did not submit any resident petition, and the other

appeal was filed by a resident petition that was apparently not verified before acceptance, the City Clerk nonetheless accepted both appeals and the Council held public hearings and took action on them (sustaining one landmark designation, and overturning another).

We later asked the City Council to address the flawed processing of these appeals. No Council consideration was undertaken and no further information was formally received by the Commission from the Council or City staff. We renew this request. Improper processing of landmark issues endangers the City's valued CLG status with the State of California since being a Certified Local Government means, in part, that the City is expected to adhere to the rules of its preservation ordinance.

Commission Meetings:

During the reporting period the Commission conducted a full schedule of monthly meetings from June 2019 through March, 2020, with the exception of a January 2020 recess. The COVID-19 crisis and Shelter in Place orders paused Commission meetings in April and May; they resumed in June in limited form.

There were eight regular Commission meetings held in the twelve month review period.

The Commission has a practice of establishing subcommittees to address some specific projects and issues. Most subcommittees have been formed to provide flexibility so a few members of the Commission with special interest or expertise in a particular building or preservation issue can go review a proposed project's details on-site, rather than having the full commission undertake the review. The subcommittee reports its actions or recommendations back to the full Commission. Subcommittee meetings are publicly noticed and open to the public. This has proved to be an effective way of evaluating project details, especially when site visits are made. Subcommittees are typically disbanded when review of a particular project is finished.

There is ambiguity of the status of subcommittees under the Shelter in Place orders. In addition, LPC staff have stated they do not have the resources to schedule or staff subcommittee meetings at this time. We ask for clarification from the City Council on whether and when subcommittees can resume operation.

Commission Membership:

During the reporting period the nine member Commission saw two Commission vacancies filled by new appointees. Another long-time Commissioner was removed by their appointer and a replacement was appointed. The Commission currently has no vacancies (as of June, 2020).

The Commission once again encourages Councilmembers undertaking appointment of new Commissioners to give the current appointees the courtesy of informing them of that they are being replaced, well in advance of Commission meetings. In the two

previous reporting years there were two occasions when a long-time Commissioner has arrived at a LPC meeting ready to routinely participate, only to find a replacement appointee already seated. This practice of not informing Commissioners in advance that they have been replaced is discourteous to volunteers who have been serving the City with their time and expertise on commissions, and the responsibility rests with individual Councilmembers.

Landmark Initiations and Designations:

A primary charge of the LPC is to consider and, if appropriate, designate, City of Berkeley landmarks, Structures of Merit and Historic Districts. During the past year the Commission received seven requests to designate new Landmarks.

Landmark consideration begins with “initiation” that can take place in a variety of ways including a letter from a property owner or member of the public, a petition signed by 50 or more Berkeley residents, or a request from an individual Commissioner or the Commission as a whole.

Of the five landmark initiation proposals received in 2019/20:

1. one was initiated by the property owner who also was supported by a public petition, and considered and approved for designation by the Commission;
2. two were initiated by public petition with the support of the property owners, and approved for designation by the Commission;
3. one was initiated by residents of the building and approved by the Commission without support of the property owner;
4. one was initiated by public petition, without the support of the property owner, but the property owner ultimately supported a modified form of the landmark designation;

Of the two pending landmark initiation proposals received in 2019/20:

1. one was initiated by public petition and is pending commission review;
2. one was initiated by the Commission and is pending receipt of landmark application.

As stated in our previous report for 2018-19, it should be noted that the Landmarks Commission has a long standing tradition of Commissioners researching and preparing landmark applications. This is consistent with the Commission mandate in the Landmark Preservation Ordinance that the Commission shall “*establish and maintain a list of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition*” and also shall “*carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation.*” However, during this review year no Commissioner-authored landmark applications have been submitted. One building has been initiated at the request of a Commission member.

The table below shows the number and pace of landmark designations over the past 12 years.

As we noted in our Annual Reports during the two previous years, the total designations represent only a very small fraction of total properties in Berkeley. There less than 340 designated Landmarks or Structures of Merit in Berkeley, representing only about 1 out of every 140 properties in the city. There is about one landmark, on average, for every three city blocks, although most areas of the City have less density of landmarks.

CALENDER YEAR	NUMBER OF LANDMARKS DESIGNATED
2020	2 to date (in addition to 2 pending applications)
2019	3
2018	5
2017	4
2016	2
2015	2
2014	6
2013	1
2012	3
2011	2
2010	2
2009	5
2008	2
Twelve year total (through June, 2019)	39 total designations, averaging 3.25 per year.

Commission Staffing:

The Planning Department assigns two planners to the LPC; one acts as Commission Secretary. Current staff are Fatema Crane (Commission Secretary) and Alison Lenci. As in the past the Commission appreciates the staff support and, in particular, the ability of the staff to maintain poise in the face of difficult and often stressful circumstances including the COVID-19 crisis, tight deadlines and complex workloads. In addition to their visible services at Commission meetings, the LPC staff do a great deal of work processing materials related to individual landmark properties.

