

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, January 29, 2019
6:00 PM**

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

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

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

Preliminary Matters

Roll Call:

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

1. Proclamation recognizing Roe v Wade.
2. Proclamation recognizing Max Dreskin.

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

Public Comment on Non-Agenda Matters: *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.*

Consent Calendar

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

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

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

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

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

Consent Calendar

- 1. Authorize Participation in State of California No Place Like Home Competitive Funding and Commit Mental Health Services for Future Tenants of the Proposed Berkeley Way Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing and directing the City Manager to submit applications to the State of California’s No Place Like Home (NPLH) housing program’s competitive application and enter into the program’s required agreements, and committing to providing mental health services for residents of the funded units for at least 20 years.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 2. Authorizing Acceptance of Mental Health Services Oversight and Accountability Commission Mental Health Triage Children’s Grant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a grant agreement with the Mental Health Services Oversight and Accountability Commission (MHSOAC) and any amendments in the amount of \$216,099 and authorize the use of Medi-Cal and Early Periodic Screening, Detection and Treatment (EPSDT) matching funds of \$145,996 to staff crisis services at Berkeley High School for the period 2/1/2019 through 1/30/2022.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400

Consent Items

- 3. Memorandum of Understanding with Alameda County Behavioral Health Care Services to Fund Construction Costs for Wellness Center**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to adopt a Memorandum of Understanding (MOU) between the City of Berkeley and Alameda County Behavioral Health Care Services (ACBHCS) for the term February 1, 2019 through June 30, 2020 for an expenditure of up to \$750,000 to fund the constructions costs of a Mental Health Wellness Center (Wellness Center) located in the City of Berkeley.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 4. Contract No. 6096F Amendment: IBM Hardware and Software Lease**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 6096F with ESI Group for leasing, maintenance, technical support, and consulting services for International Business Machines (IBM) hardware lease and software maintenance and support, increasing the current contract by \$352,000, for a total not to exceed \$2,034,769 from June 2, 2003 through June 30, 2021.
Financial Implications: See report
Contact: Savita Chaudhary, Information Technology, 981-6500
- 5. Contract: Pacific Trenchless, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Bancroft Way, Allston Way, Byron Street, West Street, Masonic Avenue, Santa Fe Avenue, Fifth Street, and Le Conte Avenue; accepting the bid of the lowest responsive and responsible bidder, Pacific Trenchless, Inc. (Pacific Trenchless); and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$2,434,400.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

Consent Items

6. **Contract: B-Bros Construction Inc. for Adult Mental Health Services Center Renovation Project at 2640 Martin Luther King Jr Way**
From: City Manager
Recommendation: Adopt a Resolution:
1. Approving plans and specifications for the Adult Mental Health Services Center Renovation Project, Specification No.19-11267-C; 2. Accepting the bid of B-Bros Construction Inc. as the lowest responsive and responsible bidder; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed \$4,886,293.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

Council Consent Items

7. **Guidelines for Developing and Writing Council Agenda Items**
From: Councilmember Hahn and Mayor Arreguin
Recommendation: Adopt a Resolution amending the City Council Rules of Procedure and Order to include "Appendix B. Guidelines for Developing and Writing Council Items."
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, 981-7150
8. **Support for SB 24 (Public University Student Health Centers)**
From: Councilmembers Droste, Kesarwani, Wengraf and Hahn
Recommendation: That the Berkeley City Council send a letter supporting SB 24, which will require student health care centers on California State University and University of California campuses to offer abortion by medication techniques by 2023.
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, 981-7180
9. **Support for SB 42 (Getting Home Safe Act)**
From: Councilmembers Droste, Hahn, Kesarwani and Bartlett
Recommendation: That the Berkeley City Council send a letter supporting SB 42, the Getting Home Safe Act, which would address dangerous, late night releases from county jails.
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, 981-7180

Council Consent Items

- 10. Support for AB 68 (Accessory Dwelling Units)**
From: Councilmembers Droste and Bartlett
Recommendation: That the Berkeley City Council send a letter supporting AB 68, Accessory Dwelling Units, authored by Assemblymember Phil Ting which seeks to streamline Accessory Dwelling Units, also known as granny flats or in-law units, in order to encourage new housing units across the state.
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, 981-7180
- 11. Support for AB 69 (Accessory Dwelling Units)**
From: Councilmembers Droste and Bartlett
Recommendation: That the Berkeley City Council send a letter supporting AB 69, Accessory Dwelling Units, authored by Assemblymember Phil Ting which will create a Small Home Building Standard Code to provide guidelines for the construction of ADUs.
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, 981-7180
- 12. Vision Zero: eliminating pedestrian, bicyclist and traffic injuries and fatalities**
From: Councilmembers Droste, Kesarwani, Wengraf and Mayor Arreguin
Recommendation: 1) Create an official Vision Zero Task Force (or Leadership Committee) to lead the planning and implementation effort for Vision Zero. The Task Force should include, at a minimum, representatives from the City Manager's office, Police, Public Works (Transportation and Engineering Divisions), Fire, and Public Health (visionzeronetwork.org).
2) Request that the City Manager hold community events to encourage equitable outcomes, cooperation and collaboration from community stakeholders to set shared goals and focus on coordination and accountability. Representatives from various commissions, including but not limited to Transportation, Disability, Aging, and Health, should be encouraged to attend and provide input.
3) Request that the City Manager hold a worksession where a Vision Zero Action Plan is presented for eliminating fatal and severe traffic injuries. Subsequent to the worksession, request that biannual informational updates on Vision Zero progress are reported to Council. The Action Plan should establish clear strategies, owners of each strategy, interim targets, timelines, & performance measures (visionzeronetwork.org).
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, 981-7180

Action Calendar

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

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

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

Action Calendar – 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.

- 13. Implement Residential Preferential Parking (RPP) Program on Sections of Fifth Street and Martin Luther King Jr. Way**
From: City Manager
Recommendation: Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Sections 25J and 25P by adding subsections to implement Residential Preferential Parking (RPP) on portions of two city streets.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, 981-6300

- 14. ZAB Appeal: 1155-1173 Hearst Ave**
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution to affirm the Zoning Adjustments Board decision to approve Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new, for-sale dwelling units; and dismiss the appeal.
Financial Implications: None
Contact: Timothy Burroughs, Planning and Development, 981-7400

Action Calendar – Public Hearings

- 15. Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus) (Continued from September 25, 2018. Item contains revised material.)**

From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

Financial Implications: None

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

Action Calendar

- 16a. Council Referral-Proposed Amendments to Berkeley’s Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27**

From: Commission on Labor

Recommendation: Adopt first reading of an Ordinance proposing revisions to Berkeley’s Living Wage Ordinance, BMC Chapter 13.27, revising Sections .020, .050, .070, .080 and .090 and adding Sections .045, .110, .120, .130, and .140 to make the application and administration of the LWO consistent with the MWO where appropriate, and modifying Sections .040 and .050 to 1) limit waivers of the LWO for a maximum of one year, and 2) clarifying when employees covered by the LWO are entitled to receive the cash value of the health care benefit.

Financial Implications: None

Contact: Delfina Geiken, Commission Secretary, 981-5400

- 16b. Companion Report: Council Referral-Proposed Amendments to Berkeley’s Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27**

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending BMC Chapter 13.27, which proposes: 1) adding a definition of “Department” in Section 13.27.020, 2) limiting new waivers of the LWO to one year in Section 13.27.040, 3) clarifying language related to wages and benefits in the Section 13.27.050 and adding Section 13.27.110 related to severability.

Financial Implications: None

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

Action Calendar

17. **Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions**
From: Councilmember Davila and Councilmember Bartlett
Recommendation: Adopt a resolution denouncing and opposing, in words and actions, white nationalist and neo-Nazi groups including their actions in the City of Berkeley.
Financial Implications: None
Contact: Cheryl Davila, Councilmember, District 2, 981-7120
18. **Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission** *(Continued from the November 13, 2018 agenda. Item contains revised material.)*
From: Councilmembers Worthington, Davila, Harrison, and Bartlett
Recommendation: That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Information Reports

19. **City Council Short Term Referral Process – Monthly Update**
From: City Manager
Contact: Mark Numainville, City Clerk, 981-6900
20. **Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight from June 26, 2018 - December 31, 2018**
From: City Manager
Contact: Dee Williams-Ridley, City Manager, 981-7000
21. **Referral Response: Support for Berkeley Nonprofit Service Providers**
From: City Manager
Contact: Jordan Klein, Economic Development, 981-7530
22. **Referral Response: Establishment of a Festival Grants Program**
From: City Manager
Contact: Jordan Klein, Economic Development, 981-7530
23. **Planning Commission Workplan 2018-2019**
From: Planning Commission
Contact: Alene Pearson, Commission Secretary, 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 or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

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



Mark Numainville, City Clerk

## **Communications**

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

### **Item #14: ZAB Appeal: 1155 – 1173 Hearst Ave.**

1. Yashu Jiang
2. Mariana Almeida
3. Pam Ormsby (2)
4. Dale Anania
5. Tracey Emerson

### **Homeless Encampments & Public Safety**

6. Cheryl Brewster
7. David Lerman (2)
8. BPD Office Brandon
9. Amy Hill
10. Lisa Lum & Michael Hohmeyer

### **Berkeley Considers – Give Input on Electric Vehicles**

11. Eric Friedman

### **Tobacco**

12. Michelle Albert, on behalf of the American Heart Association

### **West Berkeley Senior Center**

13. Todd Jersey

### **Shellmound Street Exit Clean-Up**

14. Joe Vollono
15. BPD Officer Brandon

### **Cannabis – The Apothecrium**

16. Maryclare McCauley
17. Rob Nachtwey

### **Trees – People’s Park**

- 18. Carol Denney
- 19. Unknown
- 20. Bob Hunt

### **Utility Undergrounding and Loss of Communications Choice**

- 21. Bryce Nesbitt
- 22. Susan Wengraf, Councilmember District 6

### **ADU**

- 23. Joann Sullivan

### **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.





Office of the City Manager

CONSENT CALENDAR

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Authorize Participation in State of California No Place Like Home Competitive Funding and Commit Mental Health Services for Future Tenants of the Proposed Berkeley Way Project

RECOMMENDATION

Adopt a Resolution authorizing and directing the City Manager to submit applications to the State of California's No Place Like Home (NPLH) housing program's competitive application and enter into the program's required agreements, and committing to providing mental health services for residents of the funded units for at least 20 years.

FISCAL IMPACTS OF RECOMMENDATION

Staff recommend that the City submit an application to the State NPLH program for BRIDGE/Berkeley Food and Housing Project's Berkeley Way project (specifically the permanent supportive housing component). If it is funded by the State, the City would be required to provide mental health services for the tenants of the 10 resulting NPLH-dedicated apartments in addition to the 6 authorized on December 4, 2018 connected with the City's noncompetitive NPLH funds, for a total of 16. Berkeley Mental Health already provides mental health services to qualifying people with serious mental illness who reside in Berkeley. In addition, the City of Berkeley funds services provided by contractors to homeless individuals who have a mental illness.

CURRENT SITUATION AND ITS EFFECTS

The State's No Place Like Home (NPLH) housing program includes three types of funding: noncompetitive, technical assistance, and competitive. The State has issued a Request for Proposals for \$400M in competitive NPLH funds with applications due on January 30, 2019. Both Berkeley Way and Satellite Affordable Housing Associate's Oxford Senior Apartments are seeking these funds.

Each application to this funding source must include the participation of a local mental health jurisdiction. Projects in Berkeley can either apply with Alameda County or with the City of Berkeley. Projects applying to the State with Alameda County will compete against other projects from large counties for a total of \$93.5M. Projects applying with Berkeley will compete against other projects from small counties for a total of \$32M.

After consultation with the project sponsors and Alameda County, staff believe that Berkeley projects are more likely to be funded if they apply in collaboration with the City because the small counties funding pool is likely to be undersubscribed. This will require the City to provide mental health services for tenants for 20 years. Additionally, the City's support of these applications will preserve the City's option to require a local preference for applicants who live or work in Berkeley.

Unfortunately, the NPLH program guidelines limit the state to funding only one project per funding round from cities that are mental health jurisdictions (as opposed to counties). Therefore the City is unable to submit both the Berkeley Way and Oxford Senior Apartment project to the State in this funding round. Alameda County's analysis of the applications found the Oxford Senior Apartment project to score more highly, which means that it may compete better in the large counties funding pool. For that reason, and because the Council has indicated that Berkeley Way is its first priority for City funding, staff intend and have discussed with the applicants and the County that the City will submit Berkeley Way as a Berkeley project, and the County will submit Oxford Senior Apartments.

#### BACKGROUND

The State's No Place Like Home (NPLH) housing program includes three types of funding: noncompetitive, technical assistance, and competitive. As a mental health jurisdiction, the City automatically received allocations of noncompetitive funds (which will be administered by the State for a locally-selected housing development) as well as technical assistance funds.

On December 4, 2018, the Council authorized the City to submit an application to the State for the City's noncompetitive fund and to award \$65,000 in technical assistance funds to the Berkeley Way project.

#### ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts directly associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Sponsoring Berkeley Way's application for NPLH will make the project eligible for about \$6.5M in State funds, including some funds to support its operations. Staff expect that the City's involvement, rather than the County's will increase the project's chances of being funded and will allow the City to apply a local preference for tenants. The City Council has previously committed predevelopment funds and reserved development funds for the Berkeley Way project, after selecting BRIDGE and BFHP to develop the site. The project received its land use approvals in December 2018. The State released in RFP in late 2018, with the applications due January 30, 2019, making this decision time sensitive.

ALTERNATIVE ACTIONS CONSIDERED

These projects could apply to No Place Like Home through Alameda County, if the County agreed to be the service provider. In that case, the County would not allow a Berkeley live/work preference for the permanent supportive units. In addition, the projects would need to compete with many more projects for the NPLH "large county" pool of funds, possibly diminishing chances of success.

CONTACT PERSON

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

Attachments:

1: Resolution

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

AUTHORIZATION TO PARTICIPATE IN THE NO PLACE LIKE HOME PROGRAM

WHEREAS, the State of California, Department of Housing and Community Development (“Department”) issued a Notice of Funding Availability, dated October 15, 2018 as amended on October 30, 2018 (“NOFA”), under the No Place Like Home Program (“NPLH” or “Program”) authorized by Government Code section 15463, Part 3.9 of Division 5 (commencing with Section 5849.1) of the Welfare and Institutions Code, and Welfare and Institutions Code section 5890;

WHEREAS, the NOFA relates to the availability of approximately \$400 million in Competitive Allocation funds under the NPLH Program; and

WHEREAS, the City of Berkeley is a County and an Applicant, as those terms are defined in the NPLH Program Guidelines, dated July 17, 2017 (“Guidelines”).

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Berkeley does hereby determine and declare as follows:

BE IT FURTHER RESOLVED that the City is hereby authorized and directed to apply for and if awarded, accept the NPLH Program funds, as detailed in the NOFA, up to the amount authorized by the Guidelines and applicable state law.

BE IT FURTHER RESOLVED that the City Manager, or his or her designee, is hereby authorized and directed to act on behalf of the City in connection with an award of NPLH Program funds, and to enter into, execute, and deliver any and all documents required or deemed necessary or appropriate to evidence the loan of NPLH Program funds, the City’s obligations related thereto, and the Department’s security therefore. These documents may include, but are not limited to, a State of California Standard Agreement (“Standard Agreement”), a regulatory agreement, a promissory note, a deed of trust and security agreement, and any and all other documents required or deemed necessary or appropriate by the Department as security for, evidence of, or pertaining to the NPLH Program funds, and all amendments thereto (collectively, the “NPLH Program Documents”).

BE IT FURTHER RESOLVED that the City shall be subject to the terms and conditions that are specified in the Standard Agreement; that the application in full is incorporated as part of the Standard Agreement; that any and all activities funded, information provided, and timelines represented in the application are enforceable through the Standard Agreement; and that the City will use the NPLH Program funds in accordance with the Guidelines, other applicable rules and laws, the NPLH Program Documents, and any and all NPLH Program requirements.

BE IT FURTHER RESOLVED that the City will make mental health supportive services available to each project’s NPLH tenants for at least 20 years, and will coordinate the



provision of or referral to other services (including, but not limited to, substance use services) in accordance with the City's relevant supportive services plan, and as specified in Section 202(n)(1) of the Guidelines.





Office of the City Manager

CONSENT CALENDAR  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kelly Wallace, Acting Director, Health, Housing & Community Services  
 Subject: Authorizing Acceptance of Mental Health Services Oversight and  
 Accountability Commission Mental Health Triage Children's Grant

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into a grant agreement with the Mental Health Services Oversight and Accountability Commission (MHSOAC) and any amendments in the amount of \$216,099 and authorize the use of Medi-Cal and Early Periodic Screening, Detection and Treatment (EPSDT) matching funds of \$145,996 to staff crisis services at Berkeley High School for the period 2/1/2019 through 1/30/2022.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive funds in the amount of \$216,098.53 in total for the period 2/1/2019 through 1/30/2022 from the MHSOAC. In this same period of time, it is estimated that staff in this program will bill \$145,996.00 for Medi-Cal and EPSDT activities. The funds will be deposited and expensed for this contract (CMS No. Q3657) from the One-Time Grant: Non Capital Expenditures Fund (Fund #336).

The MHSOAC grant will be officially appropriated as part of the Second Amendment to the FY 2019 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Division currently provides mental health services at Berkeley High School at the High School Health Center (BSHHC). Current staffing at the BSHHC includes 1 FTE Senior Behavior Health Clinician, 1.5 FTE Behavioral Health Clinician II, and graduate level interns. The mental health staff at the BSHHC provide a variety of services, including: responding to students who walk in with immediate needs; outreach, screening, assessment, referral and treatment for students who are referred to services; and provision of groups to students.

Due to the need to always have a mental health clinician available for walk-in services, the capacity for providing ongoing treatment for students at the BSHHC has been limited. Accepting this grant funding from the MHSOAC would support the mental health division to have a dedicated crisis clinician available for walk-in students and to

respond to any crisis in the school for fiscal year 2020. This will free up existing staff to greatly increase the amount of ongoing treatment for students who are referred for treatment or identified as needing ongoing treatment through the walk-in process.

### BACKGROUND

Both Berkeley Unified School District (BUSD) and the Mental Health Division conducted needs assessments that identified the need for additional services, including crisis services, at Berkeley High School. BUSD partnered with the Alameda County Center for Healthy Schools and Communities to conduct a Berkeley Public Schools Needs Assessment (2015), while the Mental Health Division conducted a Mental Health Service Act (MHSA) Innovations Funds: City of Berkeley Planning Report. These assessments included significant public input about the desire to have a way to increase the capacity for responding to mental health crisis within BUSD and the need for increased mental health services for students. In response to this input, the Mental Health Division has looked for opportunities to find funding to support this goal.

The Mental Health Wellness Act of 2013, Senate Bill 82, provides grant funds to improve access to and capacity for mental health crisis services. This grant program provides funds to increase capacity for client assistance and services in crisis intervention, stabilization, treatment, rehabilitative mental health services and mobile crisis support teams. Services that are funded are designed to increase access to effective outpatient and crisis services, provide an opportunity to reduce costs associated with expensive inpatient and emergency room care, reduce incarceration, and better meet the needs of individuals experiencing a mental health crisis in the least restrictive manner possible.

The MHSOAC released a Request for Applications (RFA) for Mental Health Triage Personnel Children in February, 2018. This RFA was for crisis services for children and youth. The Mental Health Division submitted an application for these funds in April of 2018. This original grant application was for \$980,892 of grant funding in total for fiscal years 2019, 2020, and 2021 and would have established a crisis system for BUSD at both the middle school and high school level.

The MHSOAC originally notified the City of Berkeley in April of 2018 that the proposal would not be funded. Subsequently, the MHSOAC contacted the mental health division and informed them that there was a reduced amount of funding that had not been allocated and that the MHSOAC would be interested in receiving a proposal for up to \$216,099 to increase crisis capacity for youth and children. The division then submitted a revised grant application and budget and revised program budget and project description were then approved by the MHSOAC.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the action recommended in this report.

RATIONALE FOR RECOMMENDATION

These funds will support the Health, Housing and Community Services Department in providing enhanced services for students who attend Berkeley High School who are in crisis for academic year 2020.

ALTERNATIVE ACTIONS CONSIDERED

The City could not accept these funds and not increase staffing to respond to student crisis needs at Berkeley High School.

CONTACT PERSON

Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, (510) 981-5290

Attachments:

1. Resolution

RESOLUTION NO. -N.S.

AUTHORIZING ACCEPTANCE OF MENTAL HEALTH SERVICES OVERSIGHT AND  
ACCOUNTABILITY MENTAL HEALTH TRIAGE GRANT

WHEREAS, as a local mental health jurisdiction, the City of Berkeley operates a High School Health Center at Berkeley High School; and

WHEREAS, the public has given input requesting that there is a need for increased crisis services for students at Berkeley High School; and

WHEREAS, the Mental Health Services Oversight and Accountability Commission has approved a grant application for the City of Berkeley \$216,098.53 in total for the period 2/1/2019 through 1/30/2022 to increase crisis services at Berkeley High School for FY2020;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the following: The City Manager or her designee is hereby authorized to accept \$216,098.53 in total for the period 2/1/2019 through 1/30/2022, execute any necessary agreements in line with the grant award, and implement the crisis services project and appropriation of funds for related agreements. The funds will be deposited and expensed for this contract (CMS No. Q3657) from the One-Time Grant: Non Capital Expenditures Fund (Fund #336). A signature copy of said documents, agreements and any amendments shall be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kelly Wallace, Interim Director Department of Health, Housing and Community Services  
Subject: Memorandum of Understanding with Alameda County Behavioral Health Care Services to Fund Construction Costs for Wellness Center

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to adopt a Memorandum of Understanding (MOU) between the City of Berkeley and Alameda County Behavioral Health Care Services (ACBHCS) for the term February 1, 2019 through June 30, 2020 for an expenditure of up to \$750,000 to fund the constructions costs of a Mental Health Wellness Center (Wellness Center) located in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

The execution of this MOU will result in the transfer of a portion of the City of Berkeley's Mental Health Services Act (MHSA) Capital Facilities funding allocation to Alameda County BHCS so that funds may be leveraged for constructions costs of a Wellness Center. The total amount of money to be expended on the Wellness Center construction costs from the City of Berkeley would be \$750,000; ACBHCS will also contribute \$750,000 for construction costs of the Wellness Center.

Berkeley Mental Health's approved MHSA FY 2019 Annual Update included authorization for transferring \$750,000 from Community Services and Supports (CSS) to Capital Facilities and Technological Needs (CFTN) and then utilizing that funding for construction costs of the Wellness Center. The MOU is the mechanism that defines the terms of the fiscal relationship between the City and the County and will enable the transfer of funds.

Funds are in expenditure budget code 315-51-503-525-2020-000-451-636110-.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley currently has an MOU with ACBHCS that authorizes the expenditure of up \$300,000 of CSS funding a year for the operation of a Wellness

Center. Bonita House is the vendor who is contracted by ACBHCS for the operation of the Wellness Center, and they are in the process of building out the site they have leased at 1909 University Avenue, Berkeley, CA 94704. Bonita House has cost estimates of \$1,500,000 for the reconstruction costs for the site they have leased for the Wellness Center. Based on MHSAs regulations, construction costs for MHSAs projects need to be spent from Capital Facilities and Technological Needs. In the MHSAs FY19 Plan Update, the Mental Health Division obtained Council approval to transfer funds from CSS to CFTN and expend those funds on the Wellness Center construction costs. The MOU will allow for CFTN funding to be appropriately spent on construction costs, with CSS funding being reserved for actual operations of the Wellness Center.

### BACKGROUND

The City of Berkeley is partnering with Alameda County to fund a Wellness Center for residents of Berkeley and Albany. The Wellness Center is modeled after existing Wellness Centers in other parts of Alameda County and will provide three levels of services. First, the Wellness Center will be open to anyone in the community who either needs support or connection to the mental health system. This is the largest level of service and will be primarily staffed by individuals with lived experience with mental health illness. Second, for a smaller cohort, the Wellness Center will be able to provide short term case management with a licensed clinician. This level of service will allow people who are not otherwise connected to care, and who use the Wellness Center, to receive some targeted support for a wide variety of issues. Finally, the Wellness Center will have some capacity to provide psychiatry and medication services for individuals not otherwise connected to care.

Bonita House has contracted with a company to do the necessary construction work to create a Wellness Center physical layout that will support the goals of the Wellness Center. ACBHCS will utilize the funding provided by the City of Berkeley to pay for approved charges for this construction project.

### ENVIRONMENTAL SUSTAINABILITY

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

### RATIONALE FOR RECOMMENDATION

Providing this funding for the construction costs will support the ability of the Vendor to do necessary construction work to support a Wellness Center in Berkeley, which will provide a needed expansion of the system of care for individuals with mental health issues in Berkeley and Albany.

### ALTERNATIVE ACTIONS CONSIDERED



The City could decide not to fund the construction costs for the Wellness Center. This would either lead to the cancellation of the Wellness Center or greatly delay the opening of the Wellness Center.

CONTACT PERSON

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

Attachments:

1: Resolution

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

MOU with ACBHCS to Fund Construction Costs for Wellness Center

WHEREAS, as part of the Mental Health Services Act (MHSA), the State of California designated a process for transferring funds for all mental health jurisdictions from Community Services and Supports (CSS) to Capital Facilities and Technological Needs (CFTN); and

WHEREAS, the City of Berkeley has an approved FY 2019 Program and Expenditure Plan that designates the transfer of \$750,000 a year from CSS to CFTN to fund construction costs for a Mental Health Wellness Center (Wellness Center); and

WHEREAS, a Memorandum of Understanding will provide the mechanism whereby the City of Berkeley Mental Health Services Act CFTN funds can be transferred to the lead agency, Alameda County Behavioral Health Care Services, to be utilized for the construction costs Mental Health Wellness Center; and

WHEREAS, funds are available in the FY 2019 budget code 315-51-503-525-2020-000-451-636110- in the MHSA fund received from the State of California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to adopt a MOU between the City of Berkeley and Alameda County Behavioral Health Care Services for the term February 1, 2019 through June 30, 2020 for an expenditure of up to \$750,000 to fund the construction costs of a Mental Health Wellness Center (Wellness Center) located in the City of Berkeley.



Office of the City Manager

CONSENT CALENDAR  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Savita Chaudhary, Director, Department of Information Technology  
Subject: Contract No. 6096F Amendment: IBM Hardware and Software Lease

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 6096F with ESI Group for leasing, maintenance, technical support, and consulting services for International Business Machines (IBM) hardware lease and software maintenance and support, increasing the current contract by \$352,000, for a total not to exceed \$2,034,769 from June 2, 2003 through June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional scope of work in the amount of \$352,000 is available in the Fiscal Year 2019, 2020, and 2021 Department of Information Technology’s Cost Allocation fund. Spending for this amendment in future fiscal years is subject to Council approval of the proposed city-wide budget and Annual Appropriation Ordinances.

|                  |                                                                                                                          |
|------------------|--------------------------------------------------------------------------------------------------------------------------|
| \$75,000         | FY19 - Hardware Lease including IBM Software Maintenance and Support<br>Budget Code: 680-35-362-376-0000-000-472-613130- |
| \$135,000        | FY20 - Hardware Lease including IBM Software Maintenance and Support<br>Budget Code: 680-35-362-376-0000-000-472-613130- |
| \$142,000        | FY21 - Hardware Lease including IBM Software Maintenance and Support<br>Budget Code: 680-35-362-376-0000-000-472-613130- |
| <b>\$352,000</b> | <b>Grand Total Hardware Lease and Software Maintenance and Support</b>                                                   |

CURRENT SITUATION AND ITS EFFECTS

ESI Group provides lease servicing, hardware and software maintenance, technical support, disaster recovery, and consulting services for the IBM infrastructure that hosts the City’s FUND\$ system. This contract is critical to providing a high-availability infrastructure for all nineteen FUND\$ modules, including payroll, accounting, billing, permitting, and purchasing.

BACKGROUND

IBM infrastructure has been required to host FUND\$ since its initial implementation in 1989. In 2003, the City contracted with ESI Group for IBM infrastructure leasing, 24x7 telephone/web support, 4 hour maximum parts replacement, co-location for disaster recovery, and hardware/software maintenance. In June 2011, staff negotiated an upgrade to improved hardware and a lowered yearly lease payment, for an annual savings of \$30,000. In January 2013, the City issued a Request for Proposals (RFP), Specification # 13-10703-C, to explore additional options for this lease; ESI Group was the only certified IBM Partner to respond. Staff recommends renewing the contract with ESI Group for one year to provide uninterrupted service while the City examines the market for certified IBM Partners and reassesses infrastructure needs as FUND\$ module replacements progress.

In 2018 the City has replaced Core Financials Procurements modules including Project and Budget modules. Over the next 5 years, the City will replace additional FUND\$ modules, including Human Resources, Payroll and other core financials such as Accounts Receivables, General Billing.

Staff recommends renewing the contract with ESI Group for three years to provide uninterrupted service while the City reassesses infrastructure needs as FUND\$ module replacements continue.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered the possibility of switching vendors and issued an RFP to examine the City's options; however, ESI Group was the only certified IBM Business Partner to respond. Staff also considered renewing this contract for more than one year, but recommends against this without another competitive bid for comparison.

ENVIRONMENTAL SUSTAINABILITY

The IBM hardware and software platform is optimized for maximum energy efficiency.

CONTACT PERSON

Savita Chaudhary, Director, Department of Information Technology, 981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 6096F AMENDMENT: IBM HARDWARE AND SOFTWARE LEASE

WHEREAS, the City of Berkeley relies upon software systems for critical business activities such as including payroll, accounting, billing, permitting, and purchasing; and

WHEREAS, International Business Machines (IBM) hardware and software is required to host the these systems; and

WHEREAS, ESI Group was the only vendor to respond to the City's Request for Proposals (Specification # 13-10703-C) for IBM leasing, maintenance, technical support, and consulting services; and

WHEREAS, funding is allocated in the Department of Information Technology's Fiscal Year 2019, 2020, and 2021 Cost Allocation Fund. Spending for this amendment in future fiscal years is subject to Council approval of the proposed city-wide budget and annual appropriation ordinances.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 6096F with ESI Group for leasing, maintenance, technical support, and consulting services for International Business Machines (IBM) hardware and software, increasing the current contract by \$352,000, for a total not to exceed \$2,034,769 from June 2, 2003 through June 30, 2021.





Office of the City Manager

CONSENT CALENDAR  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: Contract: Pacific Trenchless, Inc. for Sanitary Sewer Rehabilitation and Replacement at Various Locations

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Bancroft Way, Allston Way, Byron Street, West Street, Masonic Avenue, Santa Fe Avenue, Fifth Street, and Le Conte Avenue; accepting the bid of the lowest responsive and responsible bidder, Pacific Trenchless, Inc. (Pacific Trenchless); and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$2,434,400.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2019 Sanitary Sewer Fund 611-54-623-676-3013-000-473-622110-PWENSR1903.

|                                      |                    |
|--------------------------------------|--------------------|
| Low bid by Pacific Trenchless .....  | \$2,213,091        |
| 10% Contingency .....                | \$221,309          |
| <b>Total construction cost .....</b> | <b>\$2,434,400</b> |

The contract has been entered into the Contract Management System (CMS) as CMS No. YCCZZ.

CURRENT SITUATION AND ITS EFFECTS

This sanitary sewer project is part of the City's ongoing program to rehabilitate or replace its aging sanitary sewer system and to eliminate potential health hazards to the public. The project will be sited at various locations throughout the City as shown on the Location Map (Attachment 2). The sanitary sewer collection system in these areas needs immediate rehabilitation to prevent impending pipe failures, sewer blockages, and leakage problems. Field investigations performed using a closed circuit television camera revealed deteriorated piping and pipe defects in the existing sanitary sewer mains. These conditions are similar to problems previously found in other sanitary sewer mains prior to their replacement.

Planned work entails replacement or rehabilitation of approximately 4,572 linear feet of 6-inch to 15-inch diameter sanitary sewer mains; manhole construction; replacement of 4-inch and 6-inch diameter sanitary sewer laterals; and other related work. To reduce traffic impacts, minimize inconvenience to residents, and reduce cost, a majority of this sanitary sewer rehabilitation work will be performed using the pipe bursting method. This trenchless method allows replacement of pipelines buried below street level (such as sewer or water pipes) without the need for a traditional open trench construction. This method of pulling a new high-density polyethylene pipe (HDPE) through the existing clay pipe with a cone-shaped hammerhead to "burst" the surrounding clay pipe, allows for cost savings, and avoids street closures and traffic disruptions caused by open trenches.

The scope of work also includes provisions for urgent/emergent actions related to acute sewer defects that will be undertaken at other citywide locations on an as-needed basis. As required by the United States Environmental Protection Agency (EPA) and Regional Water Quality Control Board Consent Decree, acute defects must be addressed no later than one year after they are identified. The 105 working day contract term includes a 60 working day performance period, and an additional 45 working days for project closeout. Finally, a 10% contract contingency of \$221,309 is included to pay for related unexpected future construction events.

#### BACKGROUND

To remain compliant with the September 22, 2014 Consent Decree, the City has implemented a long-term mandated Sanitary Sewer Capital Improvement Program to eliminate sanitary sewer overflows (SSOs) and reduce storm water infiltration and inflow into the sanitary sewer system. Under this program, the City utilizes a comprehensive asset management approach based on complex and evolving hydrologic and hydraulic modeling and condition assessments to repair, replace, or upgrade the City's portion of the sanitary sewer system. Ultimately, these actions will assist East Bay Municipal Utility District (EBMUD) in their goal of eliminating discharges from their wet weather facilities by the end of 2035.

This is the fifth year of the twenty-two-year Consent Decree program, which stipulates the City shall perform collection system repair and rehabilitation to control infiltration and inflow.<sup>1</sup> This is in support of and in addition to ongoing work previously identified in the City's Sanitary Sewer Management Plan (SSMP) and Asset Management Implementation Plan (AMIP).

An Invitation for Bids (Spec. No. 19-11264-C) was released on November 16, 2018 and seven non-local bids were received, ranging from a low of \$2,213,091 to a high of \$3,750,926 (Attachment 3, Bid Results). The engineer's estimate for the project was \$2,700,000. Pacific Trenchless of Oakland, California was the lowest responsive and

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<sup>1</sup> At an average annual rate of no less than 22,120 feet of sanitary sewer mains on a three-fiscal-year rolling average.



responsible bidder. Previous work and references of Pacific Trenchless proved satisfactory, thus staff recommends award of the contract to Pacific Trenchless.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are subject to State prevailing wage laws. Pacific Trenchless has submitted a Certification of Compliance with the Equal Benefits Ordinance. Because the project's estimated value exceeds \$500,000, the Department of Public Works intends to continue honoring the Community Workforce Agreement (CWA) and will apply its terms to this agreement. As a result, the successful bidder and all subcontractors must agree to be bound by the terms of the CWA.

#### ENVIRONMENTAL SUSTAINABILITY

Improvements to the City's sanitary sewer system will help protect water quality by reducing the frequency of SSOs, and infiltration and inflows into the City's sanitary sewer system that can negatively affect the San Francisco Bay.

#### RATIONALE FOR RECOMMENDATION

Contracted services are required for these large projects, as the City lacks in-house resources needed to complete scheduled sanitary sewer rehabilitation and replacement projects. Further, the City must take timely action to address urgent/emergent sewer repairs without delay. Finally, subject to fines and stipulated penalties, the Consent Decree demands the City to repair acute defects within one year of discovery, and complete the sanitary sewer main rehabilitation and replacement at a three-year annual average minimum of 22,120 feet per fiscal year. We will have a three year annual average of approximately 23,530 linear feet replaced or rehabilitated after completing the FY 2019 work by June 30, 2019.

#### ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as the City's sanitary sewer pipelines are in need of timely rehabilitation to prevent an increased probability of infiltration and inflows, sanitary sewer leakages, and backup problems in the sanitary sewer system.

#### CONTACT PERSON

Andrew Brozyna, Deputy Director (510) 981-6396  
Nisha Patel, Manager of Engineering (510) 981-6406  
Ricardo Salcedo, Assistant Civil Engineer (510) 981-6407

#### Attachments:

- 1: Resolution
- 2: Location Map
- 3: Bid Results

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

CONTRACT: PACIFIC TRENCHLESS, INC. FOR SANITARY SEWER REHABILITATION AND REPLACEMENT – BANCROFT WAY, ALLSTON WAY, BYRON STREET, WEST STREET, MASONIC AVENUE, SANTA FE AVENUE, FIFTH STREET, AND LE CONTE AVENUE

WHEREAS, the Sanitary Sewer Project is part of the City's on-going Sanitary Sewer Capital Improvement Program to rehabilitate or replace the aging and deteriorated sanitary sewer system; and

WHEREAS, the Capital Improvement Program is a requirement of compliance with the National Pollution Discharge Elimination System Permit and California Regional Water Quality Control Board Consent Decree; and

WHEREAS, the City has neither the staff nor the equipment necessary to undertake this Sanitary Sewer Rehabilitation and Replacement Project and other urgent/emergent sewer repairs; and

WHEREAS, an invitation for bids was duly advertised and Pacific Trenchless, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS, funds are available in the FY 2019 budget Sanitary Sewer Fund 611 and the contract has been entered as CMS No. YCCZZ.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications No. 19-11264-C for the Sanitary Sewer Rehabilitation and Replacement Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Pacific Trenchless, Inc., until completion of the project in accordance with the approved specifications for the Sanitary Sewer Rehabilitation and Replacement Project located on Bancroft Way, Allston Way, Byron Street, West Street, Masonic Avenue, Santa Fe Avenue, Fifth Street, and Le Conte Avenue, in an amount not to exceed \$2,434,400. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.

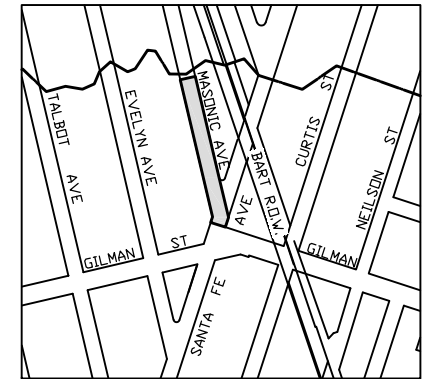
# LOCATION MAP

## SANITARY SEWER REHABILITATION AND REPLACEMENT

BANCROFT WAY, ALLSTON WAY, BYRON STREET, WEST STREET, MASONIC AVENUE, SANTA FE AVENUE, FIFTH STREET, LE CONTE AVENUE  
SPECIFICATION NO. 19-11264-C



**LOCATION 1**

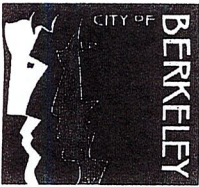


**LOCATION 2**



**LOCATION 3**

— CONSTRUCTION AREA



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

FOR: *Sanitary Sewer Rehab*

Spec. # *19*  
*19-112640*

Bid Date: *12/06/18*

|    | Bidders                        | Base Bid            |  | Nuc Free | Work Force Comp | Opp. States | Living Wage | EBO | Bid Bond | 142 Addenda |
|----|--------------------------------|---------------------|--|----------|-----------------|-------------|-------------|-----|----------|-------------|
| 1  | <i>Dagay &amp; Hasky Inc.</i>  | <i>2,243,510.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 2  | <i>Pacific Inlandless Inc.</i> | <i>2,213,091.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 3  | <i>Express Plumbing</i>        | <i>3,750,926.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 4  | <i>Crates Construction</i>     | <i>2,825,155.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 5  | <i>Calif. Inlandless Inc.</i>  | <i>2,524,704.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 6  | <i>Precision Eng.</i>          | <i>2,243,054.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 7  | <i>Crates Inc.</i>             | <i>2,778,520.00</i> |  | /        |                 | /           |             | /   | /        | /           |
| 8  |                                |                     |  |          |                 |             |             |     |          |             |
| 9  |                                |                     |  |          |                 |             |             |     |          |             |
| 10 |                                |                     |  |          |                 |             |             |     |          |             |

Bid Recorder: *[Signature]* *12/06/18*

Bid Opener: *[Signature]* *12/6/18*

Project Manager: *[Signature]* *12/6/18*



Office of the City Manager

CONSENT CALENDAR  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: Contract: B-Bros Construction Inc. for Adult Mental Health Services Center Renovation Project at 2640 Martin Luther King Jr Way

RECOMMENDATION

Adopt a Resolution:

1. Approving plans and specifications for the Adult Mental Health Services Center Renovation Project, Specification No.19-11267-C;
2. Accepting the bid of B-Bros Construction Inc. as the lowest responsive and responsible bidder; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, for an amount not to exceed \$4,886,293.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this project (\$4,886,293) is available in the FY 2019 budget:

- \$ 1,349,266: Mental Health Services Act Fund (315)
- \$ 894,467: Mental Health State Aid Real Fund (158)
- \$ 1,488,169: Development Block Grant Fund (128)
- \$ 1,692,525: T1 Fund (511)
- \$ 663,812: Capital Improvement Fund (501)

|                                          |                    |
|------------------------------------------|--------------------|
| Low bid by B-Bros Construction Inc. .... | \$4,148,950        |
| Contingency .....                        | \$737,343          |
| <b>Total Construction Cost</b>           | <b>\$4,886,293</b> |

No other funding is required, and no other projects will be delayed due to this expenditure. The contract management system number for this contract is CMS No. A231Y.

### CURRENT SITUATION AND ITS EFFECTS

Health Housing and Community Services (HHCS) will operate the Berkeley Adult Health Services Center (Center) at 2640 Martin Luther King Jr Way, which will serve Berkeley and Albany community members and their families, living with serious and persistent mental illness. The goal of this project is to improve the quality of care by having all adult clinic staff in one location accessible to community members needing services.

The required rehabilitation work is significant but will result in a welcoming, clean, durable, energy efficient, and secure facility. It will address health and safety concerns, including air quality problems, an ongoing infestation of fleas, rodents, raccoons, and water intrusion. It is critical for HHCS to reopen the facility as soon as possible.

The Project's construction documents were completed and advertised for bids on Monday, November 19, 2018. Bids were opened on Tuesday, December 18, 2018. The City received eight (8) bids ranging from \$4,148,950 to \$6,947,075. B-Bros Construction Inc. was the lowest responsive and responsible bidder and their references were provided and checked out satisfactorily, therefore Staff recommends that a construction contract for the Mental Health Services Center Renovation project be awarded to B-Bros Construction Inc.

### 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 clients are seen on a daily basis, when necessary, to obtain assistance with multiple and complex needs that put them at critically high risk for mental health emergencies. Some of the work of Mental Health staff is conducted outside of the clinic when staff meet clients in the community for service provision. Staff that provides these outside services requires a home base in one of the facilities, such as the Center. The upgraded Center will provide that 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.

There have been significant problems with the building at 2640 MLK for many years, and because of these issues, planning for renovation of the site has gone on for many years. Longstanding issues related to the site configuration – 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 additional issues including air quality problems, an ongoing infestation of fleas, rodents, and raccoons, and water intrusion. Although the building had many treatments, the problems were ultimately deemed so systemic that the building was closed in June 2016, pending the long planned major rehabilitation. The rehabilitation work 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 Berkeley and Albany residents live better lives.

ENVIRONMENTAL SUSTAINABILITY

One of goals of the new mental health facility will be to become, as much as feasible, a net zero energy facility. A net zero energy facility has a positive environmental impact and has economic advantages over the long-term.

RATIONALE FOR RECOMMENDATION

Contracted services are required for this project as the City does not have the in-house expertise to complete this specialized work. The seriously mentally ill adult clients of Berkeley and Albany deserve a dedicated and functional clinic from which to receive care.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Phillip L. Harrington, Director, Department of Public Works, 981-6303

Kelly Wallace, Interim Director, Health, Housing and Community Services, 981-5107

Attachments:

1: Resolution

2: Abstract of Bids

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

CONTRACT: B-BROS CONSTRUCTION, INC. FOR THE CITY OF BERKELEY'S  
ADULT MENTAL HEALTH SERVICES CENTER RENOVATIONS PROJECT

WHEREAS, the project consists of interior renovation and seismic upgrade 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

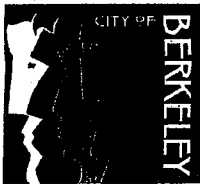
WHEREAS, an invitation for bids (Plans and Specifications No. 19-11267-C) was duly advertised, and B-Bros Construction Inc. was determined to be the lowest responsive and responsible bidder; and

WHEREAS, funds are available in the FY 2019 budget in the Mental Health Services Act Fund, Mental Health State Aid Real Fund, Community Development Block Grant (CDBG) Fund, T1 Fund, and Capital Improvement Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Plans and Specification No. 19-11267-C for the Mental Health Services Center Renovation Project are approved, and B-Bros Construction Inc. is determined to be the lowest responsive and responsible bidder.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions or change orders, until completion of the project in accordance with the approved plans and specifications with 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. A record signature copy of the agreement and any amendments will be on file in the Office of the City Clerk.





City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

FOR: Mental Health Ctr. Reno Project

Spec. #

19-11267-C Bid Date: 12/18/18

|    | Bidders                  | Base Bid     | Nuc Free | Work Force Comp | Opp. States | Living Wage | EBO | Bid Bond | Addenda |
|----|--------------------------|--------------|----------|-----------------|-------------|-------------|-----|----------|---------|
| 1  | CWS Construction Corp    | 5,130,000.00 |          |                 |             |             |     | /        | /       |
| 2  | B. Bros. Construction    | 4,148,950.00 |          |                 |             |             |     | /        | /       |
| 3  | Cal Pacific Construction | 5,305,395.00 |          |                 |             |             |     | /        | /       |
| 4  | Build Group Inc.         | 5,698,317.00 |          |                 |             |             |     | /        | /       |
| 5  | E. J. Brett              | 5,811,890.00 |          |                 |             |             |     | /        | /       |
| 6  | Wickman Development      | 4,574,368.00 |          |                 |             |             |     | /        | /       |
| 7  | Gonsalves + Strouck      | 6,947,075.00 |          |                 |             |             |     | /        | /       |
| 8  | D. L. Falk Construction  | 4,655,140.00 |          |                 |             |             |     | /        | /       |
| 9  |                          |              |          |                 |             |             |     |          |         |
| 10 |                          |              |          |                 |             |             |     |          |         |

Bid Recorder: Bob Blaw/Kees Lips 12/18/18

Bid Opener: SD 12/18/18

Project Manager: [Signature] 12/18/18





Berkeley City Council  
Agenda and Rules Committee

07

CONSENT CALENDAR

January 29, 2018

To: Honorable Mayor and Members of the City Council  
From: Agenda and Rules Committee  
Subject: Guidelines for Developing and Writing Council Agenda Items

RECOMMENDATION

Adopt a Resolution amending the City Council Rules of Procedure and Order to include “Appendix B. Guidelines for Developing and Writing Council Agenda Items”

FINANCIAL IMPLICATIONS

None

BACKGROUND

The Council Agenda and Rules Committee (“Agenda Committee”) has been considering ways to improve the clarity and completeness of policies, programs and other items submitted for Council consideration. The most significant change being implemented is the establishment of standing Council Committees. The intent of these procedural changes is to ensure robust input from stakeholders and other members of the community, to receive early Council and staff input, and to send more fully formed items to the full Council for consideration.

The Guidelines for Developing and Writing Council Agenda Items (“Guidelines”) have been reviewed by the Agenda Committee, which voted unanimously to send them to the full Council for review and adoption as an Appendix to the Council Rules of Procedure and Order (Attachment 1). They provide additional detail and guidance with respect to requirements for Council Items already included in the Rules of Procedure and Order.

The Guidelines do not create a requirement that all Items conform to each element listed and discussed. They are intended as *guidance* to authors and Committee members when considering whether an Item is as completely researched, presented and considered as might be warranted, prior to moving the Item to a full Council Agenda. Major policy initiatives likely warrant consideration of all Guideline elements, while less significant initiatives might not require as much research and consultation.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental opportunities associated with this recommendation.

CONTACT PERSON

Agenda and Rules Committee

Mayor Jesse Arreguin, Chair, (510) 981-7100

Attachments

1. Resolution

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

AMENDING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order attached hereto and incorporated by reference shall govern all proceedings of the City Council herein prescribed, subject to the exceptions and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, excepting that breach of the peace or willful failure to comply with the lawful orders of the Council or its presiding officer shall be punishable as misdemeanors under applicable law.

BE IT FURTHER RESOLVED that the City Council Rules of Procedure and Order are amended to include a new Appendix B. Guidelines for Developing and Writing Council Agenda Items.

BE IT FURTHER RESOLVED that such guidelines constitute suggestions but not requirements for items submitted to the agenda for consideration by the City Council.

BE IT FURTHER RESOLVED that preceding amendatory Resolutions 68,362-N.S. and 68,383-N.S. are hereby rescinded.

Exhibits

A: City Council Rules of Procedure and Order

# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. XX,XXX–N.S.  
Effective  
January 29, 2019

## Table of Contents

|             |                                                                                       |           |
|-------------|---------------------------------------------------------------------------------------|-----------|
| <b>I.</b>   | <b>DUTIES .....</b>                                                                   | <b>4</b>  |
| A.          | Duties of Mayor .....                                                                 | 4         |
| B.          | Duties of Councilmembers .....                                                        | 4         |
| C.          | Motions to be Stated by Chair .....                                                   | 4         |
| D.          | Decorum by Councilmembers .....                                                       | 4         |
| E.          | Voting Disqualification .....                                                         | 4         |
| F.          | Requests for Technical Assistance and/or Reports .....                                | 5         |
| G.          | City Council Policy for Naming and Renaming Public Facilities .....                   | 5         |
| <b>II.</b>  | <b>MEETINGS.....</b>                                                                  | <b>6</b>  |
| A.          | Call to Order - Presiding Officer .....                                               | 6         |
| B.          | Roll Call .....                                                                       | 6         |
| C.          | Quorum Call .....                                                                     | 6         |
| D.          | Council Meeting Schedule.....                                                         | 6         |
| E.          | Adjournment .....                                                                     | 7         |
| G.          | City Council Recess Periods .....                                                     | 7         |
| H.          | Pledge of Allegiance to the Flag.....                                                 | 8         |
| I.          | Ad Hoc Subcommittees .....                                                            | 8         |
| <b>III.</b> | <b>AGENDA.....</b>                                                                    | <b>9</b>  |
| A.          | Declaration of Policy.....                                                            | 9         |
| B.          | Definitions.....                                                                      | 9         |
| C.          | Procedure for Bringing Matters Before City Council.....                               | 10        |
| D.          | Packet Preparation and Posting.....                                                   | 14        |
| E.          | Agenda Sequence and Order of Business .....                                           | 15        |
| F.          | Closed Session Documents .....                                                        | 16        |
| <b>IV.</b>  | <b>CONDUCT OF MEETING .....</b>                                                       | <b>17</b> |
| A.          | Comments from the Public .....                                                        | 17        |
| B.          | Consent Calendar .....                                                                | 19        |
| C.          | Information Reports Called Up for Discussion .....                                    | 20        |
| D.          | Communications.....                                                                   | 20        |
| E.          | Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance<br>Matters ..... | 20        |
| F.          | Work Sessions .....                                                                   | 21        |
| G.          | Public Discussions .....                                                              | 21        |
| H.          | Protocol .....                                                                        | 21        |
| <b>V.</b>   | <b>PROCEDURAL MATTERS.....</b>                                                        | <b>23</b> |
| A.          | Persons Authorized to Sit at Tables .....                                             | 23        |
| B.          | Decorum.....                                                                          | 23        |
| C.          | Enforcement of Decorum .....                                                          | 23        |
| D.          | Precedence of Motions.....                                                            | 23        |
| E.          | Roberts Rules of Order .....                                                          | 24        |
| F.          | Rules of Debate.....                                                                  | 24        |
| G.          | Debate Limited .....                                                                  | 25        |
| H.          | Motion to Lay on Table.....                                                           | 25        |
| I.          | Division of Question .....                                                            | 25        |
| J.          | Addressing the Council .....                                                          | 25        |
| K.          | Addressing the Council After Motion Made .....                                        | 26        |

---

|                                                                                     |                                                 |           |
|-------------------------------------------------------------------------------------|-------------------------------------------------|-----------|
| <b>VI.</b>                                                                          | <b>FACILITIES</b> .....                         | <b>27</b> |
| A.                                                                                  | Council Chamber Capacity .....                  | 27        |
| B.                                                                                  | Alternate Facilities for Council Meetings ..... | 27        |
| C.                                                                                  | Signs, Objects, and Symbolic Materials .....    | 27        |
| D.                                                                                  | Fire Safety .....                               | 27        |
| E.                                                                                  | Overcrowding .....                              | 27        |
| <b>APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES</b> .....           |                                                 | <b>28</b> |
| <b>APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS</b> ..... |                                                 | <b>31</b> |



**I. DUTIES****A. Duties of Mayor**

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order.

**B. Duties of Councilmembers**

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

**C. Motions to be Stated by Chair**

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

**D. Decorum by Councilmembers**

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

**E. Voting Disqualification**

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate

and vote on such matter, but shall request and be given the presiding officer's permission to absent themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

**G. City Council Policy for Naming and Renaming Public Facilities**

The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.

**II. MEETINGS****A. Call to Order - Presiding Officer**

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair at the conclusion of the business presently before the Council. In the absence of the two officers specified in this section, the council member present with the longest period of Council service shall preside.

**B. Roll Call**

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

**C. Quorum Call**

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

**D. Council Meeting Schedule**

The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. Items removed from the Consent Calendar will be moved to the Action Calendar. The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Upon request by any council member, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by any council member, a council member may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the Agenda Committee, in conjunction with the staff, will schedule a special meeting

exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. No Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the Agenda Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Recess Periods**

A recess period is defined as a period of time longer than 21 days without a regular or special meeting of the Council.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the Agenda Committee meeting for the last regular meeting before a Council recess and this authority shall extend through the deadline for submission of staff reports for the first meeting after the Council recess.

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the program will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council members may become members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from the residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in public and in accessible locations that are open to the public. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Certain requirements listed above may not apply to ad hoc subcommittees seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items carried over.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by any council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if a council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.
2. Agenda items shall contain all relevant documentation, including the following as applicable:
  - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c) Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d) Fiscal impacts of the recommendation;
  - e) A description of the current situation and its effects;
  - f) Background information as needed;
  - g) Rationale for recommendation;
  - h) Alternative actions considered;
  - i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);

- j) Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.
3. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
4. "Packet" means the agenda plus all its corresponding duplicated agenda items.
5. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
- a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
6. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, as uncompleted items.
7. "Old Business" Items carried over from a prior agenda of a meeting as uncompleted items.

### **C. Procedure for Bringing Matters Before City Council**

#### **1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by any council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by an Agenda Committee, which shall be a standing committee of the City Council. The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.

The Agenda Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. The Agenda Committee packet, including a draft agenda and Councilmember and Commission

reports shall be distributed by 5:00 p.m. 4 days before the Agenda Committee meeting.

The Agenda Committee shall have the powers set forth below.

- a) **Items Authored by a Councilmember or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the Agenda Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a “referred” item must inform the City Clerk within 24 hours of the adjournment of the Agenda Committee whether he or she prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the Agenda Committee for the Council agenda under consideration.

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the Agenda Committee’s adjournment, the recommendation of the Agenda Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.

For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading “Referred Items”. The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.

Reason 1 – Significant Lack of Background or Supporting Information

Reason 2 – Significant Grammatical or Readability Issues

- b) **Items Authored by the City Manager.** The Agenda Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.



If the City Manager determines that the matter should proceed notwithstanding the Agenda Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the referral recommendation of the Agenda Committee or revised items that have not been resubmitted to the Agenda Committee will automatically be placed on the Action Calendar.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the Agenda Committee.
- i) For a commission item that does not require a companion report from the City Manager, the Agenda Committee may act on an agendized commission report in the following manner:
1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
  2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
  3. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the Agenda Committee will schedule the item on a Council agenda for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the Agenda Committee. A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The Agenda Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E of the Rules of Procedures and Order.

## 2. **Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

## 3. **Submission of Agenda Items.**

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from

departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the Agenda Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

#### 4. **Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that

the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation.

- b) After 5:00 p.m. seven calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

#### 5. **Scheduling a Presentation.**

Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.

The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.

### **D. Packet Preparation and Posting**

#### 1. **Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. Reports carried over, as Continued Business or Old Business need not be reproduced again.

#### 2. **Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.

- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which support materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

The Council agenda for a regular business meeting is to be arranged in the following order:

- 1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Public Comment)
- 2. Consent Calendar
- 3. Action Calendar
  - a) Appeals
  - b) Public Hearings

- c) Continued Business
  - d) Old Business
  - e) New Business
  - f) Referred Items
4. Information Reports
  5. Communications
  6. Adjournment

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

The Agenda Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

#### **F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

## IV. CONDUCT OF MEETING

### A. Comments from the Public

Public comment will be taken in the following order:

- An initial ten-minute period of public comment on non-agenda items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- Public comment on the Consent and Information Calendars.
- Public comment on action items, appeals and or public hearings as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of non-agenda public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall stand, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry.

#### 1. Public Comment on Consent Calendar and Information Items.

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

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, 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.

**2. Public Comment on Action Items.**

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

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.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

**3. Appeals Appearing on Action Calendar.**

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

**4. Public Comment on Non Agenda Matters.**

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

According to the current Rules and Procedures, no Council meeting shall continue past 11:00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00 p.m., it will be referred to the Agenda Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

**5. Ralph M. Brown Act Pertaining to Public Comments.**

The "Brown Act" prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.



It is the policy of the Council that councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of any council member shall be added to the appropriate section of Reports for Action and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of any council member a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications."

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. A council member may refer a communication to staff for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants collectively shall have five

minutes to comment and the applicant shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

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

#### **F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

#### **G. Public Discussions**

The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.

#### **H. Protocol**

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor

shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a council member except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and
9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to adjourn, amend, or substitute, shall be put to a vote without debate.

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall supercede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only on the day such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made and seconded by one of the prevailing sides, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. Except as provided in Section V.F.b hereof, consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of Good of the City; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph a.1 hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any council member to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any council member may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in subparagraph a.1 hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

Any person desiring to address the Council shall first secure the permission of the presiding officer to do so. Under the following headings of business, unless the presiding officer rules otherwise, any qualified and interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Interested parties or their authorized representatives may address the Council by written communications in regard to matters of concern to them.

Communications pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.

Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than a council member shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI. FACILITIES

### A. Council Chamber Capacity

Council Chamber attendance shall be limited to the posted seating capacity thereof. Entrance to the City Hall will be appropriately regulated by the City Manager on occasions when the Council Chamber capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the Council Chamber except to address the Council, and sitting on the floor shall not be permitted. The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the City Council Chambers.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the City Council Chambers and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the City Council Chambers.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the Council Chamber during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the Council Chambers have reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.



## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

- A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the ‘Lead Commissions’ in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City’s policy on naming of public facilities, for that commission’s review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

## Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Summary Statement/Current situation and its effects
5. Background
6. Review of Existing Plans, Programs, Policies and Laws
7. Actions/Alternatives Considered
8. Consultation/Outreach Overview and Results
9. Rationale for Recommendation
10. Implementation, Administration and Enforcement
11. Environmental Sustainability
12. Fiscal Impacts
13. Outcomes and Evaluation
14. Contact Information
15. Attachments/Supporting Materials

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**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**





Lori Droste  
Berkeley City Councilmember, District 8

Consent Calendar  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Lori Droste, Councilmember Susan Wengraf,  
Councilmember Kesarwani, and Councilmember Hahn  
Subject: Support for SB 24 (Public University Student Health Centers)

**Recommendation:**

That the Berkeley City Council send a letter supporting SB 24, which will require student health care centers on California State University and University of California campuses to offer abortion by medication techniques by 2023.

**Financial Implications:**

None.

**Background:**

Currently, none of the student health centers at California's public universities provide medication abortion services. The College Student Right to Access Act would require all on-campus student health centers at public universities to offer medication abortion for students by January 1, 2023.

This bill will create a special fund, administered by the California Commission on the Status of Women and Girls, to provide grants of \$200,000 to each on-campus student health center for the training and equipment to prepare them to provide abortion by medication techniques.

This bill will require public university student health centers to participate in an extensive evaluation and participate in efforts to ensure their centers receive the third-party reimbursements already available for medication abortion.

All students, particularly those at campuses located in rural areas, should be able to access abortion by medication and care if they so wish. Abortion by medication techniques are extremely safe, highly effective, and cost effective. They are an essential part of comprehensive

sexual and reproductive health care, and should be accessible at on-campus student health centers.

**Environmental Sustainability:**

No impact.

**Contact Person:**

Councilmember Lori Droste    Council District 8    510-981-7180

**Attachment 1: Draft letter of support**

The Honorable Connie Leyva  
State Capitol, Room 4061  
Sacramento, CA 95814

Re: SB 24 (Leyva) - Public University Student Health Centers

Dear Senator Leyva,

Berkeley City Council writes in full support for SB 24. SB 24 would enable students at a California State University and a University of California to access abortion by medication at campus health clinics, including at UC Berkeley.

The cost and travel time associated with seeking abortion by medication can be a challenge for students, especially those on rural campuses. This bill would ensure greater access to those services and care. Abortion by medication is an essential part of reproductive care, and should be made available to students at these public institutions.

Respectfully,  
Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks

SENATE BILL

No. 24

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**Introduced by Senator Leyva**

(Principal coauthor: Assembly Member Carrillo)

**(Coauthors: Senators Atkins, Beall, Dodd, Hill, Jackson, Skinner,  
Stern, Umberg, and Wiener)**

December 3, 2018

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An act to add Chapter 5.5 (commencing with Section 99250) to Part 65 of Division 14 of Title 3 of the Education Code, relating to public health, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as introduced, Leyva. Public health: public university student health centers: abortion by medication techniques.

Existing law establishes the University of California, under the administration of the Regents of the University of California, and the California State University, under the administration of the Trustees of the California State University, as 2 of the segments of public postsecondary education in this state.

This bill would express findings and declarations of the Legislature relating to the availability of abortion by medication techniques at on-campus student health centers at public postsecondary educational institutions in the state.

The bill would require, on and after January 1, 2023, each student health care services clinic on a California State University or University of California campus to offer abortion by medication techniques, as specified. The bill would require the Commission on the Status of Women and Girls to administer the College Student Health Center Sexual and Reproductive Health Preparation Fund, which the bill would establish. The bill would continuously appropriate the moneys in that fund to the commission for grants to these student health care clinics

for specified activities in preparation for providing abortion by medication techniques, thereby making an appropriation. The bill would provide that its requirements would be implemented only if, and to the extent that, a total of at least \$10,290,000 in private moneys is made available to the fund in a timely manner on or after January 1, 2020.