The Commission notes once again to the Council that while the assigned level of staff support is sufficient for the Commission's basic operations, no Planning staff time is assigned to assist the Commission with initiatives beyond those basic operations. During the life of the Ordinance almost all historic research and Landmark applications have been done by Commission or community members on a volunteer basis. This means that the City of Berkeley does not really have a historic preservation *program*; instead, it only has assigned staff resources for the processing of externally generated proposals and permits for specific existing or potential historic resources. This places Berkeley in a position of being largely reactive, not proactive, on historic preservation issues, contrary to our ordinance and State expectations of CLG governments. Berkeley would and should be more engaged with historic resources through the provision of more staff time to support preservation work and initiatives beyond basic permit and application processing and reviews.

As we noted in our previous two reports, the lack of staff time for broader initiatives limits the ability of the Commission to pursue initiatives and programs called for in the Landmarks Preservation Ordinance. For example, the Landmarks Commission is given the following powers and duties by the Landmarks Preservation Ordinance. Powers and duties A, C, D, and F in particular are difficult to pursue with only the volunteer time / labor of individual Commissioners.

3.24.070 Powers and duties generally. In connection with the foregoing power and authority, the commission may:

- A. Establish and maintain a list of structures, sites and areas deemed deserving of official recognition, although not yet designated as landmarks, historic districts or structures of merit, and take appropriate measures of recognition, as more fully set forth in Section 3.24.330 below;
- B. Carry out, assist and collaborate in studies and programs designed to identify and evaluate structures, sites and areas worthy of preservation, and establish archives where pictorial evidence of the structures and their architectural plans, if any, may be preserved and maintained;
- C. Consult with and consider the ideas and recommendations of civic groups, public agencies and citizens interested in historic preservation;
- D. Inspect structures, sites and areas which it has reason to believe worthy of preservation with the permission of the owner or the owner's agent;
- E. Disseminate information to the public concerning those structures, sites and areas deemed worthy of preservation, and may encourage and advise property owners and members of the community generally in the protection, enhancement, perpetuation and use of landmarks, property in historic districts and other officially recognized

property of historical or architectural interests;

F. Consider methods other than those provided for in this chapter for encouraging and achieving historical or architectural preservation;

G. Establish such policies, rules and regulations as it deems necessary to administer and enforce this chapter, subject to the approval of the City Council. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 2(i), 1974)

Summary of details of Commission Actions during Reporting Period

The Commission took these specific actions during the reporting year.

Landmark Nominations Approved:

- 1399 Queens Road (mid-century Modern hillside cottage)
- 2043 Lincoln Street (1880s Victorian house, residence of two notable early Berkeley families)
- 1440 Hawthorne Terrace (Marsh House) (designed by notable architect and part of “family compound” with 1450 Hawthorne Terrace.)
- 1450 Hawthorne Terrace (Sperry-McLaughlin House) (designed by notable architect, residence of two families important in national environmental / conservation history)
- 1619 Walnut (Las Casitas Apartment Building) (unusual 1920s apartment building with many period architectural details.)

Landmark Nominations Received and in process of review:

- 2328 Channing (Luttrell House). (19th century Victorian, rare survivor in College Homestead Tract.)
- 2300 Ellsworth (1920s commercial building designed by notable local firm and almost entirely intact on exterior).

Mills Act Contracts for Landmark properties Reviewed / Recommended to Council:

- 1730 Spruce Street (The Lording House)
- 2524 Dwight Way (The Stuart House)
- 2526 Hawthorne Terrace (Blood Residences)

Demolition referrals of buildings over 40 years old:

Considered and took no action to initiate these buildings for any further landmark consideration:

- 3000-3006 San Pablo / Ashby
- 2590 Bancroft
- 2650 Telegraph
- 2000 Dwight (six buildings)
- 2099 M.L. King, Jr. Way
- 999 Anthony Street
- 910 Ashby

- 1035 Heinz Avenue

Signage or other exterior alteration reviews on Landmark structures:

2133 University Avenue (signage for Acheson Commons complex).
 2018-30 University Avenue (UC Theater. Alterations to storefronts).
 1911 Fourth Street (Spenger's Fish Grotto. Alterations).
 1120 Second Street (wireless / telecommunications installation)
 2234 Haste (alterations to rear residence of two-building landmark property)
 1581 Le Roy Avenue (Hillside School)
 2200 Piedmont Avenue (access alterations to front approaches to International House across public right of way)
 Final Design Review: 2211 Harold War (item was continued, then application was later withdrawn so no final commission action.)

Courtesy reviews of projects at historic resources exempt from LPC oversight:

- none.

Other reviews and actions:

- Had Measure T-1 update from City Staff.
- Approved annual Certified Local Government (CLG) report prepared by Commission staff.
- Added to Potential Initiations list, 1631-33 Walnut Street.
- Reviewed Adeline Corridor Specific Plan.
- Commented on Section 106 review: 1601 Oxford Street and 2012 Berkeley Way.
- Reviewed programmatic agreement with the State Historic Resources Commission on Health, Housing and Community Service referral.
- Appointed Commission member to participate in Shattuck Avenue Naming Advisory Committee.



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