The bill would require the commission to submit a report to the Legislature, on or before December 31, 2021, and on or before December 31 of every year thereafter, until December 31, 2026, that includes, but is not necessarily limited to, specified information relating to abortion by medication techniques at these student health clinics.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Abortion care is a constitutional right and an integral part
- 4 of comprehensive sexual and reproductive health care.
- 5 (b) More than 400,000 students classified as female are educated
- 6 at California’s public university campuses, and it is central to the
- 7 mission of California’s public university student health centers to
- 8 minimize the negative impact of health concerns on students’
- 9 studies and to facilitate retention and graduation.
- 10 (c) The state has an interest in ensuring that every pregnant
- 11 person in California who wants to have an abortion can obtain
- 12 access to that care as easily and as early in pregnancy as possible.
- 13 When pregnant young people decide that abortion is the best option
- 14 for them, having early, accessible care can help them stay on track
- 15 to achieve their educational and other aspirational life plans.
- 16 (d) All California public university campuses have on-campus
- 17 student health centers, but none of these health centers currently
- 18 provide abortion by medication techniques. Abortion by medication
- 19 techniques is extremely safe, highly effective, and cost effective.
- 20 Abortion by medication techniques is an essential part of
- 21 comprehensive sexual and reproductive health care, and should
- 22 be accessible at on-campus student health centers.
- 23 (e) Staff at on-campus student health centers include health
- 24 professionals who are licensed to provide abortion by medication
- 25 techniques. Under current California law, all residency programs

1 in obstetrics and gynecology include training in abortion.  
 2 Physicians, nurse practitioners, physician assistants, and certified  
 3 nurse-midwives are legally authorized to perform abortions by  
 4 medication techniques. Any clinician legally authorized to provide  
 5 abortion, but not currently trained to provide abortion by  
 6 medication techniques, can be trained inexpensively to do so, and  
 7 such training falls within the requirements of continuing education  
 8 for medical providers.

9 (f) The National Academies of Sciences, Engineering, and  
 10 Medicine have found that prescribing abortion by medication  
 11 techniques is no different from prescribing other medications, and  
 12 have also found that the risks of providing abortion by medication  
 13 techniques, including via telehealth, are low and similar to the  
 14 risks of serious adverse effects of taking commonly used  
 15 prescription and over-the-counter medications.

16 (g) Students seeking early pregnancy termination, especially  
 17 those enrolled at institutions outside of major urban centers, face  
 18 prohibitively expensive travel, often without reliable means of  
 19 transportation, to a clinic that may require hours of travel from  
 20 their campus, out of their city, county, or even geographic region.  
 21 These financial and time burdens negatively impact academic  
 22 performance and mental health.

23 (h) California law recognizes abortion as a basic health service  
 24 that must be covered by Medi-Cal and by private, managed care  
 25 insurance plans regulated by the state.

26 (i) It is the intent of the Legislature that public university student  
 27 health centers make abortion by medication techniques as  
 28 accessible and cost-effective for students as possible, and thus  
 29 public university student health centers should treat abortion by  
 30 medication techniques as a basic health service.

31 SEC. 2. Chapter 5.5 (commencing with Section 99250) is added  
 32 to Part 65 of Division 14 of Title 3 of the Education Code, to read:

33  
 34 CHAPTER 5.5. STUDENT HEALTH CARE SERVICES

35  
 36 99250. For the purposes of this chapter, the following  
 37 definitions apply:

38 (a) "Commission" means the Commission on the Status of  
 39 Women and Girls established by Section 8241 of the Government  
 40 Code.

1 (b) “Fund” means the College Student Health Center Sexual  
2 and Reproductive Health Preparation Fund established by Section  
3 99251.

4 (c) “Grantee” means any qualifying student health center at a  
5 public college or university.

6 (d) “Medication abortion readiness” includes, but is not limited  
7 to, assessment of each individual clinic to determine facility and  
8 training needs before beginning to provide abortion by medication  
9 techniques, purchasing equipment, making facility improvements,  
10 establishing clinical protocols, creating patient educational  
11 materials, and training staff. “Medication abortion readiness” does  
12 not include the provision of abortion by medication techniques.

13 (e) “Public university student health center” means a clinic  
14 providing primary health care services to students that is located  
15 on the campus of a university within the University of California  
16 or California State University systems.

17 99251. (a) On and after January 1, 2023, each public university  
18 student health center shall offer abortion by medication techniques  
19 onsite. This service may be performed by providers on staff at the  
20 student health center or by providers associated with a contracted  
21 external agency.

22 (b) (1) The commission shall administer the College Student  
23 Health Center Sexual and Reproductive Health Preparation Fund,  
24 which is established by this chapter for the purposes of providing  
25 private moneys in the form of grants to public university student  
26 health centers for medication abortion readiness. Notwithstanding  
27 any other law, the commission is authorized to receive moneys  
28 from nonstate entities, including, but not necessarily limited to,  
29 private sector entities and local and federal government agencies,  
30 and deposit these moneys in the fund.

31 (2) Notwithstanding Section 13340 of the Government Code,  
32 the moneys in the fund are continuously appropriated to the  
33 commission for allocation for purposes of this subdivision.

34 (3) The commission shall utilize fund moneys to do all of the  
35 following:

36 (A) Provide a grant of two hundred thousand dollars (\$200,000)  
37 to each public university student health center to pay for the cost,  
38 both direct and indirect, of medication abortion readiness.  
39 Allowable expenses under these grants include, but are not limited  
40 to, all of the following:

- 1 (i) Purchase of equipment used in the provision of abortion by  
2 medication techniques.
- 3 (ii) Facility and security upgrades.
- 4 (iii) Costs associated with enabling the campus health center to  
5 deliver telehealth services.
- 6 (iv) Costs associated with training staff in the provision of  
7 abortion by medication techniques.
- 8 (v) Staff cost reimbursement and clinical revenue offset while  
9 staff are in trainings.
- 10 (B) Provide a grant of two hundred thousand dollars (\$200,000)  
11 to both the University of California and the California State  
12 University, to pay for the cost, both direct and indirect, of the  
13 following, for each university system:
- 14 (i) Providing 24-hour, backup medical support by telephone to  
15 patients who have obtained abortion by medication techniques at  
16 a public university student health center.
- 17 (ii) One-time fees associated with establishing a corporate  
18 account to provide telehealth services.
- 19 (iii) Billing specialist consultation.
- 20 (C) Paying itself for the costs, both direct and indirect, associated  
21 with administration of the fund, including the costs of hiring staff  
22 and the costs of reporting to the Legislature, not to exceed three  
23 million ninety thousand dollars (\$3,090,000).
- 24 (D) Maintaining a system of financial reporting on all aspects  
25 of the fund.
- 26 (4) Each public university student health center grantee shall,  
27 as a condition of receiving a grant award from the fund, participate  
28 in an evaluation of its medication abortion readiness and its  
29 provision of abortion by medication techniques.
- 30 (5) The requirements of this chapter shall be implemented only  
31 if, and to the extent that, a total of at least ten million two hundred  
32 ninety thousand dollars (\$10,290,000) in private funds is made  
33 available to the fund in a timely manner on or after January 1,  
34 2020.
- 35 (6) Nothing in this chapter shall be interpreted as requiring a  
36 public university to utilize General Fund moneys or student fees  
37 for medication abortion readiness before January 1, 2023.
- 38 (c) The commission, working with the public university student  
39 health centers, shall assist and advise on potential pathways for  
40 their student health centers to access public and private payers to

1 provide funding for ongoing costs of providing abortion by  
2 medication techniques.

3 (d) (1) On or before December 31, 2021, and on or before  
4 December 31 of each year thereafter until December 31, 2026, the  
5 commission shall submit a report to the Legislature that includes,  
6 but is not necessarily limited to, all of the following information  
7 for each reporting period, separately for the University of California  
8 and the California State University:

9 (A) The number of student health centers that provide abortion  
10 by medication techniques.

11 (B) The number of abortions by medication techniques  
12 performed at student health centers, disaggregated, to the extent  
13 possible, by student health center.

14 (C) The total amount of funds granted by the commission to the  
15 university and the university's student health centers that is  
16 expended on medication abortion readiness, and, separately, the  
17 total amount of any other funds expended on medication abortion  
18 readiness and the source of those funds, disaggregated by function  
19 and, to the extent possible, disaggregated by student health center.

20 (D) The total amount of funds expended on the provision of  
21 abortion by medication techniques and the source of those funds,  
22 disaggregated by function and, to the extent possible, disaggregated  
23 by student health center.

24 (2) The report required in paragraph (1), and any associated  
25 data collection, shall be conducted in accordance with state and  
26 federal privacy law, including, but not necessarily limited to, the  
27 state Confidentiality of Medical Information Act (Part 2.6  
28 commencing with Section 56) of Division 1 of the Civil Code),  
29 the federal Family Educational Rights and Privacy Act of 1974  
30 (20 U.S.C. Sec. 1232g), and the federal Health Insurance Portability  
31 and Accountability Act of 1996 (Public Law 104-191).

32 (3) The requirement for submitting reports under paragraph (1)  
33 shall become inoperative on January 1, 2027, pursuant to Section  
34 10231.5 of the Government Code.

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Lori Droste  
Berkeley City Councilmember, District 8

Consent Calendar  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Lori Droste, Sophie Hahn, Rashi Kesarwani and Ben Bartlett  
Subject: Support for SB 42 (Getting Home Safe Act)

**Recommendation:**

That the Berkeley City Council send a letter supporting SB 42, the Getting Home Safe Act, which would address dangerous, late night releases from county jails.

**Financial Implications:**

None.

**Background:**

This bill would not permit county jails to involuntarily hold someone beyond their release time, but would require that those scheduled to be released after business hours or sunset (whichever is later) be given the option to remain in the facility until the following day. If they decline, they must be provided a safe place to wait for pickup and/or free transportation to a location of their choice within the county or a 100-mile radius.

SB 42 would also create a Late Night Release Prevention Task Force to oversee implementation and progress of this Act. The bill would also ensure that people released from jail would have access to a phone charger and allowed three calls.

Senator Skinner proposed SB 42 in response to the tragic death of one of her constituents, Jessica St. Louis, who was released from Alameda County's Santa Rita Jail at 1:25 in the morning on July 28th, 2018.

Jessica St. Louis was released from Santa Rita Jail with nothing more than a BART card—even though the nearest BART station was over a mile away and wouldn't open for over four hours. At the time of her release Jessica did not have a working cell phone to contact friends or family in order to secure a safe place to go after her release. Just before sunrise, Jessica was found lifeless in front of the Dublin/Pleasanton BART station.

**Environmental Sustainability:**

No impact.

**Contact Person:**

Councilmember Lori Droste    Council District 8    510-981-7180

**Attachment 1: Draft letter of support**

The Honorable Nancy Skinner  
Member of the Senate  
State Capitol, Room 2059  
Sacramento, CA 95814

Re:    SB 42 (Skinner) – The Getting Home Safe Act

Dear Senator Skinner,

Berkeley City Council writes in full support for SB 42. SB 42 seeks to address dangerous, late night releases from county jails.

Specifically, SB 42 would require that people scheduled to be released from jail after business hours or sunset (whichever is later) be given the option to remain in the facility until the following day. If they decline, they must be provided a safe place to wait for pickup and/or free transportation to a location of their choice within the county or a 100-mile radius. It would also require the creation of a Task Force to oversee the implementation of this Act, and require that people released from jail have access to phone chargers and the ability to make three calls prior to leaving to assist them in coordinating their release.

It's important to ensure that people who complete their jail sentences can return home safely and easily. SB 42 would address many of the logistical challenges that make traveling home difficult.

Respectfully,  
Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks

**Introduced by Senator Skinner**

December 3, 2018

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An act to amend and repeal Section 4024 of, and to add Sections 4024.5 and 4024.6 to, the Penal Code, relating to jails.

LEGISLATIVE COUNSEL'S DIGEST

SB 42, as introduced, Skinner. The Getting Home Safe Act.

Existing law authorizes a county sheriff to discharge a person from a county jail at any time on the last day that the person may be confined that the sheriff considers to be in the best interests of that person. Existing law additionally authorizes a sheriff to offer a voluntary program to a person, upon completion of a sentence served or a release ordered by the court to be effected the same day, that would allow the person to stay in jail for up to 16 additional hours or until normal business hours, whichever is shorter, in order to offer the person the ability to be discharged to a treatment center or during daytime hours, as specified. Existing law authorizes the person to revoke his or her consent and be discharged as soon as possible and practicable. Existing law requires a sheriff offering this program to, whenever possible, allow the person to make a telephone call to arrange for transportation or to notify his or her bail agent, as specified.

This bill would make these provisions inoperative on June 1, 2020, and would repeal it as of January 1, 2021.

The bill, beginning June 1, 2020, would instead require the sheriff to make the release standards, release processes, and release schedules of a county jail available to the public and to incarcerated persons, as specified. The bill would provide a person with the right to request that, upon his or her release from a county jail, he or she be assisted in entering a drug or alcohol rehabilitation program, and would require

the county jail to provide or arrange transportation directly from jail to a rehabilitation program or hospital free of charge immediately upon release from jail. The bill would also require a person scheduled to be released from jail between the hours of 8 a.m. and 5 p.m. or sundown, whichever is later, to be released during that time. The bill would require the sheriff to offer a person scheduled to be released from jail between the hours of 5 p.m. or sundown, whichever is later, and 8 a.m. the option to voluntarily stay in jail for up to 16 additional hours or until normal business hours, as specified. The bill would require the person, if he or she declines this option, to be provided the opportunity to choose from specified alternatives, such as free transportation to a location of the person's choosing within the county or within a 100-mile radius, whichever is further. The bill would also require a person who is released from jail after being incarcerated for more than 30 days to be provided with at least 3 days' supply of any necessary medication. Because this bill would impose new duties on sheriffs and county jails, it would impose a state-mandated local program. The bill would authorize a violation of the rights described in these provisions to be submitted to the Board of State and Community Corrections, Ombudsman. The bill would require the board to convene a stakeholder group that includes women and girls who have been incarcerated to aid in developing protocols for receiving and responding to reports of violations of these provisions.

The bill would also require the Board of State and Community Corrections to establish the Late-Night Release Prevention Task Force. The bill would require the task force to be composed of relevant stakeholders, including women and children who have been incarcerated, and would require the task force, among other duties, to submit a report on January 1, 2022, to the relevant policy and budget committees of the Legislature about the progress made by the task force in implementing these provisions and make suggestions for any additional legislation necessary to prevent dangerous late-night releases at county jails throughout California.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Women of color are more commonly criminalized for
- 4 noncriminal behavior than other demographic groups and are
- 5 treated like perpetrators when they call for help or are suffering a
- 6 crisis.
- 7 (2) The overrepresentation of women of color in our county
- 8 jails is evidence of these injustices and the disregard with which
- 9 they are discharged from county jails only worsens the harm they
- 10 experience as a result.
- 11 (3) Despite legislation passed and signed in 2014 that allowed
- 12 county jails to voluntarily participate in a program that would
- 13 reduce the number of late-night releases throughout California,
- 14 few jails have changed their release policy and, instead, jails
- 15 continue to regularly release jailed persons during late-night hours.
- 16 (4) The lack of free phone services available to people during
- 17 detention and the inability to charge personal cell phones upon
- 18 release exacerbates the danger of late-night releases.
- 19 (5) This practice is especially dangerous for women, including
- 20 transgender women, who become targets for physical abuse, sexual
- 21 abuse, and sex trafficking from predators who are familiar with
- 22 county jail late-night release practices.
- 23 (6) The release of people from a county jail during late-night
- 24 hours is not only dangerous for the person being released but also
- 25 for the public health and safety of the community at large.
- 26 (7) Persons who suffer from mental illness or substance
- 27 addiction are far less likely to be able to access immediate
- 28 treatment services following a late-night release from county jail.
- 29 (8) Intentional or not, these release policies are cruel and fail
- 30 to acknowledge the often significant lived trauma that people,
- 31 especially women, who are involved in the criminal justice system
- 32 have experienced.
- 33 (9) There is no recidivism prevention or public safety purpose
- 34 of county jail late-night release policies that would substantiate
- 35 the need for counties to maintain them. In fact, the lack of access

1 to essential reentry, family reunification, and transportation services  
2 means these late-night release policies work contrary to  
3 crime-prevention goals.

4 (10) Throughout California, women impacted by these late-night  
5 release policies have been thwarted in their efforts to end this  
6 practice, indicating that a statewide solution is needed.

7 (b) It is the intent of the Legislature to ensure that people are  
8 released with expediency from county jails with conditions that  
9 protect their health and maximize the likelihood of their success  
10 in preventing rearrest by establishing a statewide release standard  
11 for county jails to follow.

12 SEC. 2. Section 4024 of the Penal Code is amended to read:

13 4024. (a) The sheriff may discharge any prisoner from the  
14 county jail at such time on the last day such prisoner may be  
15 confined as the sheriff shall consider to be in the best interests of  
16 the prisoner.

17 (b) (1) Upon completion of a sentence served by a prisoner or  
18 the release of a prisoner ordered by the court to be effected the  
19 same day, including prisoners who are released on their own  
20 recognizance, have their charges dismissed by the court, are  
21 acquitted by a jury, are cited and released on a misdemeanor  
22 charge, have posted bail, or have the charges against them dropped  
23 by the prosecutor, the sheriff may offer a voluntary program to the  
24 prisoner that would allow that prisoner to stay in the custody  
25 facility for up to 16 additional hours or until normal business hours,  
26 whichever is shorter, in order to offer the prisoner the ability to be  
27 discharged to a treatment center or during daytime hours. The  
28 prisoner may revoke his or her consent and be discharged as soon  
29 as possible and practicable.

30 (2) This subdivision does not prevent the early release of  
31 prisoners as otherwise allowed by law or allow jails to retain  
32 prisoners any longer than otherwise required by law without the  
33 prisoner's express written consent.

34 (3) Offering this voluntary program is an act of discretion within  
35 the meaning of Section 820.2 of the Government Code.

36 (4) If a prisoner has posted bail and elects to participate in this  
37 program, he or she shall notify the bail agent as soon as possible  
38 and practicable of his or her decision to participate.

39 (5) A sheriff offering this program shall, whenever possible,  
40 allow the prisoner volunteering to participate in the program to

1 make a telephone call to either arrange for transportation, or to  
2 notify the bail agent pursuant to paragraph (4), or both.

3 (c) *This section shall become inoperative on June 1, 2020, and*  
4 *as of January 1, 2021, is repealed.*

5 SEC. 3. Section 4024.5 is added to the Penal Code, to read:

6 4024.5. (a) This section shall be known as the Getting Home  
7 Safe Act.

8 (b) The rights established in this section apply to any person  
9 being released from a county jail, including, but not limited to, a  
10 person who has completed a sentence served, been ordered by the  
11 court to be released, been released on his or her own recognizance,  
12 been released because his or her charges have been dismissed by  
13 the court, is acquitted by a jury, is cited and released on a  
14 misdemeanor charge, has posted bail, has complied with pretrial  
15 release conditions, or has had the charges dropped against him or  
16 her by the prosecutor.

17 (c) (1) A county sheriff shall make the release standards, release  
18 processes, and release schedules of a county jail available to the  
19 public and shall post them online to the sheriff’s Internet Web site.  
20 The sheriff shall also make the release standards, release processes,  
21 and release schedules of a county jail available to a person when  
22 he or she is booked into a county jail and while he or she is  
23 incarcerated in a county jail.

24 (2) The release standards shall include the list of rights  
25 enumerated in this section and the timeframe for the expedient  
26 release of a person following the determination to release that  
27 person by a judge, jury, or appropriate county staff member.

28 (d) (1) A person shall have the right to request that, upon his  
29 or her release from a county jail, he or she be assisted in entering  
30 a drug or alcohol rehabilitation program. The person shall be  
31 allowed to make this request upon, or subsequent to, being booked  
32 into a county jail.

33 (2) If the person chooses to enter a drug or alcohol rehabilitation  
34 program upon release from jail, the county jail shall provide or  
35 arrange transportation directly to a rehabilitation program or  
36 hospital free of charge immediately upon release.

37 (e) A person incarcerated in or recently released from a county  
38 jail shall have access to up to three free telephone calls from a  
39 telephone in the county jail to plan for a safe and successful release

1 and shall also have access to a free cell phone charging station  
2 upon release from jail to charge his or her personal cell phone.

3 (f) (1) A sheriff shall offer a person scheduled to be released  
4 from jail between the hours of 5 p.m. or sundown, whichever is  
5 later, and 8 a.m. the option to voluntarily stay in jail for up to 16  
6 additional hours or until normal business hours, whichever is  
7 shorter, in order to offer the person the ability to be discharged  
8 during daytime hours.

9 (2) A person shall provide his or her written consent before  
10 choosing to stay voluntarily in jail as described in paragraph (1).  
11 However, a person may revoke his or her written consent at any  
12 time and be discharged from jail as soon as possible and  
13 practicable.

14 (g) A person scheduled to be released from county jail between  
15 the hours of 8 a.m. and 5 p.m. or sundown, whichever is later, shall  
16 be released during that time. If the person is scheduled to be  
17 released from jail between the hours of 5 p.m. or sundown,  
18 whichever is later, and 8 a.m., and he or she has declined the option  
19 described in subdivision (f), he or she shall be provided the  
20 opportunity to choose from both of the following alternatives:

21 (1) A safe place to wait for a person he or she knows to pick  
22 him or her up with adequate and sufficient ability to charge his or  
23 her own personal cell phone and access to a free public telephone.

24 (2) Free transportation to a location of the person's choosing  
25 within the county or within a 100-mile radius, whichever is further.

26 (h) A person who is released from jail after being incarcerated  
27 for more than 30 days shall receive at least three days' supply of  
28 any necessary medication.

29 (i) This section does not prevent the early release of a person  
30 as otherwise allowed by law or allow a county jail to retain a person  
31 any longer than otherwise required or allowed by law without the  
32 person's express written consent.

33 (j) (1) A violation of the rights established by this act may be  
34 submitted to the Board of State and Community Corrections,  
35 Ombudsman.

36 (2) (A) For purposes of developing protocols for receiving and  
37 responding to reports of violations of the rights established by this  
38 act, the board shall convene a stakeholder group that includes  
39 women and girls who have been incarcerated to aid in this effort.



1 (B) For purposes of this paragraph, “woman” means an  
2 individual who self-identifies her gender as a woman, without  
3 regard to her designated sex at birth.

4 (k) This section shall become operative on June 1, 2020.

5 SEC. 4. Section 4024.6 is added to the Penal Code, to read:

6 4024.6. (a) (1) The Board of State and Community Corrections  
7 shall establish the Late-Night Release Prevention Task Force.

8 (2) The task force shall be composed of relevant stakeholders,  
9 including women and children who have been incarcerated.

10 (b) The task force shall do both of the following:

11 (1) Prepare any and all materials related to the implementation  
12 of the Getting Home Safe Act.

13 (2) Develop recommended requirements for county jails to  
14 maintain records that adequately document the implementation of  
15 the Getting Home Safe Act, including how these records will be  
16 maintained and made available to the public.

17 (c) (1) The task force shall submit a report on January 1, 2022,  
18 to the relevant policy and budget committees of the Legislature  
19 about the progress made by the task force in implementing this  
20 section and make suggestions for any additional legislation  
21 necessary to prevent dangerous late-night releases at county jails  
22 throughout California.

23 (2) The requirement for submitting a report imposed under  
24 paragraph (1) is inoperative on January 1, 2026, pursuant to Section  
25 10231.5 of the Government Code.

26 (d) For purposes of this section, “woman” means an individual  
27 who self-identifies her gender as a woman, without regard to her  
28 designated sex at birth.

29 SEC. 5. If the Commission on State Mandates determines that  
30 this act contains costs mandated by the state, reimbursement to  
31 local agencies and school districts for those costs shall be made  
32 pursuant to Part 7 (commencing with Section 17500) of Division  
33 4 of Title 2 of the Government Code.

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Lori Droste  
Berkeley City Councilmember, District 8

Consent Calendar  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Lori Droste and Ben Bartlett  
Subject: Support for AB 68 (Accessory Dwelling Units)

**Recommendation:**

That the Berkeley City Council send a letter supporting AB 68, Accessory Dwelling Units, authored by Assemblymember Phil Ting which seeks to streamline Accessory Dwelling Units, also known as granny flats or in-law units, in order to encourage new housing units across the state.

**Financial Implications:**

None.

**Background:**

Over the past several years, the City of Berkeley has taken several steps to streamline the process of building ADUs.

AB 68 would further streamline the ADU building process by:

- Requiring permits to be issued in 60 days, rather than the 120 days in existing law;
- Prohibiting a local ordinance that applies lot coverage, lot size, or floor area ratio requirements to ADUs;
- Eliminating the requirement that off-street parking spaces be replaced if a garage is converted to an ADU;
- Specifying that local agencies requiring Owner-Occupancy for the primary unit must exempt trust and non-profit “owners” providing for lower income, senior, or disabled residents;
- Prohibiting local agencies from requiring that existing zoning nonconforming conditions be corrected as part of the ministerial approval process; and
- Prohibiting ministerially-approved ADUs from being used as short-term rentals.
- Allowing ministerial approval for:
  - Both a JADU and an ADU within an existing space
  - An ADU that is new construction of up to 800 sq. ft. and no taller than 16 ft.
  - ADUs in multi-family building areas not currently used as livable space

ADUs, also referred to as secondary units, in-law suites, or granny flats, are smaller, independent units on the same lot as a single or multi family home. Studies show that ADUs cost less to both build and rent, making them an affordable and eco-friendly source of new housing. For example, utilities cost less for those living in ADUs due to greater energy efficiency. ADUs utilize existing space on lots and maximize land use to minimize impacts on growing communities. The smaller size of ADUs allows them to be built faster and be on the market sooner. Residents will have greater choice in where they want to live as ADUs present more affordable options in neighborhoods.

Recent state efforts to incentivize the construction of ADUs have resulted in more communities and families building ADUs as a cost efficient way to address the affordable housing crisis. By further streamlining the construction process, this legislation will help add thousands of new units to California's housing stock.

**Environmental Sustainability:** No impact

**Contact Person:**

Councilmember Lori Droste    Council District 8    510-981-7180

**Attachment 1: Draft Letter of Support**

December 20, 2018

The Honorable Assemblymember Phil Ting  
California State Assembly  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249

RE: Assembly Bill 68 (Ting) – Accessory Dwelling Units - Streamlining - SUPPORT

Dear Assemblymember Ting,

Berkeley City Council is pleased to support AB 68, which will help address California's housing crisis by easing barriers to the construction of accessory dwelling units (ADUs). Over the past several years, the City of Berkeley has taken several steps to streamline the process of building ADUs and this bill further those goals.

ADUs, also referred to as secondary units, in-law suites, or granny flats, are smaller, independent units on the same lot as a single or multi family home. Studies show that ADUs cost less to both build and rent, making them an affordable and eco-friendly source of new housing. For example, utilities cost less for those living in ADUs due to greater energy efficiency. ADUs utilize existing space on lots and maximize land use to minimize impacts on

growing communities. The smaller size of ADUs allows them to be built faster and be on the market sooner. Residents will have greater choice in where they want to live as ADUs present more affordable options in neighborhoods.

Recent state efforts to incentivize the construction of ADUs have resulted in more communities and families building ADUs as a cost efficient way to address the affordable housing crisis. By further streamlining the construction process, this legislation will help add thousands of new units to California's housing stock. For these reasons and more, Berkeley City Council is proud to support AB 68.

Sincerely,  
Berkeley City Council

CC: Assemblymember Buffy Wicks  
Senator Nancy Skinner

**ASSEMBLY BILL**

**No. 68**

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**Introduced by Assembly Member Ting**  
**(Coauthor: Assembly Member Gloria)**  
(Coauthors: Senators Skinner and Wiener)

December 3, 2018

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An act to amend Sections 65852.2 and 65852.22 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 68, as introduced, Ting. Land use: accessory dwelling units.

The Planning and Zoning Law authorizes a local agency to provide, by ordinance, for the creation of accessory dwelling units in single-family and multifamily residential zones and sets forth required ordinance standards, including, among others, maximum unit size, parking, and height standards.

This bill would prohibit an ordinance from imposing requirements on minimum lot size, lot coverage, or floor area ratio, and would prohibit an ordinance from establishing size requirements for accessory dwelling units that do not permit at least an 800 square foot unit of at least 16 feet in height to be constructed.

Existing law requires a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit within 120 days of receiving the application.

This bill would instead require a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit permit within 60 days of receipt.

AB 68

— 2 —

Existing law requires ministerial approval of a permit to create one accessory dwelling unit within a single-family dwelling, subject to specified conditions and requirements.

This bill would require ministerial approval of an application for a permit to create one or more accessory dwelling units or junior accessory dwelling units on a single-family dwelling or multifamily dwelling, subject to specified conditions and requirements.

Existing law authorizes a local agency ordinance for accessory dwelling units to require that a permit applicant be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

This bill would provide that, if a local agency imposes an owner-occupancy restriction, the monitoring for compliance shall not be more frequent than annually and be based on specified published documents. The bill would describe owner-occupant for purposes of that requirement.

Existing law authorizes a local agency to adopt an ordinance providing for the creation of junior accessory dwelling units in single-family residential zones, and requires a local agency to ministerially approve or deny an application for a junior accessory dwelling unit within 120 days of submission of the application.

This bill would instead require a local agency to ministerially approve or deny an application for a junior accessory dwelling unit within 60 days of submission of the application. The bill would require a local agency that has not adopted an ordinance for the creation of junior accessory dwelling units to apply the same standards established by this bill for local agencies with ordinances.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65852.2 of the Government Code is
- 2 amended to read:
- 3 65852.2. (a) (1) A local agency may, by ordinance, provide
- 4 for the creation of accessory dwelling units in areas zoned to allow

1 single-family or multifamily use. The ordinance shall do all of the  
2 following:

3 (A) Designate areas within the jurisdiction of the local agency  
4 where accessory dwelling units may be permitted. The designation  
5 of areas may be based on criteria that may include, but are not  
6 limited to, the adequacy of water and sewer services and the impact  
7 of accessory dwelling units on traffic flow and public safety.

8 (B) (i) Impose standards on accessory dwelling units that  
9 include, but are not limited to, parking, height, setback, ~~lot~~  
10 ~~coverage~~, landscape, architectural review, maximum size of a unit,  
11 and standards that prevent adverse impacts on any real property  
12 that is listed in the California Register of Historic Places. *These*  
13 *standards shall not include requirements on minimum lot size, lot*  
14 *coverage, or floor area ratio.*

15 (ii) Notwithstanding clause (i), a local agency may reduce or  
16 eliminate parking requirements for any accessory dwelling unit  
17 located within its jurisdiction.

18 (C) Provide that accessory dwelling units do not exceed the  
19 allowable density for the lot upon which the accessory dwelling  
20 unit is located, and that accessory dwelling units are a residential  
21 use that is consistent with the existing general plan and zoning  
22 designation for the lot.

23 (D) Require the accessory dwelling units to comply with all of  
24 the following:

25 (i) The unit may be rented separate from the primary residence,  
26 ~~but~~ *but* may not be sold or otherwise conveyed separate from the  
27 primary residence.

28 (ii) The lot is zoned to allow single-family or multifamily use  
29 and includes a proposed or existing single-family dwelling.

30 (iii) The accessory dwelling unit is ~~either~~ attached or located  
31 within the living area of the proposed or existing primary ~~dwelling~~  
32 *dwelling, attached or located within an accessory structure,* or  
33 detached from the proposed or existing primary dwelling and  
34 located on the same lot as the proposed or existing primary  
35 dwelling.

36 (iv) The total *floor area of floorspace* of an attached accessory  
37 dwelling unit shall not exceed 50 percent of the proposed or  
38 existing primary dwelling living area or 1,200 square feet.

39 (v) The total *floor area of floorspace* for a detached accessory  
40 dwelling unit shall not exceed 1,200 square feet.



- 1 (vi) No passageway shall be required in conjunction with the  
 2 construction of an accessory dwelling unit.
- 3 (vii) No setback shall be required for an existing ~~garage living~~  
 4 *area or accessory structure or a structure constructed in the same*  
 5 *location and to the same dimensions as an existing structure* that  
 6 is converted to an accessory dwelling unit or to a portion of an  
 7 accessory dwelling unit, and a setback of no more than ~~five~~ *four*  
 8 feet from the side and rear lot lines shall be required for an  
 9 accessory dwelling unit that is ~~constructed above a garage.~~ *not*  
 10 *converted from an existing structure or a new structure constructed*  
 11 *in the same location and to the same dimensions as an existing*  
 12 *structure.*
- 13 (viii) Local building code requirements that apply to detached  
 14 dwellings, as appropriate.
- 15 (ix) Approval by the local health officer where a private sewage  
 16 disposal system is being used, if required.
- 17 (x) (I) Parking requirements for accessory dwelling units shall  
 18 not exceed one parking space per unit or per bedroom, whichever  
 19 is less. These spaces may be provided as tandem parking on a  
 20 driveway.
- 21 (II) Offstreet parking shall be permitted in setback areas in  
 22 locations determined by the local agency or through tandem  
 23 parking, unless specific findings are made that parking in setback  
 24 areas or tandem parking is not feasible based upon specific site or  
 25 regional topographical or fire and life safety conditions.
- 26 (III) This clause shall not apply to a unit that is described in  
 27 subdivision (d).
- 28 (xi) When a garage, carport, or covered parking structure is  
 29 demolished in conjunction with the construction of an accessory  
 30 dwelling unit or converted to an accessory dwelling unit, ~~and the~~  
 31 ~~local agency requires that those offstreet parking spaces be~~  
 32 ~~replaced, the replacement spaces may be located in any~~  
 33 ~~configuration on the same lot as the accessory dwelling unit,~~  
 34 ~~including, but not limited to, as covered spaces, uncovered spaces,~~  
 35 ~~or tandem spaces, or by the use of mechanical automobile parking~~  
 36 ~~lifts. This clause shall not apply to a unit that is described in~~  
 37 ~~subdivision (d).~~ *shall not require that those offstreet parking spaces*  
 38 *be replaced.*
- 39 (2) The ordinance shall not be considered in the application of  
 40 any local ordinance, policy, or program to limit residential growth.

1 (3) ~~When a local agency receives its first application on or after~~  
 2 ~~July 1, 2003, for a permit pursuant to this subdivision, the~~ *A permit*  
 3 ~~application shall be considered ministerially without discretionary~~  
 4 ~~review or a hearing, notwithstanding Section 65901 or 65906 or~~  
 5 ~~any local ordinance regulating the issuance of variances or special~~  
 6 ~~use permits, within ~~120~~ 60 days after receiving the application. A~~  
 7 ~~local agency may charge a fee to reimburse it for costs that it incurs~~  
 8 ~~as a result of amendments to this paragraph enacted during the~~  
 9 ~~2001–02 Regular Session of the Legislature, including the costs~~  
 10 ~~of adopting or amending any ordinance that provides for the~~  
 11 ~~creation of an accessory dwelling unit.~~

12 (4) An existing ordinance governing the creation of an accessory  
 13 dwelling unit by a local agency or an accessory dwelling ordinance  
 14 adopted by a local agency ~~subsequent to the effective date of the~~  
 15 ~~act adding this paragraph~~ *after January 1, 2017*, shall provide an  
 16 approval process that includes only ministerial provisions for the  
 17 approval of accessory dwelling units and shall not include any  
 18 discretionary processes, provisions, or requirements for those units,  
 19 except as otherwise provided in this subdivision. ~~In the event that~~  
 20 ~~If~~ a local agency has an existing accessory dwelling unit ordinance  
 21 that fails to meet *one or more of* the requirements of this  
 22 subdivision, that ordinance shall be null and void ~~upon the effective~~  
 23 ~~date of the act adding this paragraph~~ *to the extent of such conflict*  
 24 *on January 1, 2017*, and that agency shall thereafter apply the  
 25 *applicable standards or* standards established in this subdivision  
 26 for the approval of accessory dwelling units, unless and until the  
 27 agency ~~adopts an~~ *amends its* ordinance ~~that complies to comply~~  
 28 with this section.

29 (5) No other local ordinance, policy, or regulation shall be the  
 30 basis for the *delay or* denial of a building permit or a use permit  
 31 under this subdivision.

32 (6) This subdivision establishes the maximum standards that  
 33 local agencies shall use to evaluate a proposed accessory dwelling  
 34 unit on a lot zoned for residential use that includes a proposed or  
 35 existing single-family dwelling. No additional standards, other  
 36 than those provided in this subdivision, shall be ~~utilized~~ *used* or  
 37 imposed, except that a local agency may require an applicant for  
 38 a permit issued pursuant to this subdivision to be an  
 39 owner-occupant or that the property be used for rentals of terms  
 40 longer than 30 days. *If an ordinance imposes an owner-occupancy*

1 restriction, this restriction shall not be monitored more frequently  
 2 than annually based on published public documents that evidence  
 3 residency, including, but not limited to, a driver's license, school  
 4 registration, or a voter registration document. For purposes of  
 5 this requirement, an owner-occupant shall include any of the  
 6 following:

7 (A) An owner of the lot who occupies the primary dwelling or  
 8 the accessory dwelling unit.

9 (B) A trust in which ownership of the lot is placed if at least one  
 10 beneficiary of the trust occupies the primary dwelling or the  
 11 accessory dwelling unit.

12 (C) An organization that owns the lot in order to provide  
 13 long-term, deed-restricted affordable housing that is subject to a  
 14 regulatory agreement with a local agency.

15 (7) A local agency may amend its zoning ordinance or general  
 16 plan to incorporate the policies, procedures, or other provisions  
 17 applicable to the creation of an accessory dwelling unit if these  
 18 provisions are consistent with the limitations of this subdivision.

19 (8) An accessory dwelling unit that conforms to this subdivision  
 20 shall be deemed to be an accessory use or an accessory building  
 21 and shall not be considered to exceed the allowable density for the  
 22 lot upon which it is located, and shall be deemed to be a residential  
 23 use that is consistent with the existing general plan and zoning  
 24 designations for the lot. The accessory dwelling unit shall not be  
 25 considered in the application of any local ordinance, policy, or  
 26 program to limit residential growth.

27 (b) When a local agency that has not adopted an ordinance  
 28 governing accessory dwelling units in accordance with subdivision  
 29 (a) receives an application for a permit to create an accessory  
 30 dwelling unit pursuant to this subdivision, the local agency shall  
 31 approve or disapprove the application ministerially without  
 32 discretionary review pursuant to subdivision (a) within ~~120~~ 60  
 33 days after receiving the application.

34 (c) A local agency may establish minimum and maximum unit  
 35 size requirements for both attached and detached accessory  
 36 dwelling units. No minimum or maximum size for an accessory  
 37 dwelling unit, or size based upon a percentage of the proposed or  
 38 existing primary dwelling, shall be established by ordinance for  
 39 either attached or detached dwellings that does not permit at least  
 40 an ~~efficiency unit~~ 800 square feet accessory dwelling unit that is

1 *at least 16 feet in height* to be constructed in compliance with local  
 2 development standards. Accessory dwelling units shall not be  
 3 required to provide fire sprinklers if they are not required for the  
 4 primary residence.

5 (d) Notwithstanding any other law, a local agency, whether or  
 6 not it has adopted an ordinance governing accessory dwelling units  
 7 in accordance with subdivision (a), shall not impose parking  
 8 standards for an accessory dwelling unit in any of the following  
 9 instances:

10 (1) The accessory dwelling unit is located within one-half mile  
 11 of public transit.

12 (2) The accessory dwelling unit is located within an  
 13 architecturally and historically significant historic district.

14 (3) The accessory dwelling unit is part of the proposed or  
 15 existing primary residence or an accessory structure.

16 (4) When on-street parking permits are required but not offered  
 17 to the occupant of the accessory dwelling unit.

18 (5) When there is a car share vehicle located within one block  
 19 of the accessory dwelling unit.

20 (e) *(1)* Notwithstanding subdivisions (a) to (d), inclusive, a  
 21 local agency shall ministerially approve an application for a  
 22 building permit ~~to create within a zone for single-family use one~~  
 23 ~~accessory dwelling unit per single-family lot if the unit is contained~~  
 24 ~~within the existing space of a single-family residence or accessory~~  
 25 ~~structure, including, but not limited to, a studio, pool house, or~~  
 26 ~~other similar structure, has independent exterior access from the~~  
 27 ~~existing residence, and the side and rear setbacks are sufficient for~~  
 28 ~~fire safety. Accessory dwelling units shall not be required to~~  
 29 ~~provide fire sprinklers if they are not required for the primary~~  
 30 ~~residence. A city may require owner occupancy for either the~~  
 31 ~~primary or the accessory dwelling unit created through this process.~~  
 32 *within a residential or mixed-use zone to create any of the*  
 33 *following:*

34 (A) *One accessory dwelling unit and one junior accessory*  
 35 *dwelling unit per lot with a single-family dwelling if all of the*  
 36 *following apply:*

37 (i) *The accessory dwelling unit or junior accessory dwelling*  
 38 *unit is substantially within the existing space of a single-family*  
 39 *dwelling or accessory structure, including, but not limited to,*

- 1 *reconstruction of an existing space with substantially the same*  
2 *physical dimensions as the existing accessory structure.*
- 3 *(ii) The space has exterior access from the existing single-family*  
4 *dwelling.*
- 5 *(iii) The side and rear setbacks are sufficient for fire and safety.*
- 6 *(iv) The junior accessory dwelling unit complies with the*  
7 *requirements of Section 65852.22.*
- 8 *(B) One detached, new construction, single-story accessory*  
9 *dwelling unit that does not exceed four-foot side and rear yard*  
10 *setbacks for a lot with a single-family dwelling. The accessory*  
11 *dwelling unit may be combined with a junior accessory dwelling*  
12 *unit described in subparagraph (A). A local agency may impose*  
13 *the following conditions on the accessory dwelling unit:*
- 14 *(i) A total floor area limitation of not more than 800 square*  
15 *feet.*
- 16 *(ii) A height limitation of 16 feet.*
- 17 *(C) Multiple accessory dwelling units within the portions of*  
18 *existing multifamily dwelling structures that are not used as livable*  
19 *space, including, but not limited to, storage rooms, boiler rooms,*  
20 *passageways, attics, or garages, if each unit complies with state*  
21 *building standards for dwellings.*
- 22 *(D) Not more than two accessory dwelling units that are located*  
23 *on a lot that has an existing multifamily dwelling, but are detached*  
24 *from that multifamily dwelling and are subject to a height limit of*  
25 *16 feet and four-foot rear yard and side setbacks.*
- 26 *(2) A local agency shall not require, as a condition for*  
27 *ministerial approval, the correction of nonconforming zoning*  
28 *conditions.*
- 29 *(3) The installation of fire sprinklers shall not be required in*  
30 *an accessory dwelling unit if sprinklers are not required for the*  
31 *primary residence.*
- 32 *(4) A local agency may require owner occupancy for either the*  
33 *primary dwelling or the accessory dwelling unit on a single-family*  
34 *lot, subject to the requirements of paragraph (6) of subdivision*  
35 *(a).*
- 36 *(5) A local agency shall require that a rental of the accessory*  
37 *dwelling unit created pursuant to this subdivision be for a term*  
38 *longer than 30 days.*
- 39 *(6) Subparagraphs (C) and (D) of paragraph (1) shall not apply*  
40 *to a local agency that has adopted an ordinance by July 1, 2018,*

1 *providing for the approval of accessory dwelling units in*  
 2 *multifamily dwelling structures.*

3 (f) (1) Fees charged for the construction of accessory dwelling  
 4 units shall be determined in accordance with Chapter 5  
 5 (commencing with Section 66000) and Chapter 7 (commencing  
 6 with Section 66012).

7 (2) Accessory dwelling units shall not be considered by a local  
 8 agency, special district, or water corporation to be a new residential  
 9 use for the purposes of calculating connection fees or capacity  
 10 charges for utilities, including water and sewer service.

11 (A) For an accessory dwelling unit described in *subparagraph*  
 12 *(A) of paragraph (1) of subdivision (e)*, a local agency, special  
 13 district, or water corporation shall not require the applicant to  
 14 install a new or separate utility connection directly between the  
 15 accessory dwelling unit and the utility or impose a related  
 16 connection fee or capacity charge.

17 (B) For an accessory dwelling unit that is not described in  
 18 *subparagraph (A) of paragraph (1) of subdivision (e)*, a local  
 19 agency, special district, or water corporation may require a new  
 20 or separate utility connection directly between the accessory  
 21 dwelling unit and the utility. Consistent with Section 66013, the  
 22 connection may be subject to a connection fee or capacity charge  
 23 that shall be proportionate to the burden of the proposed accessory  
 24 dwelling unit, based upon either its size or the number of its  
 25 plumbing fixtures, upon the water or sewer system. This fee or  
 26 charge shall not exceed the reasonable cost of providing this  
 27 service.

28 (g) This section does not limit the authority of local agencies  
 29 to adopt less restrictive requirements for the creation of an  
 30 accessory dwelling unit.

31 ~~Local agencies~~ *A local agency* shall submit a copy of the  
 32 ordinance adopted pursuant to subdivision (a) to the Department  
 33 of Housing and Community Development within 60 days after  
 34 adoption. The department may review and comment on this  
 35 submitted ordinance.

36 (i) As used in this section, the following terms ~~mean~~ *apply*:

37 (1) ~~“Living area” means the interior habitable area of a dwelling~~  
 38 ~~unit including basements and attics but does not include a garage~~  
 39 ~~or any accessory structure.~~

- 1     ~~(2) “Local agency” means a city, county, or city and county,~~  
 2 ~~whether general law or chartered.~~
- 3     ~~(3) For purposes of this section, “neighborhood” has the same~~  
 4 ~~meaning as set forth in Section 65589.5.~~
- 5     ~~(4)~~
- 6     (1) “Accessory dwelling unit” means an attached or a detached  
 7 residential dwelling unit ~~which~~ *that* provides complete independent  
 8 living facilities for one or more persons. It shall include permanent  
 9 provisions for living, sleeping, eating, cooking, and sanitation on  
 10 the same parcel as the single-family dwelling is situated. An  
 11 accessory dwelling unit also includes the following:
- 12     (A) An efficiency unit, as defined in Section 17958.1 of the  
 13 Health and Safety Code.
- 14     (B) A manufactured home, as defined in Section 18007 of the  
 15 Health and Safety Code.
- 16     (2) *“Accessory structure” means an existing, fixed structure,*  
 17 *including, but not limited to, a garage, studio, pool house, or other*  
 18 *similar structure.*
- 19     (3) *“Living area” means the interior habitable area of a*  
 20 *dwelling unit, including basements and attics but does not include*  
 21 *a garage or any accessory structure.*
- 22     (4) *“Local agency” means a city, county, or city and county,*  
 23 *whether general law or chartered.*
- 24     (5) *“Nonconforming zoning condition” means a physical*  
 25 *improvement on a property that does not conform with current*  
 26 *zoning standards.*
- 27     ~~(5)~~
- 28     (6) “Passageway” means a pathway that is unobstructed clear  
 29 to the sky and extends from a street to one entrance of the accessory  
 30 dwelling unit.
- 31     ~~(6)~~
- 32     (7) “Tandem parking” means that two or more automobiles are  
 33 parked on a driveway or in any other location on a lot, lined up  
 34 behind one another.
- 35     (j) Nothing in this section shall be construed to supersede or in  
 36 any way alter or lessen the effect or application of the California  
 37 Coastal Act of 1976 (Division 20 (commencing with Section  
 38 30000) of the Public Resources Code), except that the local  
 39 government shall not be required to hold public hearings for coastal  
 40 development permit applications for accessory dwelling units.

1 SEC. 2. Section 65852.22 of the Government Code is amended  
2 to read:

3 65852.22. (a) Notwithstanding Section 65852.2, a local agency  
4 may, by ordinance, provide for the creation of junior accessory  
5 dwelling units in single-family residential zones. The ordinance  
6 may require a permit to be obtained for the creation of a junior  
7 accessory dwelling unit, and shall do all of the following:

8 (1) Limit the number of junior accessory dwelling units to one  
9 per residential lot zoned for single-family residences with a  
10 single-family residence already built on the lot.

11 (2) Require owner-occupancy in the single-family residence in  
12 which the junior accessory dwelling unit will be permitted. The  
13 owner may reside in either the remaining portion of the structure  
14 or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another  
15 governmental agency, land trust, or housing organization.

17 (3) Require the recordation of a deed restriction, which shall  
18 run with the land, shall be filed with the permitting agency, and  
19 shall include both of the following:

20 (A) A prohibition on the sale of the junior accessory dwelling  
21 unit separate from the sale of the single-family residence, including  
22 a statement that the deed restriction may be enforced against future  
23 purchasers.

24 (B) A restriction on the size and attributes of the junior accessory  
25 dwelling unit that conforms with this section.

26 (4) Require a permitted junior accessory dwelling unit to be  
27 constructed within the existing walls of the structure, and require  
28 the inclusion of an existing bedroom.

29 (5) Require a permitted junior accessory dwelling to include a  
30 separate entrance from the main entrance to the structure, with an  
31 interior entry to the main living area. A permitted junior accessory  
32 dwelling may include a second interior doorway for sound  
33 attenuation.

34 (6) Require the permitted junior accessory dwelling unit to  
35 include an efficiency kitchen, which shall include all of the  
36 following:

37 (A) A sink with a maximum waste line diameter of 1.5 inches.

38 (B) A cooking facility with appliances that do not require  
39 electrical service greater than 120 volts, or natural or propane gas.



1 (C) A food preparation counter and storage cabinets that are of  
2 reasonable size in relation to the size of the junior accessory  
3 dwelling unit.

4 (b) (1) An ordinance shall not require additional parking as a  
5 condition to grant a permit.

6 (2) This subdivision shall not be interpreted to prohibit the  
7 requirement of an inspection, including the imposition of a fee for  
8 that inspection, to determine ~~whether~~ *if* the junior accessory  
9 dwelling unit ~~is in compliance~~ *complies* with applicable building  
10 standards.

11 (c) An application for a permit pursuant to this section shall,  
12 notwithstanding Section 65901 or 65906 or any local ordinance  
13 regulating the issuance of variances or special use permits, be  
14 considered ministerially, without discretionary review or a hearing.  
15 A permit shall be issued within ~~120~~ *60* days of submission of an  
16 application for a permit pursuant to this section. A local agency  
17 may charge a fee to reimburse the local agency for costs incurred  
18 in connection with the issuance of a permit pursuant to this section.

19 (d) ~~For the~~ purposes of any fire or life protection ordinance or  
20 regulation, a junior accessory dwelling unit shall not be considered  
21 a separate or new dwelling unit. This section shall not be construed  
22 to prohibit a city, county, city and county, or other local public  
23 entity from adopting an ordinance or regulation relating to fire and  
24 life protection requirements within a single-family residence that  
25 contains a junior accessory dwelling unit so long as the ordinance  
26 or regulation applies uniformly to all single-family residences  
27 within the zone regardless of whether the single-family residence  
28 includes a junior accessory dwelling unit or not.

29 (e) ~~For the~~ purposes of providing service for water, sewer, or  
30 power, including a connection fee, a junior accessory dwelling  
31 unit shall not be considered a separate or new dwelling unit.

32 (f) This section shall not be construed to prohibit a local agency  
33 from adopting an ordinance or regulation, related to parking or a  
34 service or a connection fee for water, sewer, or power, that applies  
35 to a single-family residence that contains a junior accessory  
36 dwelling unit, so long as that ordinance or regulation applies  
37 uniformly to all single-family residences regardless of whether the  
38 single-family residence includes a junior accessory dwelling unit.

39 (g) *If a local agency has not adopted a local ordinance pursuant*  
40 *to this section, the local agency shall ministerially approve a permit*

1 *to construct a junior accessory dwelling unit that satisfies the*  
2 *requirements set forth in subparagraph (A) of paragraph (1) of*  
3 *subdivision (e) of Section 65852.2 and the requirements of this*  
4 *section.*

5 ~~(g)~~

6 (h) For purposes of this section, the following terms have the  
7 following meanings:

8 (1) “Junior accessory dwelling unit” means a unit that is no  
9 more than 500 square feet in size and contained entirely within an  
10 existing single-family structure. A junior accessory dwelling unit  
11 may include separate sanitation facilities, or may share sanitation  
12 facilities with the existing structure.

13 (2) “Local agency” means a city, county, or city and county,  
14 whether general law or chartered.

15 SEC. 3. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 a local agency or school district has the authority to levy service  
18 charges, fees, or assessments sufficient to pay for the program or  
19 level of service mandated by this act, within the meaning of Section  
20 17556 of the Government Code.

O

# AB 68

## ADU Streamlining

Assemblymember  
**Phil Ting**  
19TH DISTRICT



### SUMMARY

Accessory dwelling units (ADUs) have surged in popularity as a way to address California's housing crisis as demand outpaces supply. AB 68 will remove remaining barriers to the widespread adoption of ADUs as low-cost, energy efficient, affordable housing that can go from policy to permit in 12 months.

### BACKGROUND

ADUs, also referred to as secondary units, in-law suites, or granny flats, are smaller, independent units on the same lot as a single or multi family home. Junior accessory dwelling units (JADUs) are units that are no more than 500 square feet and are contained entirely within an existing room, with an efficiency kitchen and a private or shared bathroom.

California is in a housing crisis. Currently, the ability to create additional small housing on a homeowner's property can be delayed for months, or stopped all together, due to zoning requirements that are not directly related to the health and safety of the unit's occupiers.

ADUs and JADUs represent forms of housing production that can be rapidly increased without significant change to state laws. These dwellings provide affordable housing options by maximizing existing space on lots. However, many homeowners encounter land use and permitting obstacles when planning to build ADUs, and thus end up building illegal units that may be unsafe.

A University of California, Berkeley Turner Center for Housing Innovation report (ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes) documented that despite numerous ADU laws enacted in California in the past few years, many cities and counties continue to unevenly impose barriers that prevent ADU development.

By removing remaining barriers to building, while keeping health and safety in mind, we can allow for the non-discriminatory building of ADUs and JADUs throughout the State of California.

### THIS BILL

AB 68 will create more housing in California by:

- Requiring permits to be issued in 60 days, rather than the 120 days in existing law;
- Prohibiting a local ordinance that applies lot coverage, lot size, or floor area ratio requirements to ADUs;
- Eliminating the requirement that offstreet parking spaces be replaced if a garage is converted to an ADU;
- Specifying that local agencies requiring Owner-Occupancy for the primary unit must exempt trust and non-profit "owners" providing for lower income, senior, or disabled residents;
- Allowing ministerial approval for:
  - Both a JADU and an ADU within an existing space
  - An ADU that is new construction of up to 800 sq. ft. and no taller than 16 ft.
  - ADUs in multi-family building areas not currently used as livable space;
- Prohibiting local agencies from requiring that existing zoning nonconforming conditions be corrected as part of the ministerial approval process; and
- Prohibiting ministerially-approved ADUs from being used as short-term rentals.

### SUPPORT

Bay Area Council

Non-Profit Housing Association of Northern CA

### STAFF CONTACT

Office of Assemblymember Phil Ting

Irene Ho

(916) 319-2019





Lori Droste  
Berkeley City Councilmember, District 8

Consent Calendar  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Lori Droste and Ben Bartlett  
Subject: Support for AB 69 (Accessory Dwelling Units)

**Recommendation:**

That the Berkeley City Council send a letter supporting AB 69, Accessory Dwelling Units, authored by Assemblymember Phil Ting which will create a Small Home Building Standard Code to provide guidelines for the construction of ADUs.

**Financial Implications:**

None.

**Background:**

Over the past several years, the City of Berkeley has taken several steps to streamline the process of building ADUs. This bill furthers those goals by tasking the Department of Housing and Community Development (HCD) with creating a Small Home Building Standard Code with an emphasis on cost-effectiveness such as guidelines for small kitchens and bathrooms with small appliances. HCD will also have the authority to evaluate whether local agencies' ADU ordinances comply with state law and notify the Attorney General of violations. Ensuring compliance with state law will help eliminate barriers to the widespread adoption of ADUs as low-cost, energy efficient, affordable housing that can go from policy to permit in 12 months.

ADUs, also referred to as secondary units, in-law suites, or granny flats, are smaller, independent units on the same lot as a single or multi family home. Studies show that ADUs cost less to both build and rent, making them an affordable and eco-friendly source of new housing. For example, utilities cost less for those living in ADUs due to greater energy efficiency. ADUs utilize existing space on lots and maximize land use to minimize impacts on growing communities. The smaller size of ADUs allows them to be built faster and be on the market sooner. Residents will have greater choice in where they want to live as ADUs present more affordable options in neighborhoods.

Recent state efforts to incentivize the construction of ADUs have resulted in more communities and families building ADUs as a cost efficient way to address the affordable housing crisis. By

further streamlining the construction process, this legislation will help add thousands of new units to California's housing stock.

**Environmental Sustainability:**

No impact

**Contact Person:**

Councilmember Lori Droste    Council District 8    510-981-7180

**Attachment 1: Draft Letter of Support**

December 20, 2018

The Honorable Assemblymember Phil Ting  
California State Assembly  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249

RE: Assembly Bill 69 (Ting) – Accessory Dwelling Units - Building Standards - SUPPORT

Dear Assemblymember Ting,

Berkeley City Council is pleased to support AB 69, which will help to address California's housing crisis by setting up helpful guidelines for the construction of accessory dwelling units (ADUs). The Department of Housing and Community Development will be tasked with creating a Small Home Building Standard Code with an emphasis on cost-effectiveness such as guidelines for small kitchens and bathrooms with small appliances. Berkeley City Council has taken several steps to streamline the building process for ADU's in our City, and this bill furthers those goals.

ADUs, also referred to as secondary units, in-law suites, or granny flats, are smaller, independent units on the same lot as a single or multi family home. Studies show that ADUs cost less to both build and rent, making them an affordable and eco-friendly source of new housing. For example, utilities cost less for those living in ADUs due to greater energy efficiency. ADUs utilize existing space on lots and maximize land use to minimize impacts on growing communities. The smaller size of ADUs allows them to be built faster and be on the market sooner. Residents will have greater choice in where they want to live as ADUs present more affordable options in neighborhoods.

Recent state efforts to incentivize the construction of ADUs have resulted in more communities and families building ADUs as a cost efficient way to address the affordable housing crisis. Providing cost effective guidelines and incentivizing local agencies to follow them will help combat California's housing shortage. This legislation will help add thousands of new units to

California's housing stock. For these reasons and more, Berkeley City Council is proud to support AB 69.

Sincerely,  
Berkeley City Council

CC: Assemblymember Buffy Wicks  
Senator Nancy Skinner

# AB 69

## ADU Building Standards

Assemblymember  
**Phil Ting**  
 19TH DISTRICT



### SUMMARY

Accessory dwelling units (ADUs) have surged in popularity as a way to address California's housing crisis as demand outpaces supply. However, they are subject to the same building standards as traditional homes, despite their much smaller size. AB 69 will expedite the construction of cost-effective and safe ADUs by creating a Small Home Building Standards Code that reflects the unique nature of these units.

### BACKGROUND

ADUs, also referred to as secondary units, in-law suites, or granny flats, are smaller, independent units on the same lot as a single or multi family home.

California is in a housing crisis. Currently, the ability to create additional small housing on a homeowner's property can be delayed for months, or stopped all together, due to zoning requirements that are not directly related to the health and safety of the unit's occupiers.

ADUs represent forms of housing production that can be rapidly increased without significant change to state laws. These dwellings provide affordable housing options by maximizing existing space on lots. However, many homeowners encounter land use and permitting obstacles when planning to build ADUs, and thus end up building illegal units that may be unsafe.

A University of California, Berkeley Turner Center for Housing Innovation report (ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes) documented that despite numerous ADU laws enacted in California in the past few years,

many cities and counties continue to unevenly impose barriers that prevent ADU development.

By removing remaining barriers to building, while keeping health and safety in mind, we can allow for the non-discriminatory building of ADUs and JADUs throughout the State of California.

### THIS BILL

AB 69 will facilitate the construction of more ADUs in California by requiring the Department of Housing and Community Development (HCD) to create a Small Home Building Standards Code by January 1, 2021. The standards drafted by HCD must emphasize cost-effectiveness, and include guidance for small kitchens and bathrooms with small appliances.

HCD will also have the authority to evaluate whether local agencies' ADU ordinances comply with state law and notify the Attorney General of violations. Ensuring compliance with state law will help eliminate barriers to the widespread adoption of ADUs as low-cost, energy efficient, affordable housing that can go from policy to permit in 12 months.

### SUPPORT

Bay Area Council  
 Non-Profit Housing Association of Northern CA

### STAFF CONTACT

Office of Assemblymember Phil Ting  
 Irene Ho  
 (916) 319-2019





Lori Droste  
Berkeley City Councilmember, District 8

**CONSENT CALENDAR**

January 29, 2019

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

**FROM:** Councilmember Lori Droste, Mayor Jesse Arreguín, Councilmember Rashi Kesarwani, and Councilmember Susan Wengraf

**SUBJECT:** Vision Zero: eliminating pedestrian, bicyclist and traffic injuries and fatalities

**RECOMMENDATION**

- 1) Create an official Vision Zero Task Force (or Leadership Committee) to lead the planning and implementation effort for Vision Zero. The Task Force should include, at a minimum, representatives from the City Manager's office, Police, Public Works (Transportation and Engineering Divisions), Fire, and Public Health ([visionzeronetwork.org](http://visionzeronetwork.org)).
- 2) Request that the City Manager hold community events to encourage equitable outcomes, cooperation and collaboration from community stakeholders to set shared goals and focus on coordination and accountability. Representatives from various commissions, including but not limited to Transportation, Disability, Aging, and Health, should be encouraged to attend and provide input.
- 3) Request that the City Manager hold a worksession where a Vision Zero Action Plan is presented for eliminating fatal and severe traffic injuries. Subsequent to the worksession, request that biannual informational updates on Vision Zero progress are reported to Council. The Action Plan should establish clear

strategies, owners of each strategy, interim targets, timelines, & performance measures ([visionzeronetWORK.org](http://visionzeronetWORK.org)).

**BACKGROUND:**

In March of 2018, Berkeley City Council resolved to make Berkeley a Vision Zero city and referred the policy and implementation plan to the City Manager. Since that time, City Council rated this Vision Zero legislation as its number one priority for the year. This item is to help guide the process so we can take measurable action to prevent fatalities and injuries on Berkeley streets.

Approximately three people are killed and 31 people are severely injured each year in traffic collisions on Berkeley streets (City Council work session report, 2017).

Pedestrians and bicyclists are involved in only 7% of overall crashes but represent roughly one-third of all traffic fatalities. High vehicle speeds, violation of “Pedestrian Right of Way”, and alcohol/drug intoxication are the primary causes of severe and fatal collisions. Under a Vision Zero approach, traffic safety efforts would focus on reducing these primary causes of severe and fatal collisions ([City Council work session report, 2017](#)).

**ENVIRONMENTAL SUSTAINABILITY**

Vision Zero policies are consistent with several provisions of the City of Berkeley’s Climate Action Plan. Significant positive environmental impacts (e.g. increased pedestrian and bicycle trips resulting in lower greenhouse gas output) arise when cities prioritize walking and bicycling infrastructure and safety.

**FINANCIAL IMPLICATIONS**

None.

**CONTACT**

Councilmember Lori Droste, 510-981-7180



Office of the City Manager

PUBLIC HEARING  
January 29, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Phillip Harrington, Director, Public Works  
 Subject: Implement Residential Preferential Parking Program on Sections of Fifth Street and Martin Luther King Jr. Way

#### RECOMMENDATION

Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Sections 25J and 25P by adding subsections to implement Residential Preferential Parking on portions of two city streets.

#### FISCAL IMPACTS OF RECOMMENDATION

Funding of \$2,800 for RPP street signage installation is available in the FY 2019 budget in General Fund, 011-54-622-664-0000-000-431-513110- and 011-54-622-664-0000-000-431-642990-.

#### CURRENT SITUATION AND ITS EFFECTS

Within the past few months, residents in two Residential Preferential Parking (RPP) eligible areas submitted petitions to join the RPP Program. The two areas that would join the Program are shown in Attachment 3 and include:

1. In Area J: Both sides of the 2900 block of Martin Luther King Jr. Way between Ashby Avenue and Russell Street; and
2. In Area P: The west side of the 1800 block of Fifth Street between Hearst Avenue and a point approximately 244 feet north of Hearst Avenue.

In accordance with Berkeley Municipal Code Section 14.72.050(A)(1), staff verified that residents submitted signatures on qualifying petitions representing a numerical majority of dwellings wishing to “opt-in” to the RPP for the street sections listed in the attached Resolution. Staff also verified that at least 75% of the curb spaces were occupied during mid-morning and mid-afternoon observation periods at all locations.

The addition of one block in existing RPP Area J, and one side of one block in recently added Area P should have a minimal impact on enforcement capabilities. Each new addition to the RPP Program, however, tends to result in slightly diminished

enforcement for all other existing permit areas, due to parking enforcement officers having slightly larger areas to patrol.

### BACKGROUND

The RPP Program limits parking for vehicles not displaying the appropriate RPP permit to two hours, and reserves available daytime parking for residents, between 9:00 a.m. and 7:00 p.m. Monday through Friday, and on some blocks Saturday. The RPP Program was instituted in 1980 (1) to protect Berkeley residential neighborhoods from an influx of non-resident vehicles and related traffic; (2) to assure continued quality of life for residents; and (3) to provide neighborhood parking for residents.

Initial expansion of the RPP Program was approved by City Council on February 7, 1989 after the associated Environmental Impact Report (EIR) was certified on September 27, 1988. By Resolution 54,648-N.S., Council increased the number of RPP areas to fourteen (14). To date, sixteen (16) RPP areas (A-P) have been designated by Council, with Areas O and P, the latter serving residents in an area zoned Mixed-Use Residential, added in February 2018.<sup>1</sup> While permit parking has been established for the majority of eligible blocks within the EIR study area, there are approximately 300 additional blocks which do not presently have permit parking restrictions.

The RPP Program currently allows residents to petition the City to “opt-in” or “opt-out” of the Program. The process to install RPP controls requires submittal of a petition signed by residents (including tenants of rental properties) of at least 51% of dwellings sited along the affected block, and a parking survey of those blocks that shows at least 75% of available on-street parking spaces are occupied during the mid-morning and midafternoon time periods.

### ENVIRONMENTAL SUSTAINABILITY

Expansion of the RPP Program to include additional blocks may have minor environmental effects. Expansion may increase greenhouse gases generated by commuters searching for parking and move their cars to new locations after the two-hour time limit expires. However, incremental expansion of the RPP Program may also make alternative transportation options more attractive. A modal shift by commuters to walking, bicycling, public transportation, or carpooling could lead to a decrease in greenhouse gas emissions.

### RATIONALE FOR RECOMMENDATION

Because the required number of households on the subject blocks have signed a petition, and as parking surveys show more than 75% occupancy of curbside parking,

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<sup>1</sup> Mixed-use refers to an area with different adjacent land uses, such as residences next to businesses or other commercial establishments. See February 13, 2018 *City Council Agenda: Residential Preferential Parking (RPP) Program Reform and Expansion*: <https://bit.ly/2s4bn15>

these blocks meet the requirements set forth by the BMC for inclusion into the RPP Program.

ALTERNATIVE ACTIONS CONSIDERED

Council may allow unrestricted parking to remain on these streets. Yet, Council has acted previously to approve the “opting in” of blocks where the requisite number of households signed a petition requesting RPP control, and where the parking utilization exceeds 75%.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works (510) 981-7010

Matthew Cotterill, Traffic Engineering Assistant, Public Works (510) 981-6433

Attachments:

1. Resolution
2. Public Hearing Notice
3. Map of Street Sections Opting Into Program

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

IMPLEMENT RESIDENTIAL PREFERENTIAL PARKING (RPP) PROGRAM ON TWO  
STREETS

WHEREAS, Berkeley Municipal Code Section 14.72.050.A.1, Designation of a Residential Preferential Parking (RPP) Area, allows residents to petition the City to "opt-in" or "opt-out" of the program and requires submittal of a petition containing signatures of residents of at least 51% of dwellings on the affected block; and

WHEREAS, residents of at least 51% of the dwellings on the following blocks have petitioned to "opt-in" to Residential Preferential Parking:

1. Both sides of the 2900 block of Martin Luther King Jr. Way between Ashby Avenue and Russell Street; and
2. The west side of the 1800 block of Fifth Street between Hearst Avenue and a point approximately 244 feet north of Hearst Avenue.

WHEREAS, staff has conducted field observations and determined at least 75% of available on-street parking spaces are occupied during the mid-morning and mid-afternoon time periods; and

WHEREAS, the designation of these blocks as a residential permit parking area will not be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing in the area designated; and

WHEREAS, the \$2,800 implementation cost is available in FY 2019 General Fund (Fund 011).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following subsections of Section 25 of Resolution No. 56,508-N.S. are hereby added to read as follows:

Section 25J MARTIN LUTHER KING JR. BOULEVARD, both sides between Ashby Avenue and Russell Street

Section 25P **RESIDENTIAL PERMIT PARKING AREA P (MIXED USE RESIDENTIAL)**

That a two-hour parking limit between the hours of 8:00 A.M. and 7:00 P.M. is hereby established on the following streets designated as Section 25P in the first three characters, except on Saturdays, Sundays and holidays, and other designated times as indicated, and except for vehicles with a valid residential preferential parking permit for Area P; or any other permit authorized by the City Council.

Section 25P FIFTH STREET, west side between Hearst Avenue and a point approximately 244' north of Hearst Avenue

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL  
SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET, BERKELEY CA  
94702**

**EXTEND RESIDENTIAL PREFERENTIAL PARKING PROGRAM  
TUESDAY, JANUARY 29, 2019 AT 6:00 P.M.**

The Public Works Department is proposing to conduct a public hearing and, if recommendations are approved, adopt a Resolution amending Sections 25J and 25P of Resolution No. 56,508-N.S. by adding subsections to extend residential preferential parking on both sides of the 2900 block of Martin Luther King Jr. Way between Ashby Avenue and Russell Street; and the west side of the 1800 block of Fifth Street between Hearst Avenue and a point approximately 244 feet north of Hearst Avenue.

The Residential Preferential Parking (RPP) Program allows for residents to petition the City to "opt-in" or "opt-out" of the Program. Complying with program requirements, residents of the blocks under consideration for opting into the RPP Program have submitted the qualifying signatures on petitions and also have at least 75% of the curb spaces occupied during the morning and mid-afternoon observation periods. Adding blocks within the existing residential study area boundaries through evaluations by an EIR study certified on September 27, 1988, and in accordance with California Environment Quality Act (CEQA) guidelines, are categorically exempt as defined by Section 15.162(c).

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 January 17, 2019.

For further information, please contact **Matthew Cotterill, Traffic Engineering Assistant** at (510) 981-6433.

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](mailto:clerk@cityofberkeley.info) for further information.

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*

**Posted:** January 17, 2019

Posting is in accordance with Berkeley Municipal Code Chapter 14.72

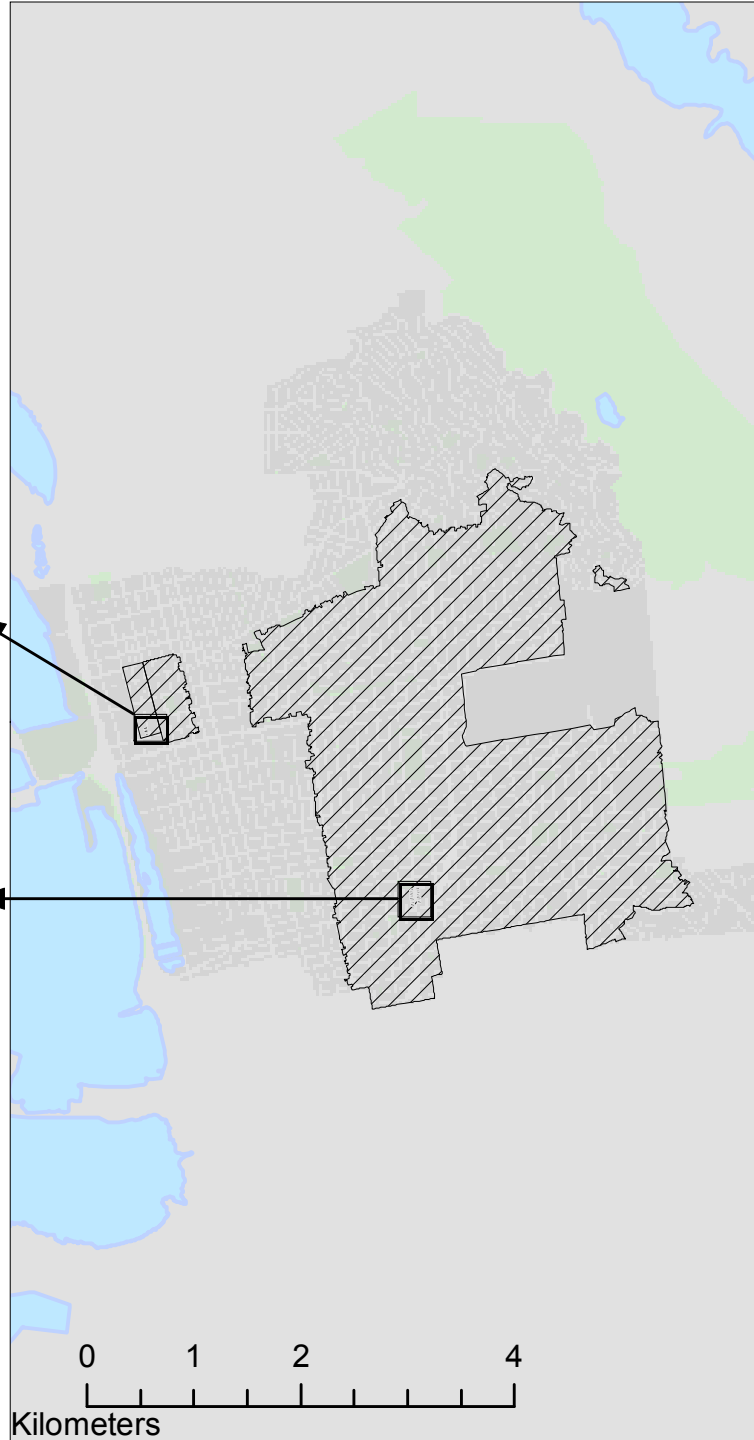
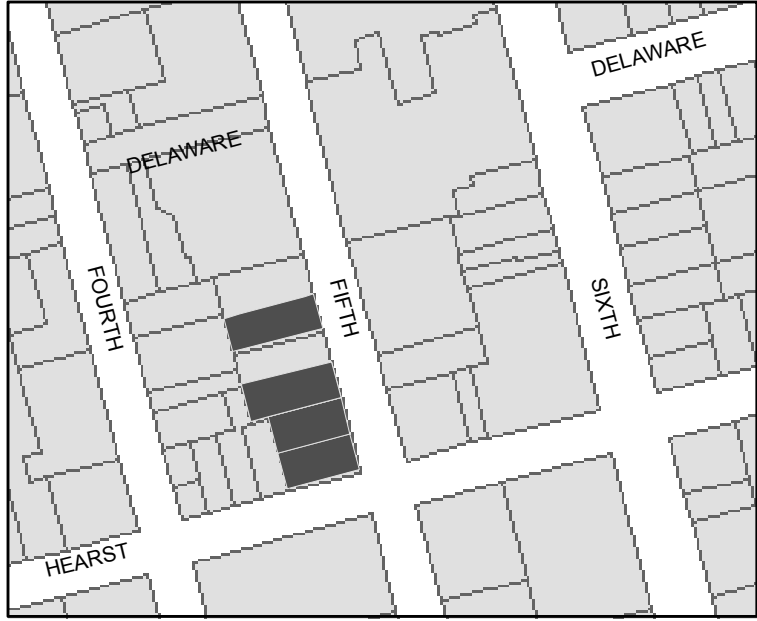


I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Old Berkeley City Hall, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 17, 2019.

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Mark Numainville, City Clerk





# ATTACHMENT 3

- Parcels Opting In
- ▨ RPP Area Boundary

This map is for reference purposes only.

Care was taken in the creation of this map, but it is provided "AS IS". Please contact the City of Berkeley to verify map information or to report any errors.  
November 27, 2018



**CITY OF BERKELEY**  
Transportation Division  
1947 Center Street  
Berkeley CA 94704





Office of the City Manager

14

PUBLIC HEARING

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Department of Planning & Development

Subject: ZAB Appeal: 1155-1173 Hearst Street

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution to affirm the Zoning Adjustments Board decision to approve Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new, for-sale dwelling units; and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On August 23, 2018, the Zoning Adjustments Board (ZAB) held a public hearing and approved Use Permit #ZP2016-0028 by an 8-0-1-0 vote (Yes: O'Keefe, Kahn, Olson, Hauser, Simon-Weisberg, Kim, Zaneri, Clarke; No: None; Abstain: M. Poblet; Absent: None). On August 30, 2018, staff issued the notice of the ZAB decision. On September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street ("Appellant"), filed an appeal with the City Clerk. Twenty-nine additional individuals signed a petition in support of the appeal. The Clerk set the matter for review by the Council on January 29, 2019.

BACKGROUND

The project site consists of two separate parcels located on the north side of Hearst Avenue on the block bound by San Pablo Avenue to the west and Curtis Street to the east. The parcel to the west (1155-63 Hearst) is developed with a two-story duplex towards the rear of the lot and two single-story duplexes situated towards the front of the lot, separated by a paved parking area. All six of these units are subject to rent control. The parcel to the east (1173 Hearst) is developed with a two-story single family dwelling with an attached tandem car garage. All seven units are currently occupied by renters.

The project site, which lies within the Strawberry Creek Watershed, is located in a topographic depression roughly bounded to the south by Hearst Avenue, to the north by Delaware Street, to the east by Curtis Avenue and to the west approximately 100-200

feet west of the site. Recurrent ponding and flooding occurs in the topographic depression during the rains.

On February 2, 2016, Mark Rhoades (“Applicant”) submitted a Use Permit application for a project that requested to merge the two lots, substantially rehabilitate the existing dwelling units, and construct eleven additional units employing State Density Bonus Law, for a total of 18 units. Due to the provision of Density Bonus Law requiring replacement of units under rent control, which, according to the Applicant, rendered the project infeasible, the Applicant chose to revise the project in response to comments received by the ZAB during the project hearing on September 28, 2017.

On March 6, 2018, the Applicant resubmitted the revised project, which did not include a request for Density Bonus. The revised project contains the following main components:

- Construction of one duplex on the western parcel in the middle of the lot;
- Construction of two duplexes on the eastern parcel behind the single-family dwelling;
- Uncovered parking for both properties located in the middle of the western lot; and
- Rehabilitation of all seven existing units, plus expansion of the three duplexes after all current residents voluntary vacate.

The applicant has committed to, and the project is conditioned (condition of approval #15) that prior to building permit issuance for any interior improvements, renovations, or addition to the existing dwelling units, the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation. To provide clarity, staff recommends the condition be modified as follows:

Tenant Relocation. Prior to building permit issuance for any interior improvements, renovations or addition to any the existing dwelling units building (1955-57 Hearst, 1959 A & B Hearst, 1961-63 Hearst, and 1973 Hearst), the property owner shall provide proof that all tenants within the building have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation. This shall not apply to issuance of building permits for general renovation or repair within these units.

Due to the voluntary participation by existing tenants, the timeframe of work on these buildings cannot be anticipated.

The ZAB approved the project at the August 23, 2018 meeting.

#### ENVIRONMENTAL SUSTAINABILITY

The project approved by ZAB is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the Appellant’s letter, and staff’s responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety; refer to the attached appeal letter for full text.

Issue A: “ZAB erred in finding the project exempt from CEQA.” [p. 1 of attached appeal letter]

Issue A1: “The project does not qualify for a categorical exemption because there is substantial evidence that it will not be adequately served by the existing utility infrastructure.” [p. 1-2]

Response A1: The ZAB approved the project with the CEQA determination that the project is categorically exempt pursuant to Section 15332 of the CEQA Guidelines, “Class 32 In-Fill Development Projects. Class 32 consists of projects characterized as in-fill development meeting the following conditions: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value, as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) The site can be adequately served by all required utilities and public services.

The Appellant has claimed that the project fails to qualify for this CEQA exemption as it does not meet condition (e) above. The Appellant’s reasoning behind the assertion is that the site is located over a non-engineered buried branch of Strawberry Creek, that the site is prone to flooding, that the storm drain system is unable to address the runoff, and that the proposed impervious surfaces and foundations would exacerbate existing flooding conditions.

Due to the hydrology conditions on the project site, the Applicant proactively submitted a stormwater and flooding assessment (Assessment) and mitigation design for the proposed project prepared by Clearwater Hydrology. The objective of the Assessment was twofold: 1) to develop a storm drainage system design for the proposed project that would have the ability to provide proper drainage without on-site flooding during the 10-year design rainstorm; and 2) to improve, even marginally, the flooding conditions that occur along the neighboring Curtis Street properties for rainstorms exceeding roughly the five-year recurrence interval. The City hired Balance Hydrologics to peer review the Assessment, provide comment, and review comments provided on

the Assessment by Terraphase, a consultant hired by the Appellant. Balance Hydrologics concurred with the findings of the Assessment that the selected drainage design—which includes a drainage channel inset within the main driveway to the northern edge of the parking lot and a grassed swale extending eastward from the parking lot to the eastern project boundary—would meet the Assessment objectives. Balance Hydrologics recommended that additional information be provided prior to Building Permit submittal to ensure the projects meets the requirements of the California Water Boards Municipal Regional Permit (MRP). The requested information includes changes to time of concentration, revised modeling of overflow from Curtis Street, and inclusion of information on changes in peak flow, and C.3 compliance. Project approval is conditioned with this recommendation. Although drainage conditions on the private property are not part of the public drainage infrastructure, the project would not exacerbate existing conditions on the project site or the neighboring site, and is actually expected to improve drainage conditions in the area.

The public service to which the appeal point refers is the City's storm drain system (curbs, gutters, catchment basins, street crossing swales, etc.) on the public right-of-way. There is no evidence in the record that the storm drain system is inadequate for the site area; that water flow ponds on the street or sidewalk. To the contrary, during a field visit in the rain on November 29, 2018, after heavy rains during the previous night, the water flowed freely through the gutters in front of the project site and on both sides of the block (see Figure 1 below). The water flow follows the topography from east to west and enters the catchment basin located just east of San Pablo Avenue. At the catchment basin (i.e. storm drain) the water enters a 2' x 3' sewer pipe that runs under San Pablo Avenue to the south and connects to a 5'-2" x 7'-9" sewage pipe that runs under University Avenue to the west. Public Works engineering staff stated that they had no concerns as to whether the storm drain system could accommodate any additional flow from the proposed six-unit infill project. The Appellant's claim that the existing utility infrastructure cannot adequately service the development project is, therefore, unfounded; the project qualifies for a Class 32 In-Fill exemption.

Figure 1: Water Flow at Project Site Frontage (1173 Hearst looking southwest)



Issue A1a: “CEQA Guidelines are clear that the proposed categorical exemption is not applicable in cases when a proposed project is located in a sensitive site” [p. 1]

Response A1a: The Appellant is referencing, and proceeds to quote the Location exception to a CEQA categorical exemption (14 CCR § 15300.2(a)). The location-based exception applies only to Class 3, 4, 5, 6, and 11 categorical exceptions, and any references to sensitive location throughout this appeal point does not apply to Class 32 In-Fill Development Projects. The exception does not apply to this project and the appeal point is without merit.

Issue A1b: “The buried creek alignment is also associated with the potential presence of cultural and/or historic resources. Testimony was given that a portion of the property on which the project is proposed was the site of the original Chez Panisse garden” [p. 2]

Response A1b: Even if there was an original Chez Panisse garden and it was located at this site, the City of Berkeley has never determined it to be a significant or historical resource. The former presence of a garden would not constitute a sensitive location for environmental purposes. This appeal point is without merit.

No known cultural resources have been identified on the site, however, project approval is subject to the City’s standard conditions regarding

tribal cultural resources, archaeological resources, human remains, and paleontological resources (COAs 34 – 37).

Issue A1c: “[T]he area proposed for development forms a “lake” seasonally, indicat[ing] that the area may qualify as a potential jurisdictional wetland subject to additional review and permitting requirements.” [p. 2]

Response A1c: The area of proposed development is not listed in the National Wetlands Inventory ([www.fws.gov/wetlands/](http://www.fws.gov/wetlands/)) and there is no evidence in the record that the back yard area of these lots has the required soil, plant life, and fish and/or wildlife communities (i.e. aquatic resources) required to meet the definition of wetland.

Issue A2: “Even if the project qualifies for a categorical exemption, it is subject to the unusual circumstances exception because there is substantial evidence of an unusual circumstance and of a fair argument that there may be a significant effect on the environment” [p. 2-3]

Response A2: A project is ineligible for a categorical exemption if it falls under one of six exceptions listed in §15300.2 of the CEQA Guidelines. The Appellant asserts the project falls under §15300.2(c)'s Significant Effect exception: “*A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*”

In *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, the California Supreme Court held that for the exception to apply, “[i]t is not alone enough that there is a reasonable possibility that the activity will have a significant effect.” Rather, the effect must be “due to unusual circumstances.” *Id.* at 1097-98.

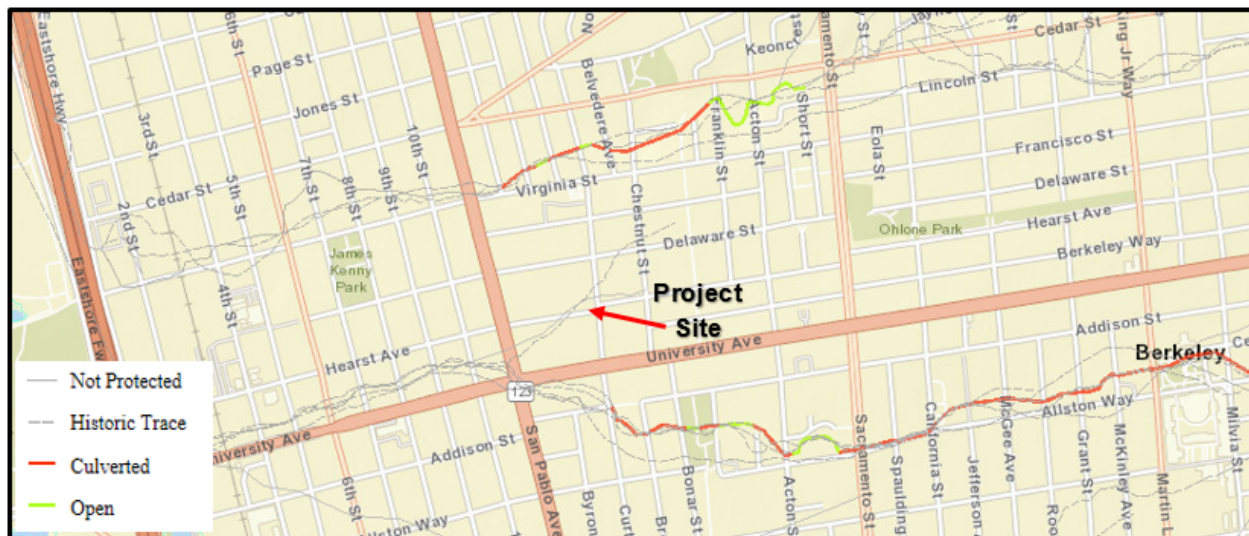
The Appellant claims the fact that the site sits on an underground branch of the historic Strawberry Creek, which is filled with non-engineered soils and has been subject to significant historical flooding, constitutes an “Unusual Circumstance.” As evidenced in the record—a hydrology Assessment prepared by a licensed engineer, Peer Reviewed by a licensed engineer, with recommendations incorporated as project conditions of approval—there is substantial evidence in the record that the project would *not* have a significant environmental impact, thereby negating any fair argument that it could. As such, the exception does not apply as the Appellant fails the “significant effect” prong of the test.

The Appellant also fails the “unusual circumstances” prong of the test. In *Berkeley Hillside Preservation v. City of Berkeley*, the Court determined that without evidence of an environmental effect, a party



invoking the exception may establish an unusual circumstance “[b]y showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location.” *Id.* at 1105. Though the project area is above a former creek and though there is evidence of flooding in the backyards of the neighborhood, this is not unique to this project, or in fact to this neighborhood. In questioning different members of Public Works field staff, several areas of the City were listed as experiencing seasonal flooding including the northwest corner of University and San Pablo Avenues; Derby Street near Martin Luther King Jr. Way; Derby Street between Shattuck and Telegraph Avenues; and the area around Malcolm X Elementary School south of Ashby Avenue and west of the Ashby BART station, among others. It is not a coincidence that all these areas are over either historic traces of streams or underground creek beds, labeled “Not Protected” on the City’s GIS maps (<http://cobmapv2/planning/>). As can be seen in Figure 2 below, which represents a small portion of the City, underground and historic traces of streams striate the city running from east to west. Ponding and flooding conditions vary, but are not uncommon or otherwise unusual on the numerous properties overlaying these hydrologic features.

Figure 2: GIS Creek Layer on Area Including Project Site

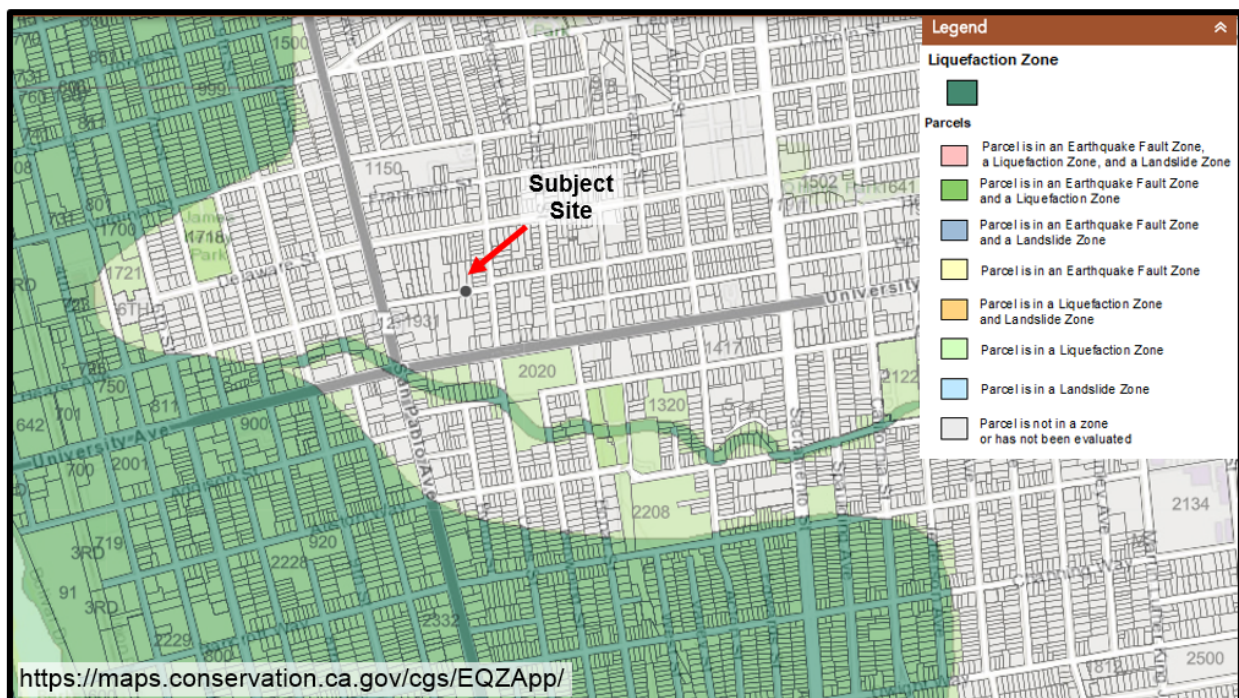


Additionally, in response to the Appellant’s point, the Public Works Engineer has stated in the record that although the Urban Creek Council—a Bay Area non-profit organization working to preserve, protect, and restore urban streams and their riparian habitats ([urbancreeks.org](http://urbancreeks.org))—may have classified this area as “filled wetlands” and as “seismically unstable and subject to liquefaction,” that is not the

viewpoint of Public Works staff or the U.S. Geological Survey (USGS), who have not designated this area as a site with high potential for liquefaction. See figure 3 below.

Available information belies the Appellant's claim that an unusual circumstance exists as the project does not have some feature, such as size or location, which distinguishes it from others in the exempt class. Accordingly, the project is exempt from CEQA under the Class 32 In-Fill categorical exemption.

**Figure 3: Earthquake Zones of Required Investigation (USGS)**



Issue A2a: "City of Berkeley Zoning Department Staff recognized and agreed that the "Level of water in the area" constitutes an unusual circumstance." [p. 3]

Response A2a: The project planner did state towards the beginning of the ZAB hearing on this project that the level of water in the area was an unusual circumstance. The comment was based on a layman's definition of what is typical and not upon the investigation of what legally constitutes an unusual circumstance as discussed in Issue A above. A statement by staff does not constitute the required substantial evidence to designate an unusual circumstance. In addition, the ZAB secretary clarified later in

the hearing that staff reviewed this application and determined it meets the infill exemption.

Issue B: “If the project is exempt from CEQA[,] appropriate conditions must be imposed under BMC §23B.32.040 to ensure the project is not detrimental to the health, safety, comfort or general welfare of the neighborhood or injurious to the adjacent properties, the surrounding area or neighborhood.” [p. 3-5]

Response B: Staff concurs that appropriate conditions must be imposed on any project to ensure non-detriment. Staff believes, as did ZAB upon granting of the Use Permit, that the appropriate conditions of approval (COA) were so imposed and, thereby, made the non-detriment finding pursuant to BMC §23B.32.040.A. As the Appellant’s issue is specifically related to hydrology impacts, staff is limiting the discussion of detriment to hydrology as well.

In addition to the standard Toxics condition of approval regarding a Soil and Groundwater Management Plan (COA 28B), Stormwater Requirements (COA 40), and Public Works conditions regarding sub- and surface waters (COAs 42-45, 48), the project is conditioned to incorporate the Drainage Plan as presented in the Applicant’s revised Hydrology Assessment of July 12, 2017 and to submit additional design documentation as requested by the Peer Review (COA 21).

Specifically, in order to provide proper drainage without on-site flooding during the 10-year design rainstorm and to improve the flooding conditions that occur along the neighboring Curtis Street properties for rainstorms exceeding roughly the two-year recurrence interval, the project will incorporate a drainage design that includes the following components:

- A 2.5-foot wide, 0.4-foot deep rectangular channel with a slope of 0.8% inset within the Project main driveway, extending north to the northern edge of the new parking lot; and
- A trapezoidal grassed swale with side slopes 3:1, channel slope of 1.0% and a minimum depth of 0.3 feet extending eastward from the parking lot to the eastern Project boundary.

Although a geotechnical report would have been required regardless by the Building and Safety Division prior to issuance of the building permit, ZAB added a condition of approval to emphasize the requirement (COA 13): “*The applicant shall submit to the Building and Safety Division a geotechnical report that addresses the subsurface water conditions in*

*and in the immediate vicinity of the project site. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports.”* For clarity, the reports referenced are those submitted by the Applicant that are prepared by a licensed engineer, and the peer review by a licensed engineer commissioned by the City.

Contrary to the Appellant’s statements that ZAB intended certain conditions be met prior to issuance of the Use Permit, the vote conducted by ZAB at the end of the hearing approved the Use Permit. Conditions added to the project by ZAB during the motion to approve a project are subsequent to issuance of the Use Permit. If ZAB had intended otherwise it would have continued the project.

Despite the evidence in the record that the project will not have a detrimental impact to the surrounding neighborhood, the project conditions of approval, both standard and additional, will further ensure the health, safety, comfort and general welfare of the neighborhood and that the project will not be injurious to the adjacent properties, the surrounding area or neighborhood.

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

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437  
Leslie Mendez, Senior Planner, Planning & Development Department, (510) 981-7426

Attachments:

- 1: Resolution
  - Exhibit A: Findings and Conditions
  - Exhibit B: Project Plans dated June 8, 2018
- 2: Appeal Letter, dated September 12, 2018
- 3: ZAB Staff Report, dated August 23, 2018
- 4: Index to Administrative Record

ZAB Appeal: 1155-73 Hearst Street

PUBLIC HEARING  
January 29, 2019

5: Administrative Record

6: Public Hearing Notice

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

APPROVING USE PERMIT #ZP2016-0028 TO DEVELOP TWO PARCELS, INCLUDING THE SUBSTANTIAL REHABILITATION OF THE EXISTING SEVEN DWELLING UNITS AND CONSTRUCTION OF SIX NEW DWELLING UNITS IN THE RESTRICTED MULTIPLE-FAMILY RESIDENTIAL (R-2A) ZONING DISTRICT

WHEREAS, on February 2, 2016, Mark Rhoades of Rhoades Planning Group filed an application on behalf of Hearst Avenue Cottages, LLC (“applicant”) to substantially rehabilitate seven existing dwelling units, and construct eleven new dwelling units employing State Density Bonus Law on two parcels located at 1155 – 1173 Hearst Avenue (“project”); and

WHEREAS, on May 17, 2017, staff deemed this application complete; and

WHEREAS, on August 10, 2017, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on August 24, 2017, the ZAB continued the item to September 28, 2017 to allow the applicant time to address tenant protections; and

WHEREAS, on September 28, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and continued the project off calendar to allow the applicant further time to address tenant protections; and

WHEREAS, on March 6, 2018, the applicant submitted a revised project that reduced the proposed new construction of dwelling units to seven; and

WHEREAS, on July 3, 2018 staff deemed the revised application complete; and

WHEREAS, on August 8, 2018, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on August 23, 2018, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the project; and

WHEREAS, on August 30, 2018, staff issued the notice of the ZAB decision; and

WHEREAS, on September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street (“Appellant”), filed an appeal with the City Clerk; and

WHEREAS, on January 15, 2019, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on January 29, 2019, 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 comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP 2016-0028, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeals.

Exhibits

A: Findings and Conditions

B: Project Plans, dated June 8, 2018

# ATTACHMENT 1, EXHIBIT A

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## FINDINGS AND CONDITIONS

AUGUST 23, 2018

### 1155-1173 Hearst Street

**Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and constructing six new dwelling units.**

#### PERMITS REQUIRED

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- Use Permit for construction of dwelling units, under BMC Section 23D.32.030
- Use Permit for the addition of a sixth or greater bedroom in existing dwellings on a parcel, under BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming front and side yard, BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", BMC Section 23D.32.070.D.4

#### I. CEQA FINDING

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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 15332 of the CEQA Guidelines ("In-Fill Development"). 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 Section 23B.28.050.A of the Zoning Ordinance, 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:
  - The project will add six new housing units to the City's housing stock and will comply with the City's Inclusionary Ordinance by either providing one below market rate unit for a Low Income Household and payment into the Affordable Housing Trust Fund of the remainder 0.2 unit fee, or payment of the in-lieu fee.
  - The project's proposed massing contributes to the continued evolution of the City's development landscape. The project design was modified in several ways to respect the lower density single-family dwellings fronting Curtis Street. The final development



plan will renovate and rehabilitate the existing dwellings to match the style and materials of the new construction for a cohesive and attractive street presence that fits well with the surrounding mix of architectural styles.

- As the properties to the east of the subject site front Curtis Street and have rear yards abutting the subject site, the building separation between the Curtis Street Neighbors and the new construction ranges from approximately 36 feet to 42 feet. The properties abutting to the north and fronting Delaware Street have more substantial rear yard areas, resulting in a proposed main building separation of approximately 175 feet and more. Buildings to the west are closest due to the abutting side yard orientation to the subject lot. But with building separation ranging from approximately 8.5 feet to 18 feet, the project's proposed massing will be compatible with the four neighboring two-story buildings to the west.
  - Shadow impacts from the project are expected to affect direct sunlight on certain residential windows. However, these areas will still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year will the proposed project cause adjacent properties to lose access to direct sunlight from all the windows throughout the whole day at any time of the year. Such shading impacts are to be expected in an infill urbanized area and are not deemed detrimental.
  - The project site is located one block east of San Pablo Avenue and one block north of University Avenue, two major transit thoroughfares. The project will add eleven additional residential units located within one quarter mile of the San Pablo/University intersection that is served by the following AC Transit bus lines: 72 Rapid, 49, 51B, 52, FS, G, 72, 72M, 800 and 802. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services.
  - The project meets the purposes of the Restricted Multiple-family Residential District as it will provide smaller multiple-family garden-type apartment structures with the maximum feasible amount of useable open space on the property. The buildings will be constructed with sufficient separation on the subject lot, and with ample distance with abutting single-family neighbors. Light and air, therefore, will not be unreasonably obstructed. Based on the proposed two-story height of the building, the existing structures around the site, and the generally flat topography of the neighborhood, the project will not affect significant views enjoyed by neighboring residents. The project will further not be detrimental to the neighborhood as it would be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would 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.
2. Pursuant to BMC 23C.04.070.C, the proposed vertical extensions of the non-conforming front and side yard setbacks of Azalea and Begonia are permissible as they will not further reduce existing non-conforming yards.
  3. Pursuant to BMC Section 23D.32.050, the project, when completed, would change the existing configuration of the duplexes to four two-bedroom dwelling units and two four-

bedroom dwelling units. Both the two-unit layout and the four-unit layout are designed to be occupied by single households within a development of six other newly constructed two-bedroom units. The renovated dwellings are designed to provide for a range of family composition and is not expected to lead to formation of a mini-dorm.

4. Pursuant to BMC 23D.070.D.4 the project the reduction in the building to building separation between Freesia and Geranium from the District minimum of 8' on the first floor and 12' on the second floor down to 6'-1" is permissible as the minimum distance is only at one horizontal plane between the buildings; otherwise the separation ranges from 8 feet to 13 feet. The current building layout and juxtaposition provides adequate air and light between the buildings. With the proposed added condition that the north facing window of the northeast bedroom in Geranium be a minimum of 68 inches from finished floor level, privacy between residents of the two opposing units will be ensured.
-

### III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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 (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 (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, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

#### 5. **Plans and Representations Become Conditions (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 (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 (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.



- The roof deck on **Geranium** shall be moved to the east side of the roof and the roof access shall not include any windows and shall be reduced in massing (i.e. sloped) to limit impacts to the western neighbors.
- All west facing windows on **Freesia** and **Geranium** shall, subject to review and approval by the Zoning Officer, be redesigned to ensure privacy for the residents of the building to the west. This may include, but is not limited to, frosted glass and/or clerestory design.
- A maximum of three full bathrooms are permitted in the two **Freesia** dwelling units.

**12. Address Assignment.** The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City’s database prior to the applicant’s submittal of a building permit application for that unit.

**Prior to Issuance of Any Building Permit:**

- 13. Geotechnical Report.** The applicant shall submit to the Building and Safety Division a geotechnical report that addresses the subsurface water conditions in and in the immediate vicinity of the project site. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports.
- 14. Demolition Schematic.** The applicant shall include a sheet within the plan set for each existing building (Azalea, Begonia, Camellia, and Freesia) that clearly shows the surface area of each exterior wall and the roof that is to be removed and that is to remain. A percentage calculation for the sum of the exterior walls to be removed and for the roof shall be included. A building permit will not be issued unless it is confirmed that the project would not result in a demolition as defined in BMC 23F.04.010.
- 15. Tenant Relocation.** Prior to building permit issuance for any interior improvements, renovations or addition to the existing dwelling units (1955-57 Hearst, 1959 A & B Hearst, 1961-63 Hearst, and 1973 Hearst) the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation.
- 16. Parcel Merger.** The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
- 17. Percent for Art:** Consistent with BMC §23C.23, prior to issuance of a building permit the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
- 18. Construction Noise Management - Public Notice Required.** At least thirty calendar days prior to initiating any construction activities at the site, the applicant shall provide notice to existing residents on the project site, including (1) description of construction activities, (2) daily construction schedule (i.e., time of day) and expected duration (number of months), (3) the name and phone number of the Noise Management Individual for the project, and (4) designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to

correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

The public notice shall also state that the applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit pursuant Condition of Approval number 32; that the existing tenants have the option to temporarily relocate during construction for all active building permits related to this Use Permit pursuant to Condition of Approval number 31; and that parking shall be provided on or off site during all construction in compliance with Condition of Approval number 30.

19. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
  - Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
  - Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
  - Prohibit unnecessary idling of internal combustion engines.
  - If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
  - Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
  - Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - Route construction related traffic along major roadways and away from sensitive receptors where feasible.

20. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
21. Drainage Plan. Unless modified by the City's Building & safety Division and/or Department of Public Works, plans submitted for building permit shall include the drainage design as presented in Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, prepared by Clearwater Hydrology, dated January 7, 2016 as revised July 12, 2017, and all recommendations of the peer review prepared by Balance Hydrologics.
22. Electric Vehicle (EV) Charging. At least 10% of the project parking spaces for residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.
23. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
24. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
25. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
26. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
27. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City's Employment Programs office at 2180 Milvia, 1<sup>st</sup> Floor.
28. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3<sup>rd</sup> Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

## A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old\*) shall be submitted to TMD for developments for:
  - All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at:
    - [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

## B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

## C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality



Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Construction:**

29. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

**During Construction:**

30. Tenant Parking. During any construction related to this Use Permit, the applicant/property owner shall ensure that parking is provided to existing tenants per their lease agreement either on-site or in an alternative location within the area bounded by San Pablo Avenue to the west, Francisco Street to the north, Chestnut Street to the east, and University Avenue to the south.
31. Temporary Relocation. During any construction related to this Use Permit, existing tenants may choose to temporary relocate and the applicant/property owner shall accommodate the request and provide the same benefits and protections as in the Relocation Ordinance, BMC Section 13.84.
32. Neighborhood Construction Meetings. The applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit.
33. Existing Perimeter Vegetation. The applicant shall retain all perimeter vegetation on the property during all phases of construction.
34. 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.
35. 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.

**36.** 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 Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, 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.

**37.** 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.

38. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 12:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
39. 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 or pedestrian paths
  - Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
  - Storage of building materials, dumpsters, debris anywhere in the public ROW
  - Provision of exclusive contractor parking on-street relevant
  - 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, 3<sup>rd</sup> floor, 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 2120 Milvia 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.

40. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
  - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff.

When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F. All on-site storm drain inlets/catch basins **must** be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- J. All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- K. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

L. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

41. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
  - Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
42. Public Works. 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 thick and secured to the ground.
43. Public Works. 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.
44. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
45. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

46. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
47. Public Works. 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.
48. Public Works. The applicant shall inform the contractor of the potential for high groundwater and that a temporary de-watering method during construction may become necessary. Temporary construction dewatering methods may include sumps and pumps placed in a low spot within the excavations. Several sumps and pumps may be required depending on the magnitude of water encountered. The design and implementation of temporary construction de-watering is considered the responsibility of the contractor. Caution should be exercised to prevent softening of the subgrade soils exposed within the excavations. Equipment operated upon saturated subgrade soils tends to cause rutting and weakening, which will require over-excavation of the weakened subgrade. Standing water within the excavation can also cause weakening of the subgrade soils. A temporary mud slab or gravel pad may be needed at the base of the garage and/or parking lifts excavations to provide a clean, dry working area.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

49. Access Agreement. Subject to review and approval by the Zoning Officer, an access agreement shall be recorded with the title of the properties with the County and a copy shall be provided to the planner that provides for the following:
- Parking access for dwelling units in Edelweiss and Daffodil on 1155-63 Hearst (current APN 057-2086-014-00); and
  - Cross access for all units for all common Useable Open Space Areas on both parcels (current APNs 057-2086-014-00 and 057-2086-0130-00).
50. Regulatory Agreement for Ownership Units. Prior to the issuance of a certificate of occupancy, the applicant shall enter into an inclusionary housing agreement providing for compliance with the requirements of Berkeley Municipal Code (BMC) Chapter 23C.12. The inclusionary housing agreement shall include, but not be limited to, the following conditions:
- A. Sales prices of inclusionary units. If inclusionary housing units (i.e. condominiums) are provided on site, the sales price shall not exceed three (3) times eighty percent (80%) of the Area Median Income (hereinafter referred to as "AMI") as of the date of the sale the unit. Allowable sale prices shall be determined in accordance with BMC 23C.12.090.
- B. In-Lieu Fee. Instead of providing the 1.2 inclusionary (i.e. 2 ownership) units on site, the applicant may pay an in-lieu fee for any or all portion of the 1.2 required inclusionary units in accordance with BMC Section 23C.12.035 and 23C.12.040.E.1.

51. Determination of Area Median Income (AMI).

The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

The applicable AMI for the purpose of determining the allowable rent or sale price for each unit (but not for the purpose of determining eligibility for occupancy of a BMR unit) shall be determined in accordance with the following table:

| Unit Size          | AMI Standard                     |
|--------------------|----------------------------------|
| Studio unit        | AMI for a one person household   |
| One-bedroom unit   | AMI for a two person household   |
| Two-bedroom unit   | AMI for a three person household |
| Three-bedroom unit | AMI for a four person household  |

52. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

53. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

54. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 8, 2018, except as modified by conditions of approval, including:

- The north facing window of the northeast bedroom in **Geranium** be a minimum of 68 inches from finished floor level to ensure privacy between residents of the two opposing units.
- The roof deck on **Geranium** shall be moved to the east side of the roof and the roof access shall not include any windows and shall be reduced in massing (i.e. sloped) to limit impacts to the western neighbors.
- All west facing windows on **Freesia** and **Geranium** shall, subject to review and approval by the Zoning Officer, be redesigned to ensure privacy for the residents of the building to the west. This may include, but is not limited to, frosted glass and/or clerestory design.
- A maximum of three full bathrooms are permitted in the two **Freesia** dwelling units.

55. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City’s Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

**At All Times:**

56. Exterior Lighting. 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.
  57. 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.
  58. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
  59. Parking to be Leased or Sold Separately. The seven existing units are guaranteed one parking space per unit as part of the lease or future sale. For the eleven newly constructed units, parking spaces shall be leased or sold separately.
  60. Bike Parking. Secure and on-site bike parking for a minimum of 19 bicycles shall be provided for the life of the building.
  61. Geranium and Freesia Windows. The north facing window of the northeast bedroom in Geranium shall be a minimum of 68 inches from finished floor level to ensure privacy between residents of the two opposing units. The west facing windows of both Geranium and Freesia shall retain the location and treatment as approved by the Zoning Officer pursuant to Condition of Approval number 54 to ensure privacy for the residents of the dwellings to the west.
-





**PROJECT:**

**HEARST GARDENS  
BERKELEY, CA 94702**

**DESCRIPTION:**

DEVELOPMENT OF TWO EXISTING LOTS AT HEARST STREET BETWEEN SAN PABLO & CURTIS STREET. THE EXISTING LOTS ARE OVER 21,000 SF, AND CURRENTLY HAVE 7 RESIDENCES ON SITE. ALL OF THESE ARE TO BE MAINTAINED AND RENOVATED. THERE WILL BE 6 HOMES ADDED TO THE SITE. UNITS ARE ARRANGED AROUND A CENTRAL PASEO THAT PROVIDES ACCESS TO ALL UNITS AND AMPLE OPEN SPACE.

**SITE ADDRESS:**

1155, 1157, 1159, 1161, 1163 & 1173 HEARST AVE.  
BERKELEY, CA 94704

**ASSESSOR'S PARCEL #:**

LOT @ 1173: 057 208601300  
LOT @ 1157: 057 208601400



**APPLICANT:**

RHOADES PLANNING GROUP  
46 SHATTUCK SQUARE, SUITE 11  
BERKELEY, CA 94704  
info@rhodesplanninggroup.com

**ARCHITECT:**

DEVI DUTTA-CHOUDHURY, AIA  
DEVI DUTTA ARCHITECTURE INC.  
928 CARLETON STREET  
BERKELEY, CA 94710  
[510] 705-1937  
hello@devidutta.com

**OWNER:**

HEARST AVE COTTAGES, LLC  
46 SHATTUCK SQUARE, SUITE 11  
BERKELEY, CA 94704

**SHEET INDEX**

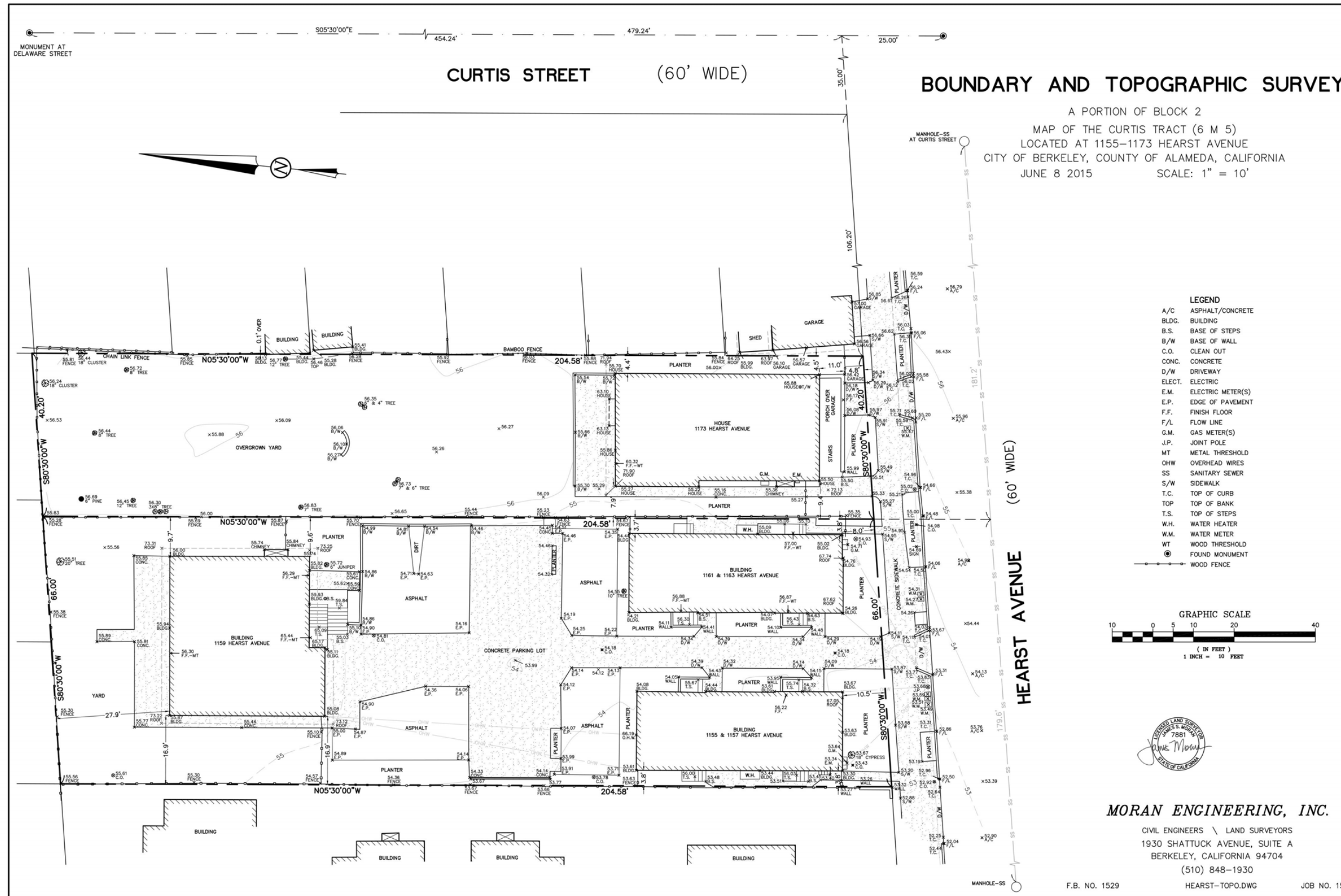
|       |                                 |
|-------|---------------------------------|
| A0.0  | COVER SHEET                     |
| A0.00 | SURVEY                          |
| A0.2  | PROJECT INFORMATION             |
| A0.3  | SITEPLAN, SETBACKS & OPEN SPACE |
| A0.7  | VICINITY MAP                    |
| A1.0  | EXISTING SITE PLAN              |
| A1.1  | EXISTING PLANS & ELEVATIONS     |
| A1.2  | EXISTING PLANS & ELEVATIONS     |
| A1.3  | EXISTING PLANS & ELEVATIONS     |
| A1.4  | LOT COVERAGE & HYDROLOGY        |
| A1.5  | GROUND FLOOR                    |
| A1.6  | SECOND FLOOR                    |
| A1.8  | ROOF PLAN                       |
| A2.0  | SOUTH SITE ELEVATION (FRONT)    |
| A2.1  | NORTH SITE ELEVATION            |
| A2.2  | EAST SITE ELEVATION             |
| A2.3  | WEST SITE ELEVATION             |
| A3.0  | SITE SECTIONS LOOKING WEST      |
| A3.1  | SITE SECTIONS LOOKING EAST      |
| A3.2  | SITE SECTIONS LOOKING NORTH     |
| A3.3  | SITE SECTIONS LOOKING SOUTH     |
| A3.4  | BUILDING SITE SECTIONS          |
| A3.5  | BUILDING SITE SECTIONS          |

**SHEET INDEX**

|       |                                 |
|-------|---------------------------------|
| A4.0  | AZALEA & BEGONIA PLANS          |
| A4.0A | AZALEA ELEVATIONS               |
| A4.0B | AZALEA ELEVATIONS               |
| A4.0C | BEGONIA ELEVATIONS              |
| A4.0D | BEGONIA ELEVATIONS              |
| A4.1  | CAMELLIA PLANS                  |
| A4.1A | CAMELLIA ELEVATIONS             |
| A4.1B | CAMELLIA ELEVATIONS             |
| A4.2  | DAFFODIL & EDELWEISS PLANS      |
| A4.2A | DAFFODIL & EDELWEISS ELEVATIONS |
| A4.2B | DAFFODIL & EDELWEISS ELEVATIONS |
| A4.3  | FREESIA PLANS                   |
| A4.3A | FREESIA ELEVATIONS              |
| A4.3B | FREESIA ELEVATIONS              |
| A4.4  | GERANIUM PLANS                  |
| A4.4A | GERANIUM ELEVATIONS             |
| A4.4B | GERANIUM ELEVATIONS             |
| A4.5  | FENCE DETAIL                    |
| A4.6  | BIKE STORAGE DETAILS            |
| A5.0  | RENDERING - HEARST LOOKING WEST |
| A9.1  | BUILDING CODE SUMMARY           |

**ZONING INFORMATION:**

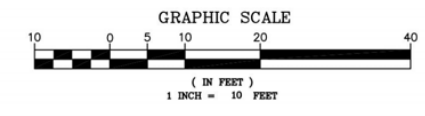
|                         |           |
|-------------------------|-----------|
| GENERAL PLAN:           | MDR       |
| ZONING DISTRICT:        | R-2A      |
| FLOOD ZONE:             | NO        |
| FIRE ZONE:              | 1         |
| ENV. MGMT. AREA:        | NO        |
| LANDMARK STRUCT. MERIT: | NO        |
| LOT AREA 1173:          | 8,204 SF  |
| LOT AREA: 1157          | 13,469 SF |
| TOTAL:                  | 21,673 SF |



### BOUNDARY AND TOPOGRAPHIC SURVEY

A PORTION OF BLOCK 2  
MAP OF THE CURTIS TRACT (6 M 5)  
LOCATED AT 1155-1173 HEARST AVENUE  
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA  
JUNE 8 2015 SCALE: 1" = 10'

- LEGEND**
- A/C ASPHALT/CONCRETE
  - BLDG. BUILDING
  - B.S. BASE OF STEPS
  - B/W BASE OF WALL
  - C.O. CLEAN OUT
  - CONC. CONCRETE
  - D/W DRIVEWAY
  - ELECT. ELECTRIC
  - E.M. ELECTRIC METER(S)
  - E.P. EDGE OF PAVEMENT
  - F.F. FINISH FLOOR
  - F/L FLOW LINE
  - G.M. GAS METER(S)
  - J.P. JOINT POLE
  - MT METAL THRESHOLD
  - OHW OVERHEAD WIRES
  - SS SANITARY SEWER
  - S/W SIDEWALK
  - T.C. TOP OF CURB
  - TOP TOP OF BANK
  - T.S. TOP OF STEPS
  - W.H. WATER HEATER
  - W.M. WATER METER
  - WT WOOD THRESHOLD
  - FOUND MONUMENT
  - WOOD FENCE



**MORAN ENGINEERING, INC.**  
CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930

F.B. NO. 1529 HEARST-TOP0.DWG JOB NO. 15-9090

HEARST GARDENS

DEVI DUTTA ARCHITECTURE

SURVEY

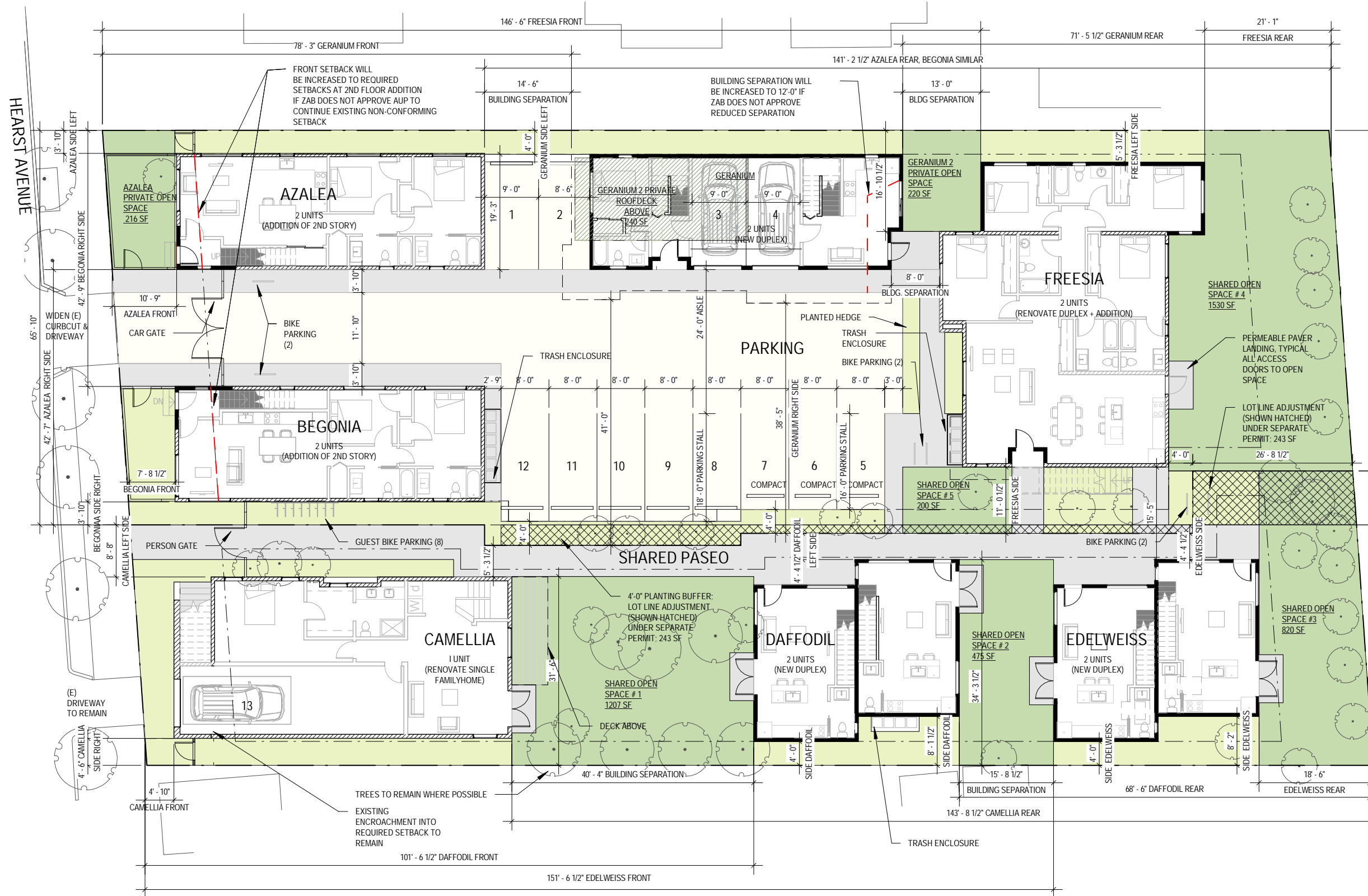
SCALE:

**A0.00**



| HEIGHT & STORIES                                                    | ZONING:                           | EXISTING:                                       | PROPOSED:                                                                                                                                     |
|---------------------------------------------------------------------|-----------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| STORIES:                                                            | 2 ALLOWED                         | 2                                               | 2                                                                                                                                             |
| HEIGHT:                                                             | 28' AVG                           | 23' MAX                                         | 28' MAX                                                                                                                                       |
| <b>SETBACKS</b> (MIN. DIMENSIONS SHOWN - SEE SETBACK DIAGRAM, A0.3) |                                   |                                                 |                                                                                                                                               |
| FRONT                                                               | 15'                               | 4'-10" - 10'-5.5"                               | 4' - 9" - 7'-10" ADDITION<br>CONTINUE EXIST. SETBACK                                                                                          |
| SIDE                                                                | 4' @ 1ST STORY<br>4' @ 2ND STORY  | 3'-10" @ WEST<br>4'- 6" @ EAST                  | 3'-10" - 5'-3.5"                                                                                                                              |
| BACK                                                                | 15'                               | 28'-8" - 143'-8"                                | 16'-3" - 21'-1"                                                                                                                               |
| BUILDING SEPARATION                                                 | 8' @ 1ST STORY<br>12' @ 2ND STORY | 13'- 3"                                         | A - B: 19' - 4"<br>B - C: 12' - 5"<br>C - D: 40' - 4"<br>D - E: 15' - 8 1/2"<br>E - F: 15' - 5"<br>F - G: 8' - 0" AUP REQ.<br>A - G: 14' - 6" |
| <b>LOT AREA</b>                                                     |                                   |                                                 |                                                                                                                                               |
|                                                                     | @ 1173<br>@ 1157                  | 8,204 SF<br>13,469 SF                           | 8,204 SF<br>13,469 SF                                                                                                                         |
| <b>LOT COVERAGE</b>                                                 | 2 - STORY: 40%                    | @ 1173: 17.5%<br>@1157: 26%                     | @ 1173: 3,275 SF: 39.9%<br>@ 1157: 5,170 SF: 38.9%                                                                                            |
| <b>PARKING: CARS</b>                                                |                                   |                                                 |                                                                                                                                               |
| RESIDENTIAL                                                         | 1/UNIT<br>13 REQUIRED             | 7 (1 COVERED @<br>CAMELLIA; 6 @<br>SURFACE LOT) | 13<br><br>10 UNCOVERED @ SURFACE LOT<br>2 COVERED @ GERANIUM<br>1 COVERED @ CAMELLIA                                                          |
| <b>PARKING: BIKE</b>                                                |                                   |                                                 |                                                                                                                                               |
| RESIDENTIAL                                                         | NONE REQUIRED                     | 0                                               | 13                                                                                                                                            |

| DENSITY:                                                                                     | ZONING:                                                                                                 | EXISTING:                                      | PROPOSED:                                      |
|----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------------------------------|
| * NOTE: SEE SHEET A0.8 FOR UNIT MIX AND SIZES                                                |                                                                                                         |                                                |                                                |
| ALLOWED<br>1173 HEARST:<br>1157 HEARST:                                                      | 1 / 1650 SF LOT AREA<br>8,204/1650 = 5 UNITS<br>13,469/1650 = 8 UNITS                                   | 1 UNIT<br>6 UNITS                              | 4 NEW UNITS = 5 TOTAL<br>2 NEW UNITS = 8 TOTAL |
| <b>OPEN SPACE</b> (SEE OPEN SPACE DIAGRAM, A0.3)                                             |                                                                                                         |                                                |                                                |
|                                                                                              | 300 SF / UNIT<br>X 13 = 3900 SF<br><br>@ 1173: 5 X 300<br>= 1500 SF<br><br>@ 1157: 8 X 300<br>= 2400 SF | @ 1173:<br>5,599 SF<br><br>@ 1157:<br>2,560 SF | SEE A0.3                                       |
| <b>BUILDING OCCUPANCY PER CBC.</b>                                                           |                                                                                                         |                                                |                                                |
| R-3 (SINGLE FAMILY RESIDENTIAL DUPLEXES)                                                     |                                                                                                         |                                                |                                                |
| <b>PROPOSED CONSTRUCTION TYPE</b>                                                            |                                                                                                         |                                                |                                                |
| TYPE VB CONSTRUCTION THROUGHOUT - WOOD FRAMING,<br>NON-RATED PER CALIFORNIA RESIDENTIAL CODE |                                                                                                         |                                                |                                                |
| <b>EXCAVATION</b>                                                                            |                                                                                                         |                                                |                                                |
| APPROXIMATELY 55 CUBIC YARDS, FOR NEW FOUNDATIONS ONLY.                                      |                                                                                                         |                                                |                                                |



**LEGEND**

- PEDESTRIAN WALKWAY, PERMEABLE
- PLANTING (NOT COUNTING TOWARDS OPEN SPACE)
- OPEN SPACE
- NON-CONFORMING SETBACKS & BUILDING SEPARATION
- DRIVEWAY AND PARKING
- PROPERTY LINE
- REQUIRED SETBACK
- OPEN SPACE ABOVE
- LOT AREA CHANGE

**PROVIDED OPEN SPACE**

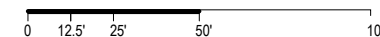
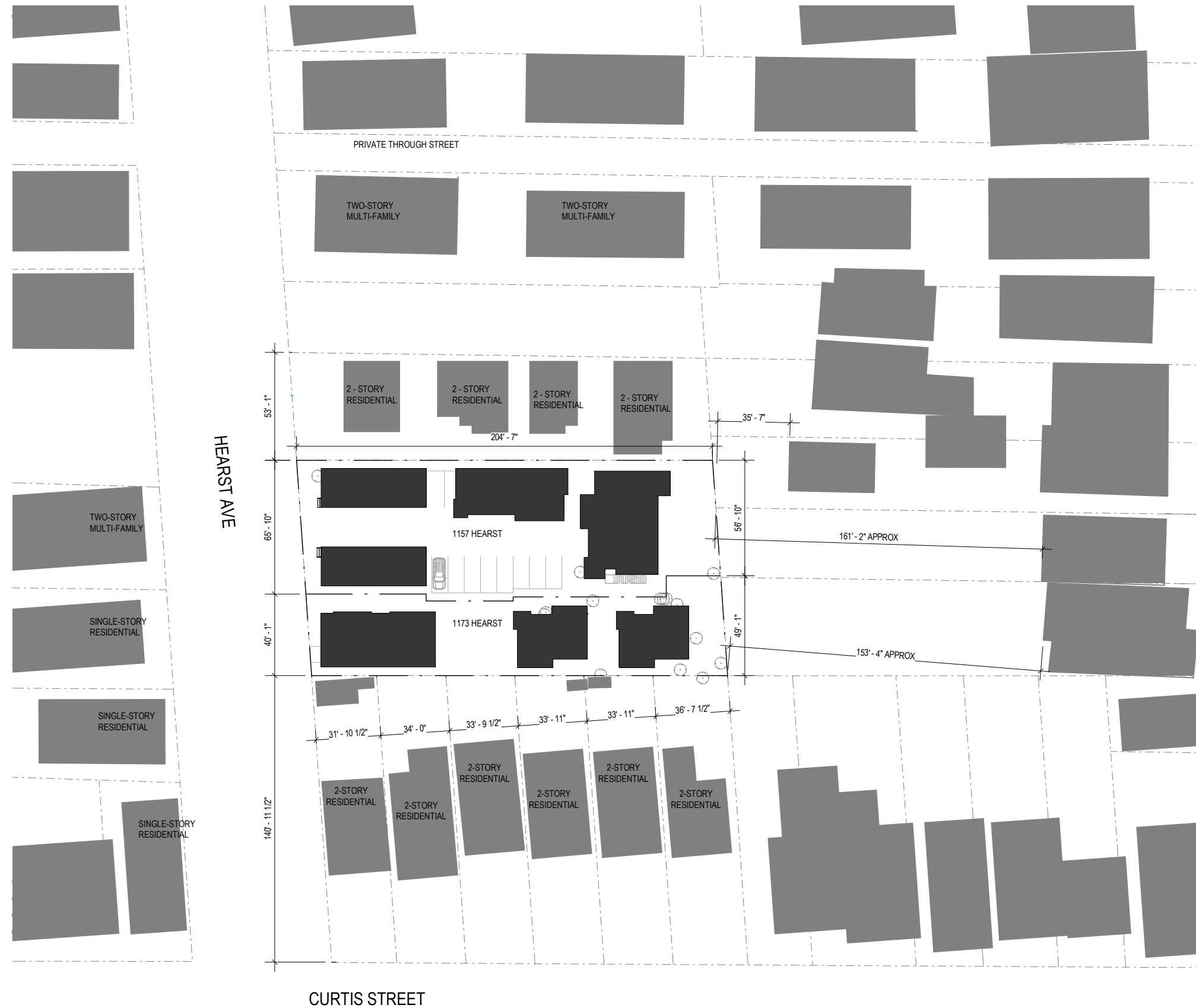
**1157 HEARST**

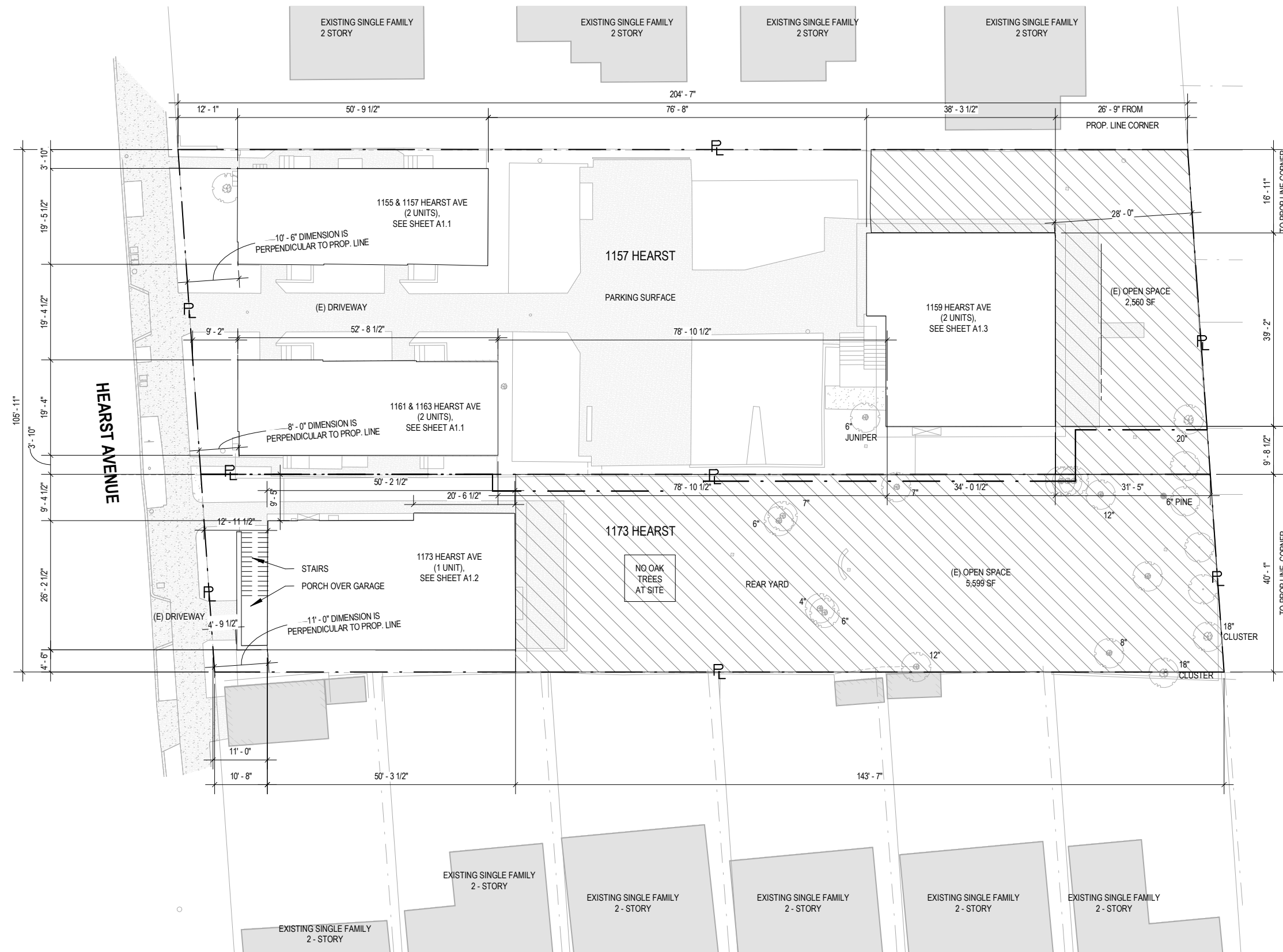
- AZALEA 1: 216 SF PRIVATE OPEN SPACE  
84 SF COMMON OPEN SPACE PROVIDED AT OPEN SPACE #4 & #5
- AZALEA 2: 300 SF COMMON AT #4 & #5
- BEGONIA 1: 300 SF COMMON AT #4 & #5
- BEGONIA 2: 300 SF COMMON AT #4 & #5
- FRESIA 1: 300 SF COMMON AT #4 & #5
- FRESIA 2: 300 SF COMMON AT #4 & #5
- GERANIUM 1: 240 SF PRIVATE  
60 SF COMMON OPEN SPACE PROVIDED AT OPEN SPACE #4 & #5
- GERANIUM 2: 220 SF PRIVATE  
80 SF COMMON OPEN SPACE PROVIDED AT OPEN SPACE #4 & #5

**1173 HEARST**

- CAMELLIA: 300 SF COMMON AT OPEN SPACE #1, #2 & #3
- DAFFODIL 1: 300 SF COMMON AT #1, #2 & #3
- DAFFODIL 2: 300 SF COMMON AT #1, #2 & #3
- EDELWEISS 1: 300 SF COMMON AT #1, #2 & #3
- EDELWEISS 2: 300 SF COMMON AT #1, #2 & #3

|                           |         |         |
|---------------------------|---------|---------|
| TOTAL PRIVATE O.S.        | 1157    | 1173    |
| TOTAL COMMON O.S.         | 679     | 0       |
| TOTAL OPEN SPACE PROVIDED | 2409 SF | 2502 SF |
| TOTAL OPEN SPACE REQUIRED | 2400 SF | 1500 SF |

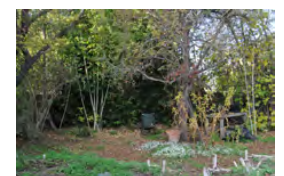




BACKYARD OF 1159 HEARST AVE.



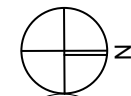
BACKYARD OF 1173 HEARST AVE.



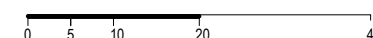
BACKYARD OF 1173 HEARST AVE.

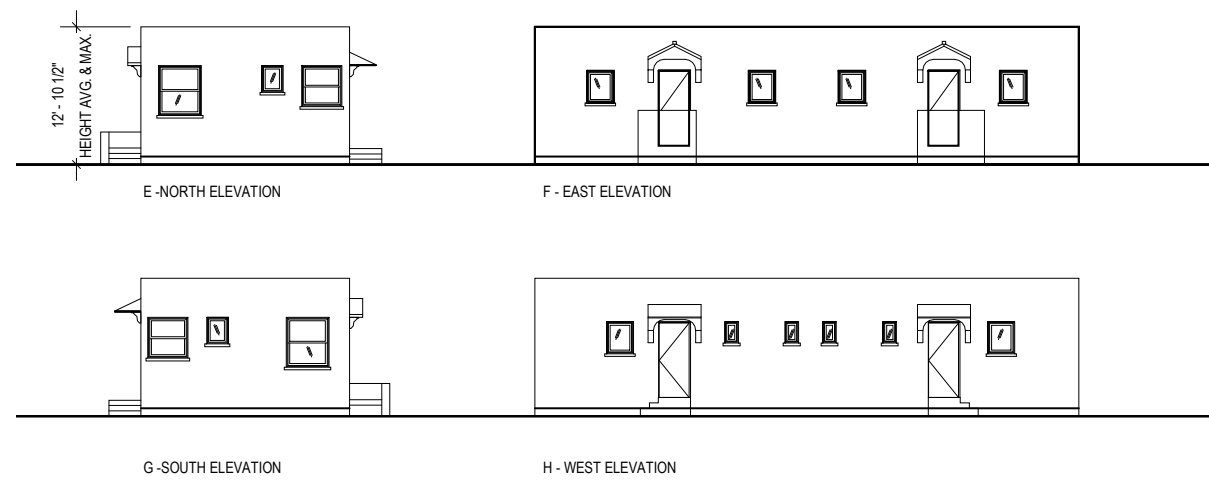
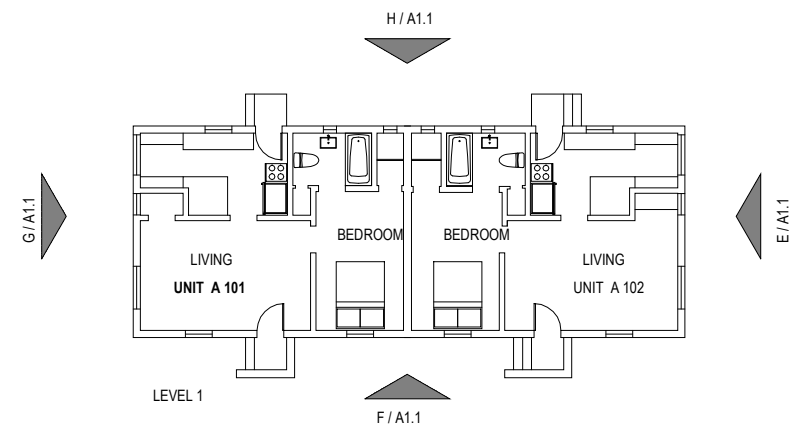


BACKYARD OF 1173 HEARST AVE.

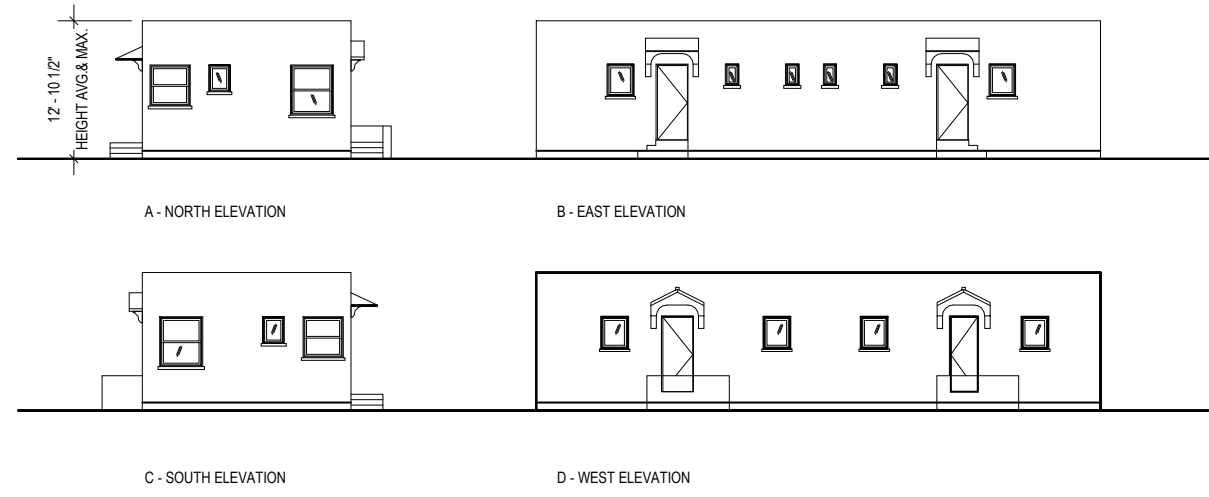
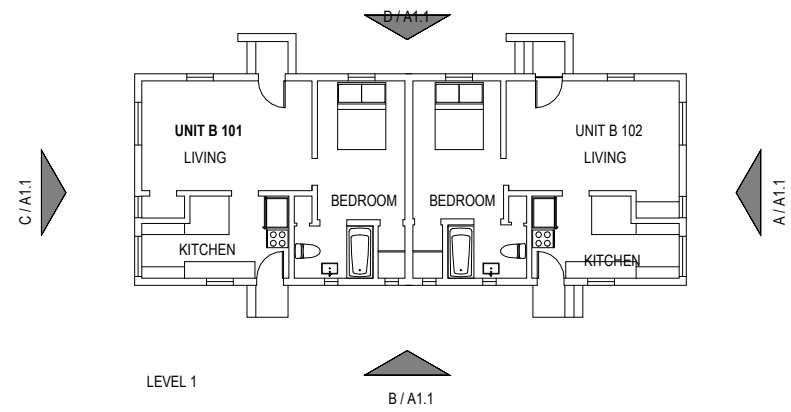


A1.0

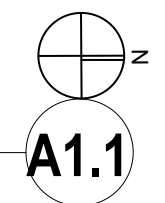
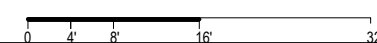


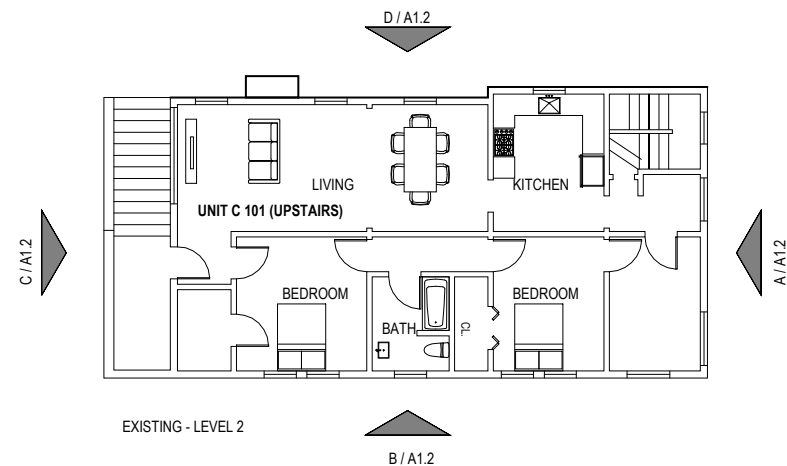


**2 AZALEA 1155 & 1157 HEARST**  
1/16" = 1'-0"

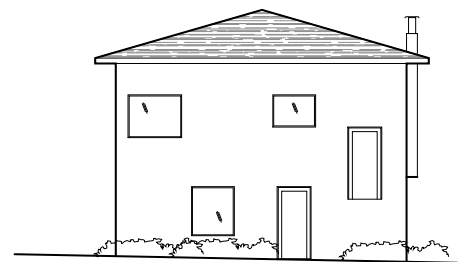


**1 BEGONIA 1161 & 1163 HEARST**  
1/16" = 1'-0"

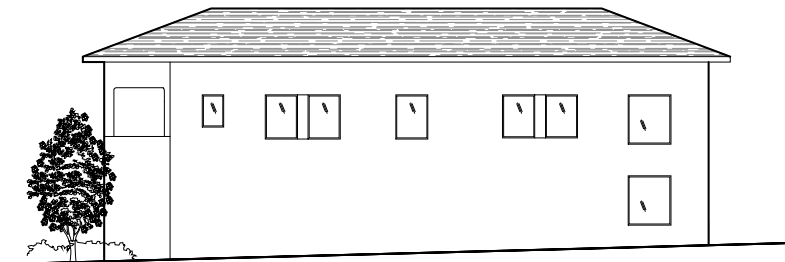




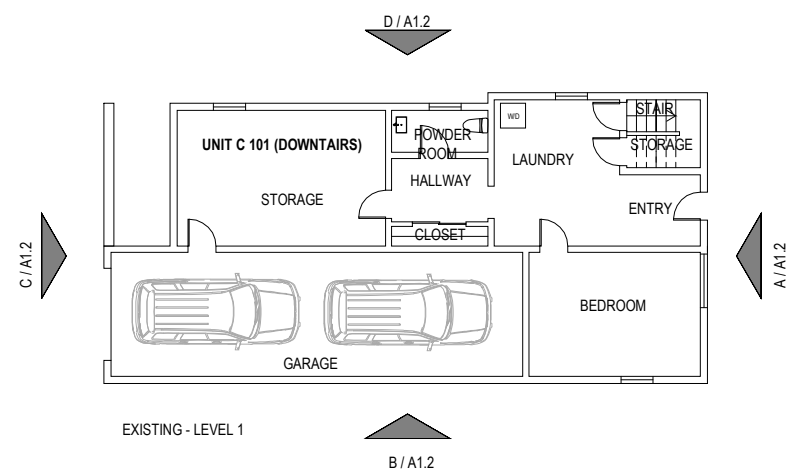
EXISTING - LEVEL 2



A - EXISTING NORTH ELEVATION



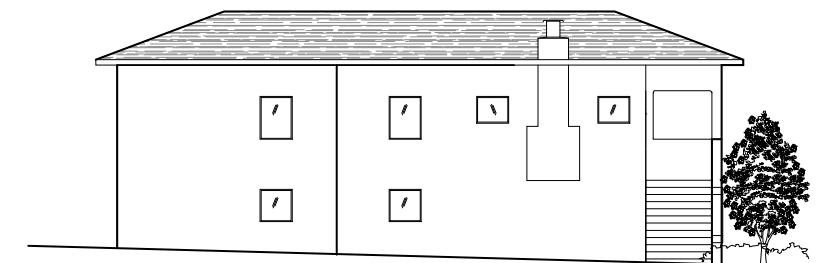
B - EXISTING EAST ELEVATION



EXISTING - LEVEL 1

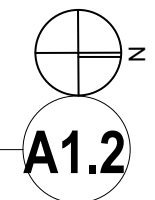


C - EXISTING SOUTH ELEVATION

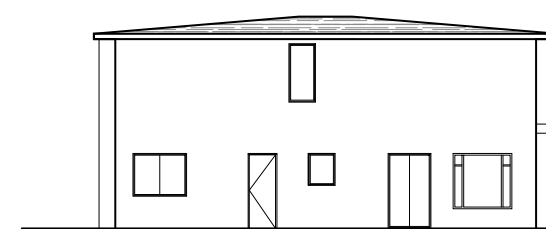
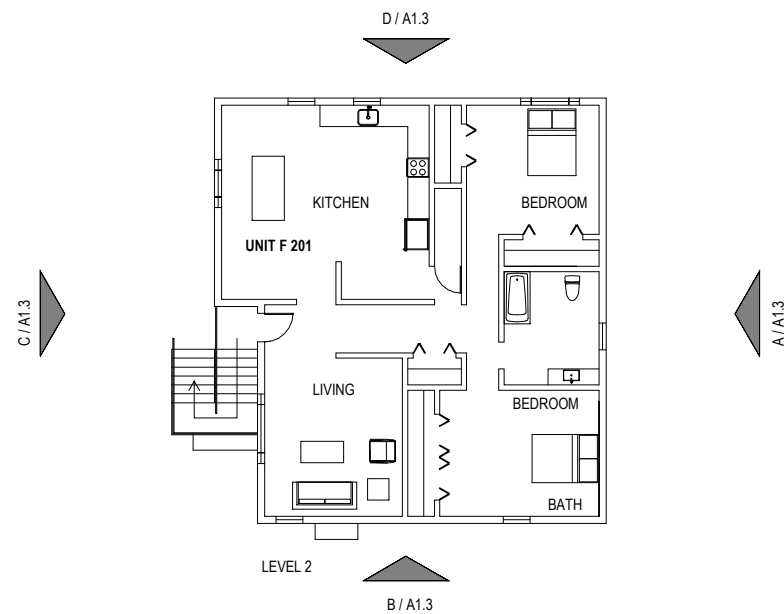


D - EXISTING WEST ELEVATION

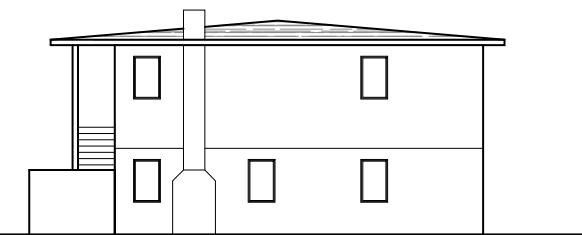
**EXISTING PLANS & ELEVATIONS - CAMELIA / 1173  
HEARST**  
1  
1/16" = 1'-0"



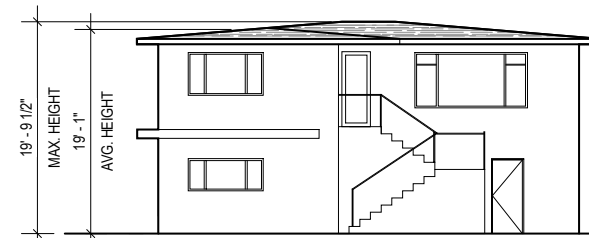
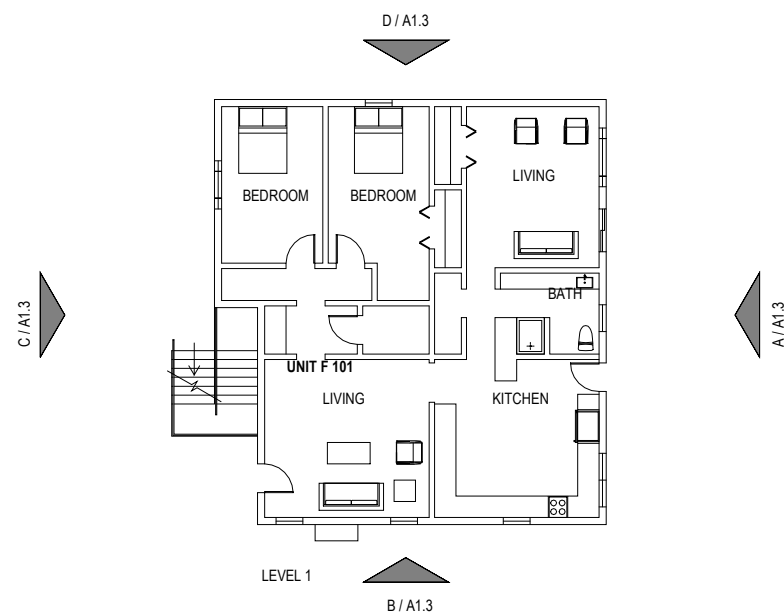




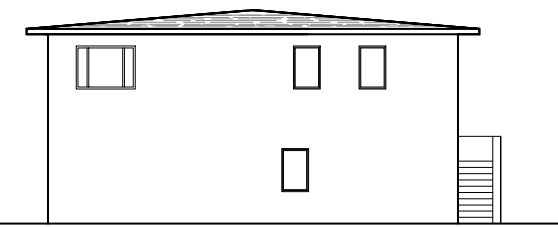
A - NORTH ELEVATION



B - EAST ELEVATION



C - SOUTH ELEVATION

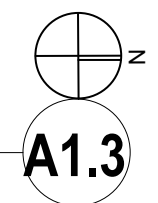
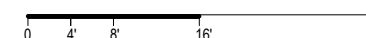


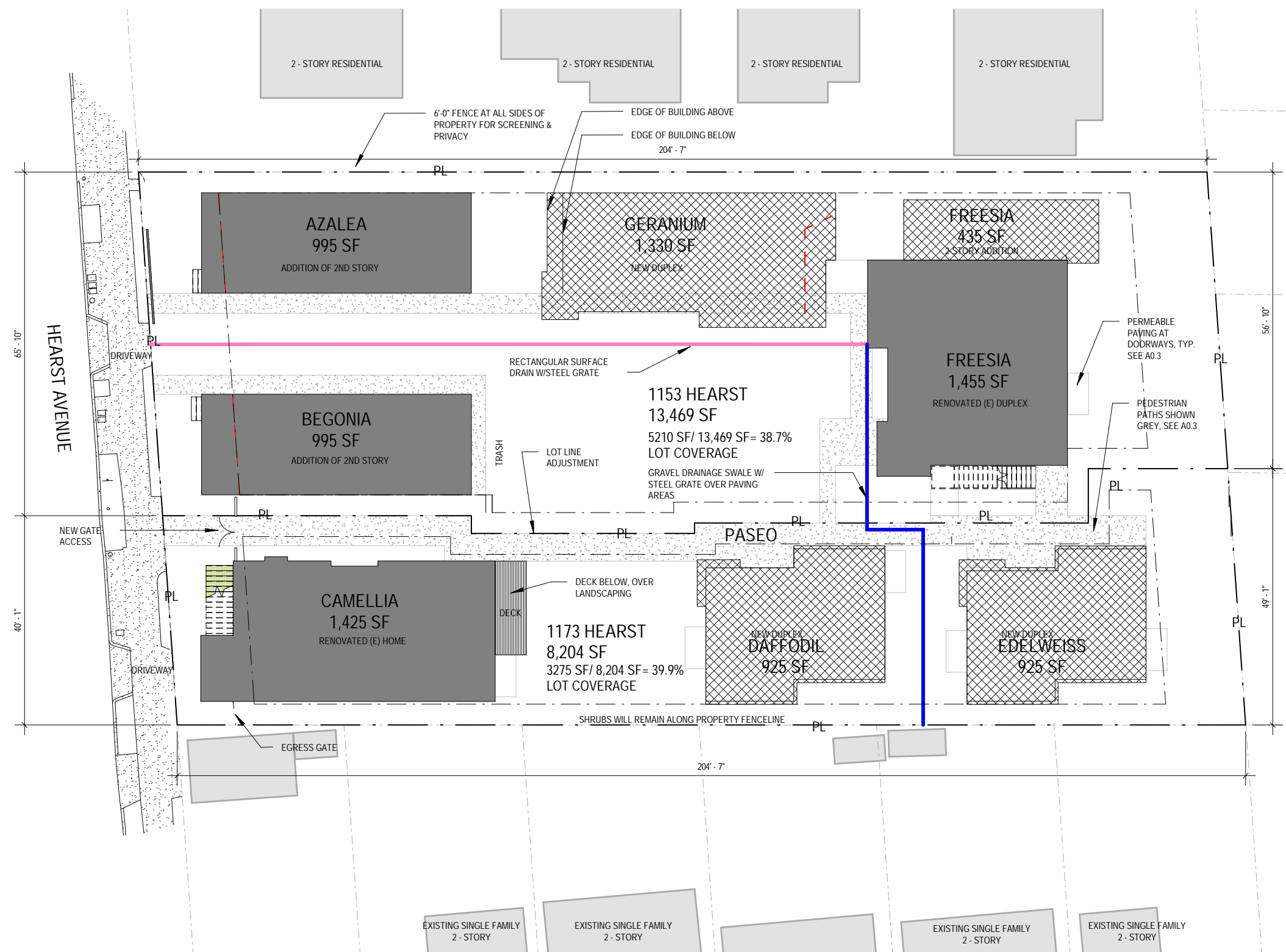
D - WEST ELEVATION

**EXISTING PLANS & ELEVATIONS - FREESIA / 1179**

**HEARST**

1  
1/16" = 1'-0"

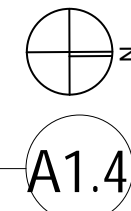
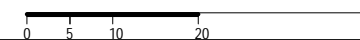


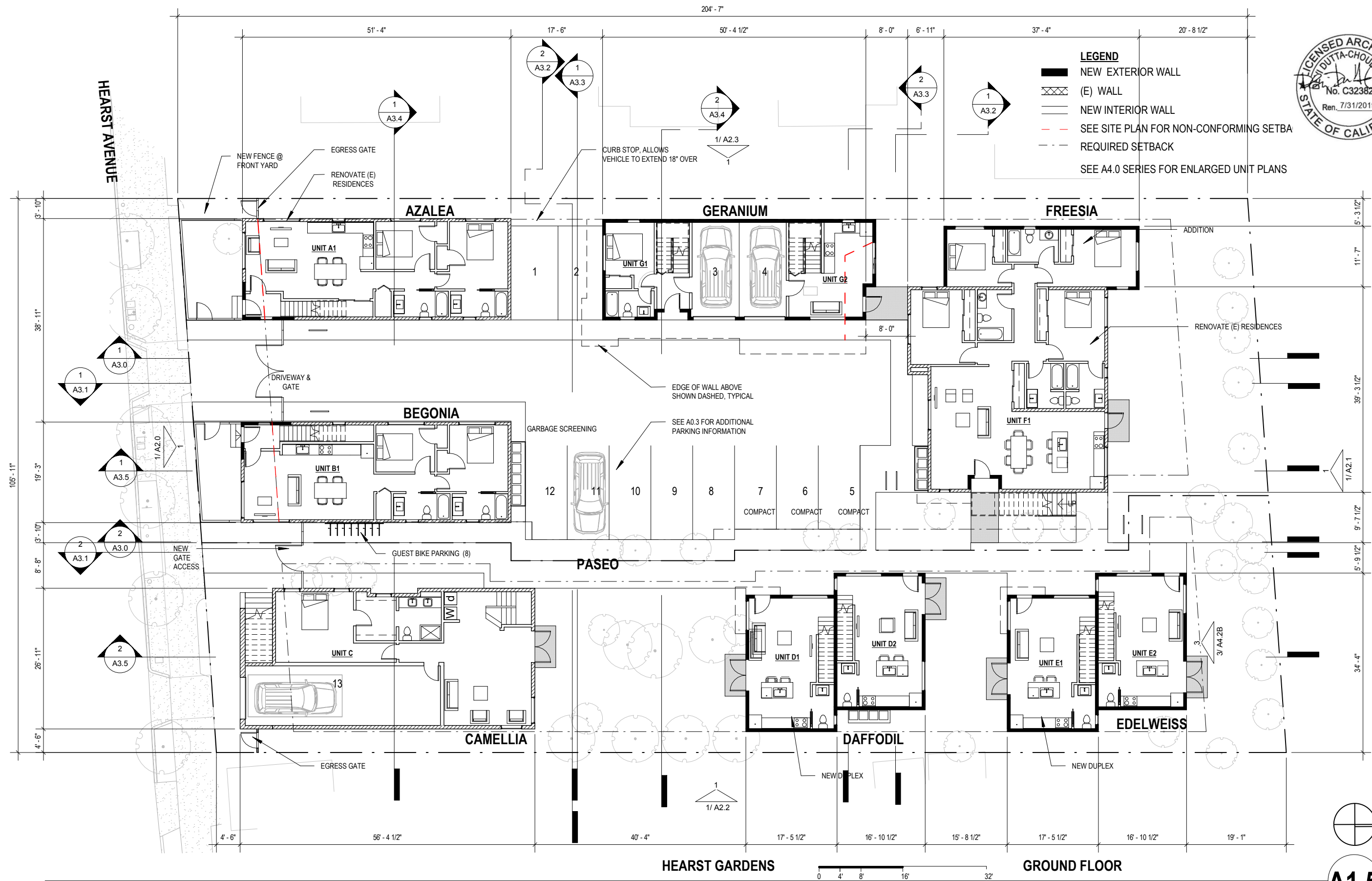


- LEGEND**
- NEW BUILDING AREA
  - RENOVATED (E) BUILDING
  - PEDESTRIAN PATHS
  - NON-CONFORMING SETBACKS & BUILDING SEPARATION
  - PROPERTY LINE
  - REQUIRED SETBACK

**HYDROLOGY NOTES**

Unless modified by the City's Building & Safety Division and/or Department of Public Works, the drainage system shall be designed and installed as presented in the Stormwater and Flooding Assessment and Mitigation Design prepared by Clearwater Hydrology, dated January 7, 2016 and as well as all recommendations of the peer review prepared by Balance Hydrologics on March 16, 2017.





**LEGEND**  
 NEW EXTERIOR WALL  
 (E) WALL  
 NEW INTERIOR WALL  
 SEE SITE PLAN FOR NON-CONFORMING SETBA  
 REQUIRED SETBACK  
 SEE A4.0 SERIES FOR ENLARGED UNIT PLANS

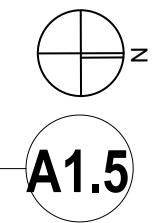
HEARST GARDENS

GROUND FLOOR

DEVI DUTTA ARCHITECTURE

SCALE: 1/16" = 1'-0"

ZAB 6.8.2018





- LEGEND**
- NEW EXTERIOR WALL
  - (E) WALL
  - NEW INTERIOR WALL
  - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
  - REQUIRED SETBACK
- SEE A4.0 SERIES FOR ENLARGED UNIT PLANS



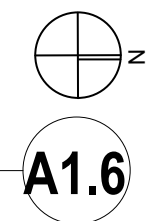
HEARST GARDENS

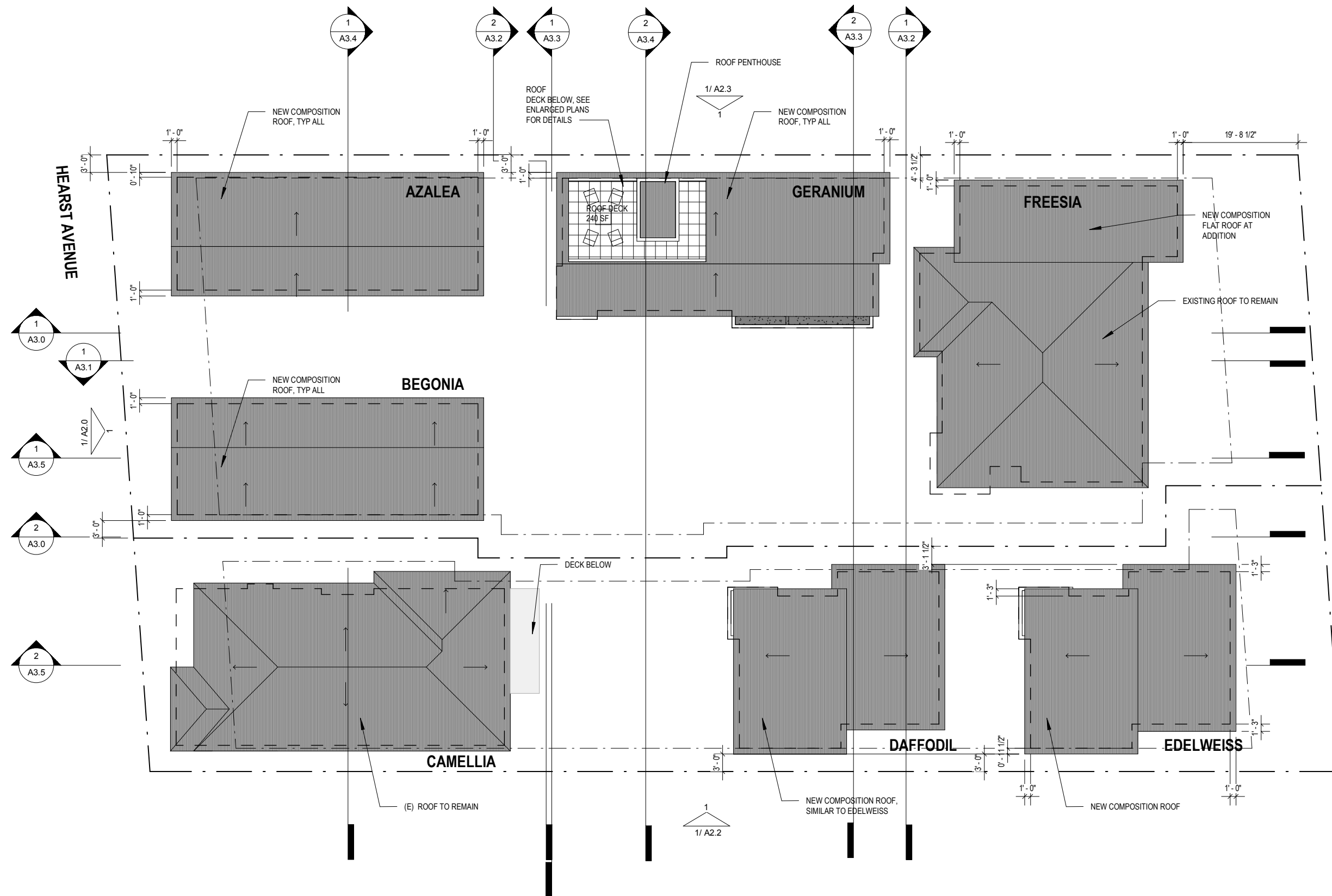
DEVI DUTTA ARCHITECTURE

SECOND FLOOR

SCALE: 1/16" = 1'-0"

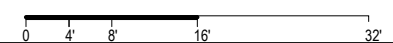
ZAB 6.8.2018





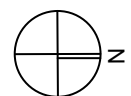
HEARST GARDENS

DEVI DUTTA ARCHITECTURE



ROOF PLAN

SCALE: 1/16" = 1'-0"

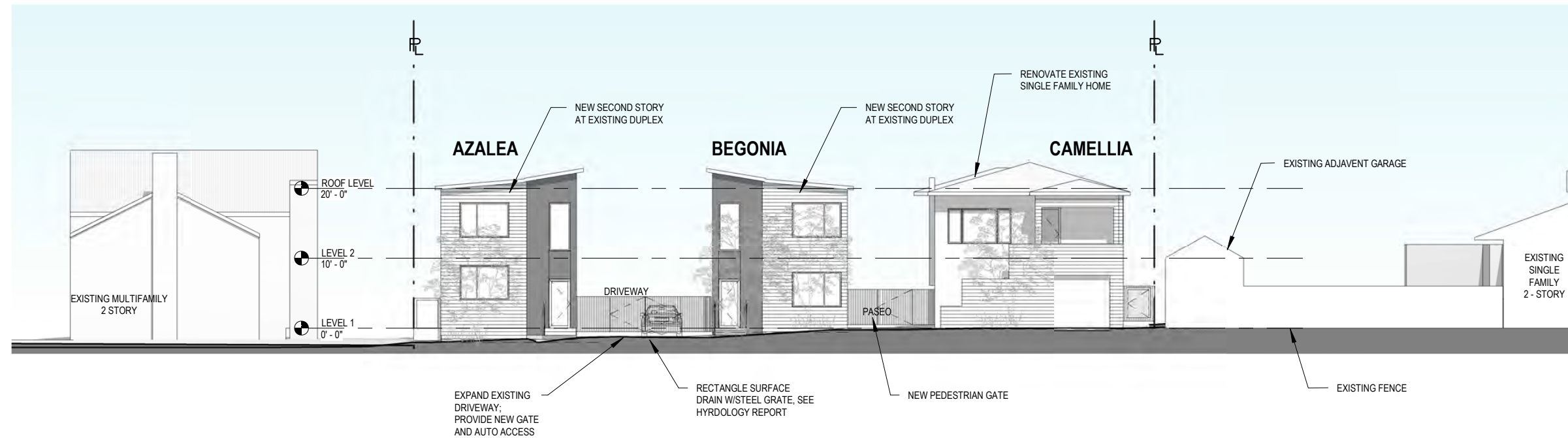


A1.8







- MATERIAL LEGEND**
- PAINTED WOOD SIDING
  - WOOD PATTERNED FIBER CEMENT
  - CEMENT PLASTER
  - CEMENT PLASTER

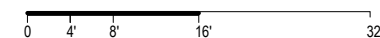
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS









- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER

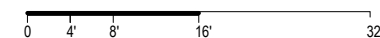
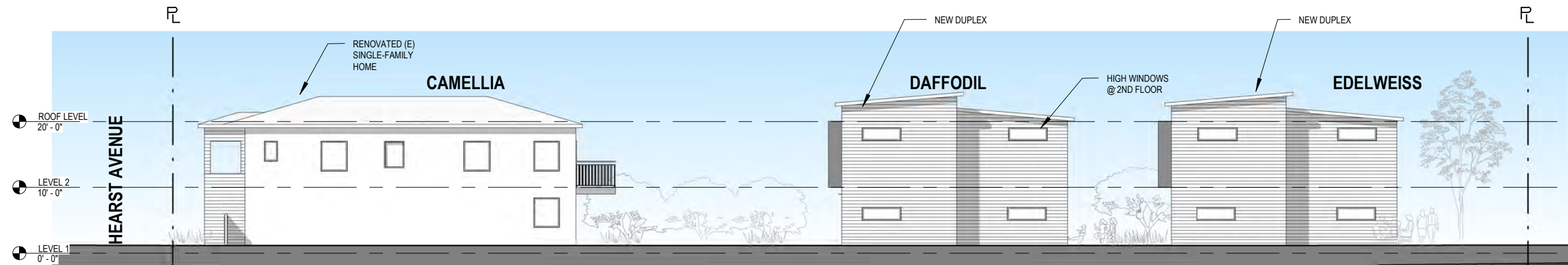
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS









- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER

SEE A4.0 SERIES FOR ENLARGED ELEVATIONS

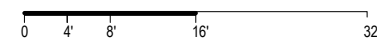
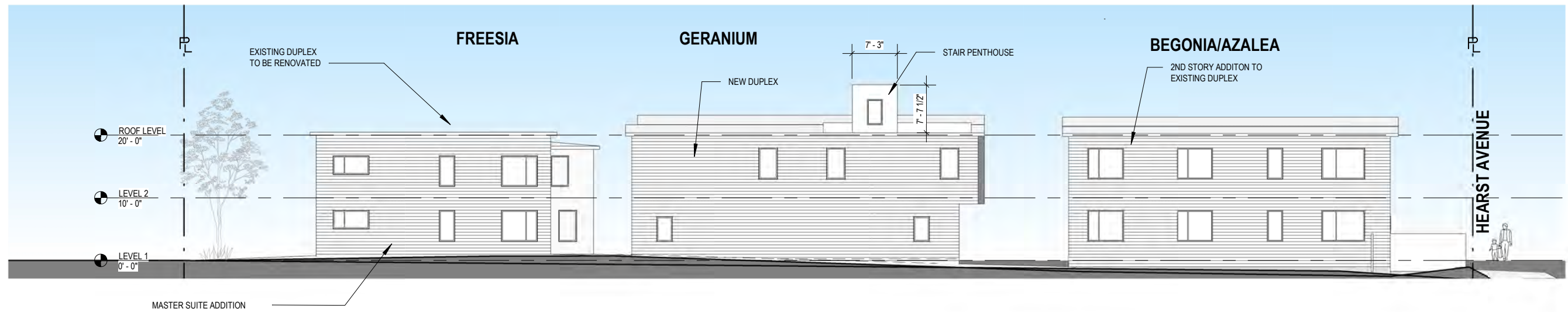


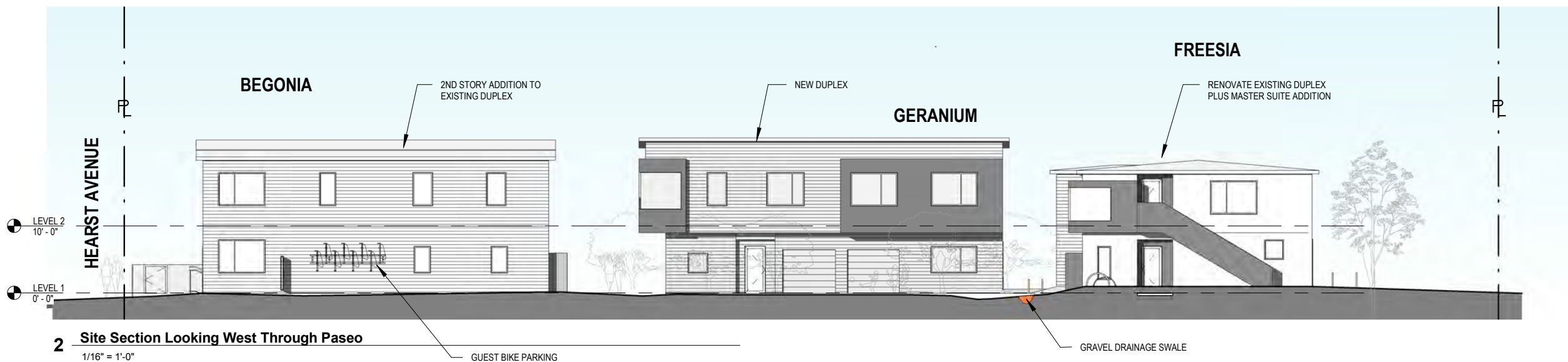
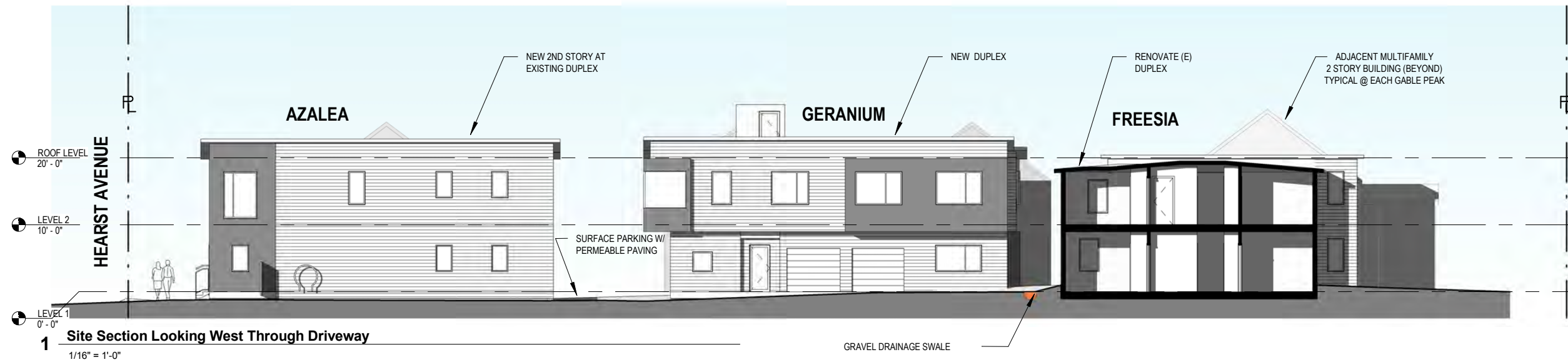




- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER

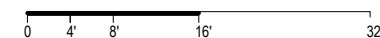
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS





HEARST GARDENS

DEVI DUTTA ARCHITECTURE

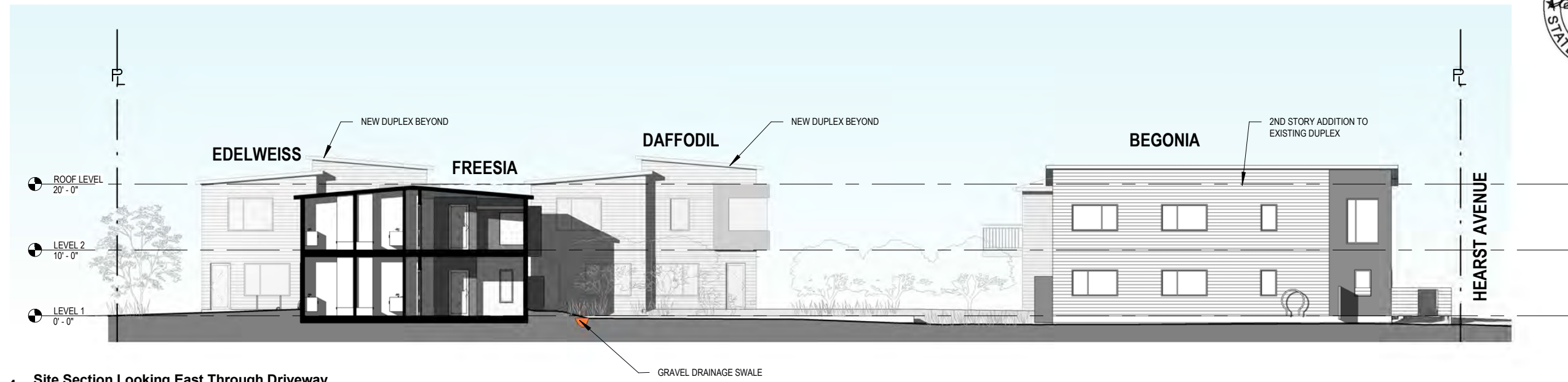


SITE SECTIONS LOOKING WEST

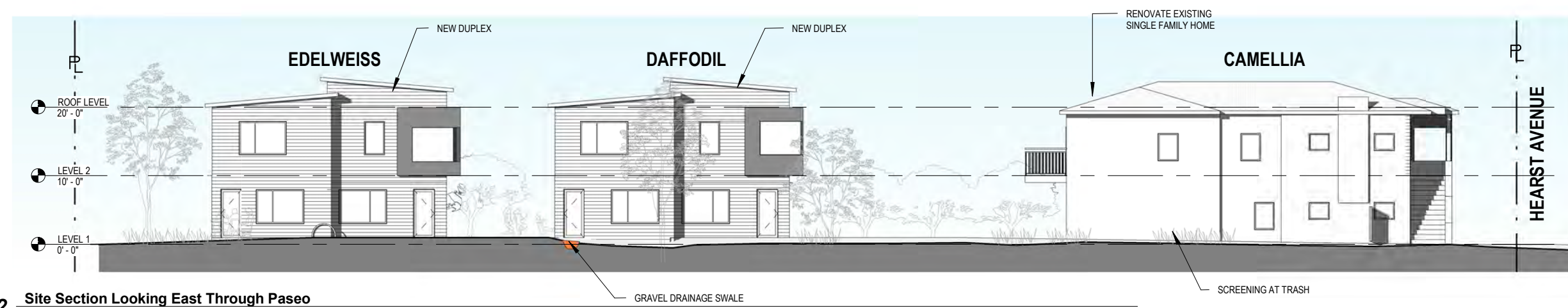
SCALE: 1/16" = 1'-0"

ZAB 6.8.2018

**A3.0**



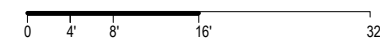
**1 Site Section Looking East Through Driveway**  
1/16" = 1'-0"



**2 Site Section Looking East Through Paseo**  
1/16" = 1'-0"

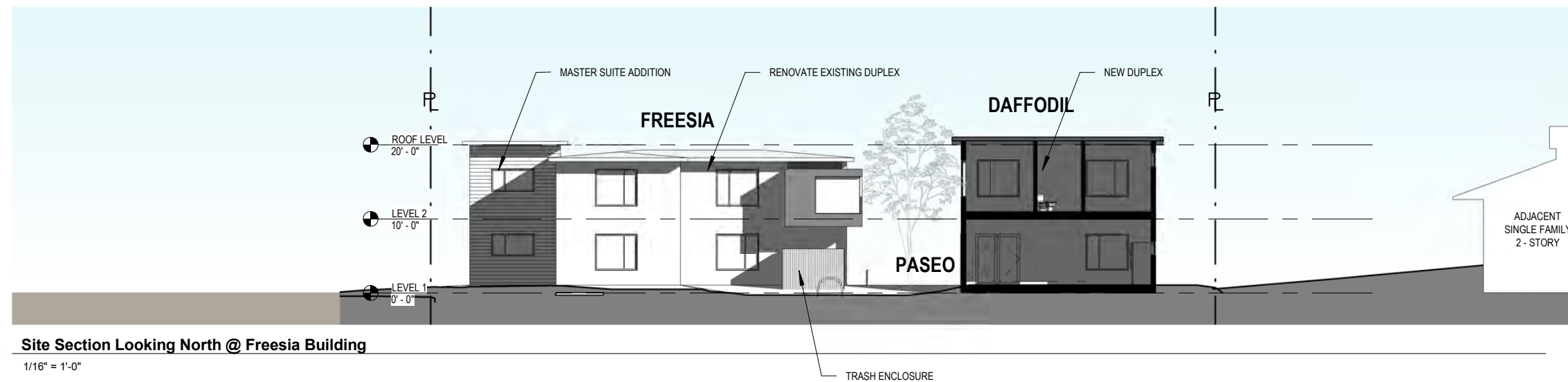
HEARST GARDENS

DEVI DUTTA ARCHITECTURE

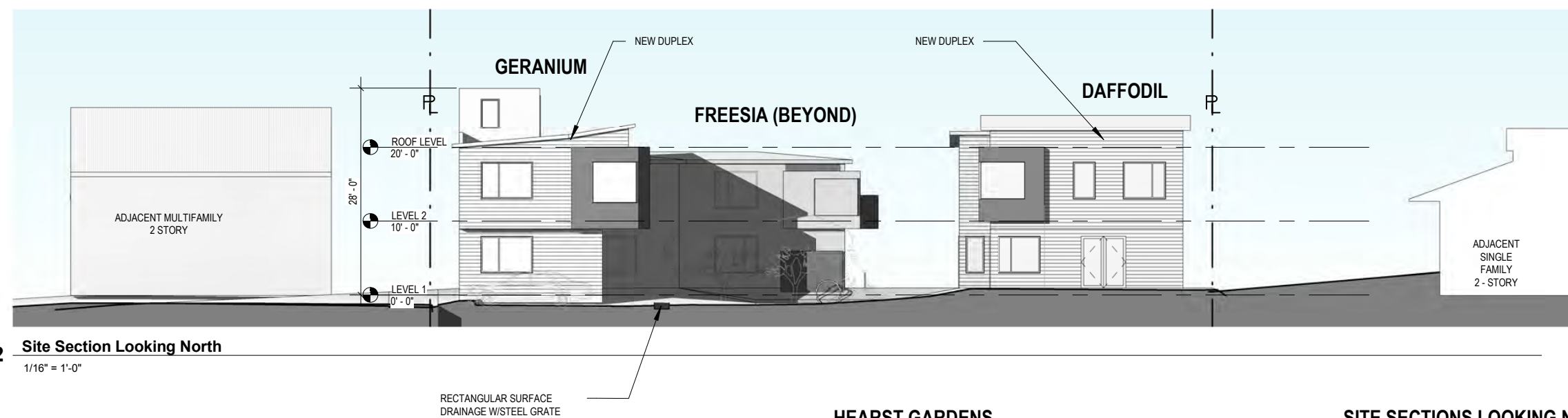


SITE SECTIONS LOOKING EAST

SCALE: 1/16" = 1'-0"



**1 Site Section Looking North @ Freesia Building**  
1/16" = 1'-0"



**2 Site Section Looking North**  
1/16" = 1'-0"

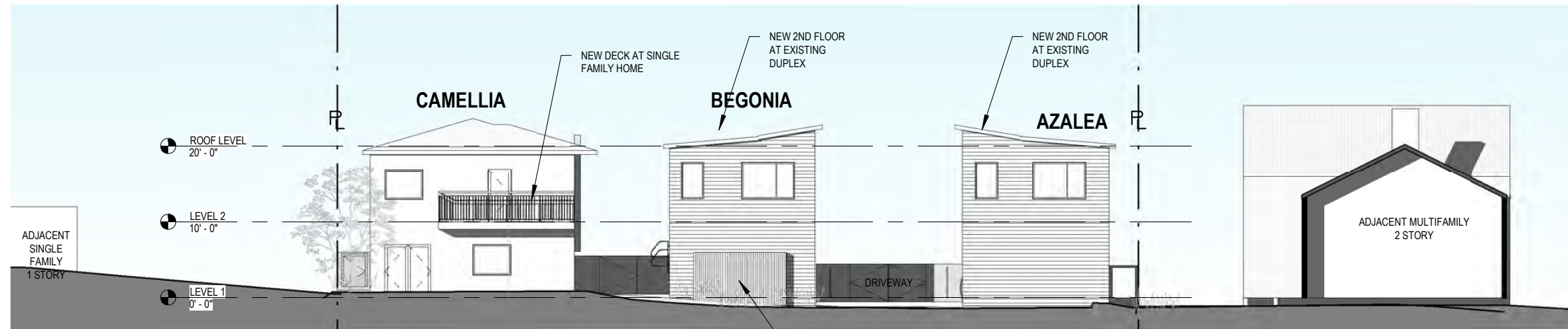
HEARST GARDENS

DEVI DUTTA ARCHITECTURE



SITE SECTIONS LOOKING NORTH

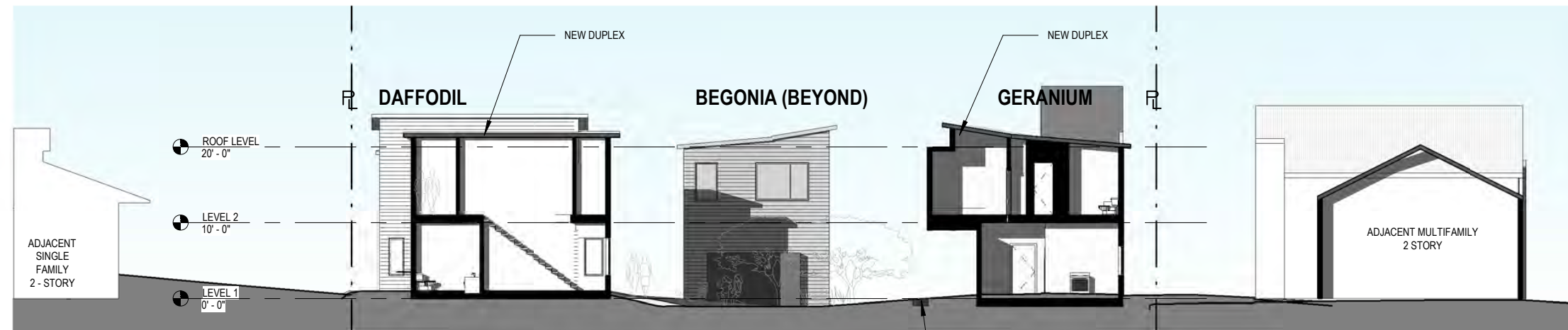
SCALE: 1/16" = 1'-0"



1 Site Section Looking South

1/16" = 1'-0"

SCREENED, SHARED  
TRASH & RECYCLING  
ENCLOSURE



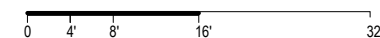
2 Site Section Looking South @ Parking Lot

1/16" = 1'-0"

RECTANGULAR SURFACE  
DRAIN W/ STEEL GRATE

HEARST GARDENS

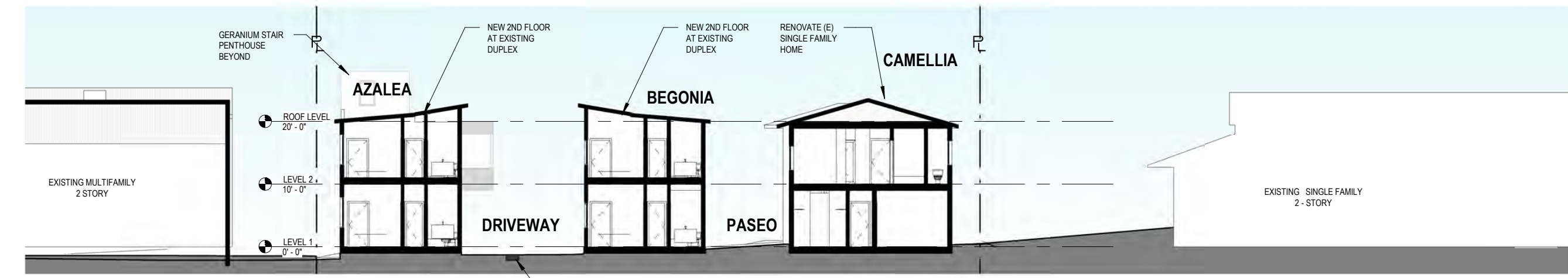
DEVI DUTTA ARCHITECTURE



SITE SECTIONS LOOKING SOUTH

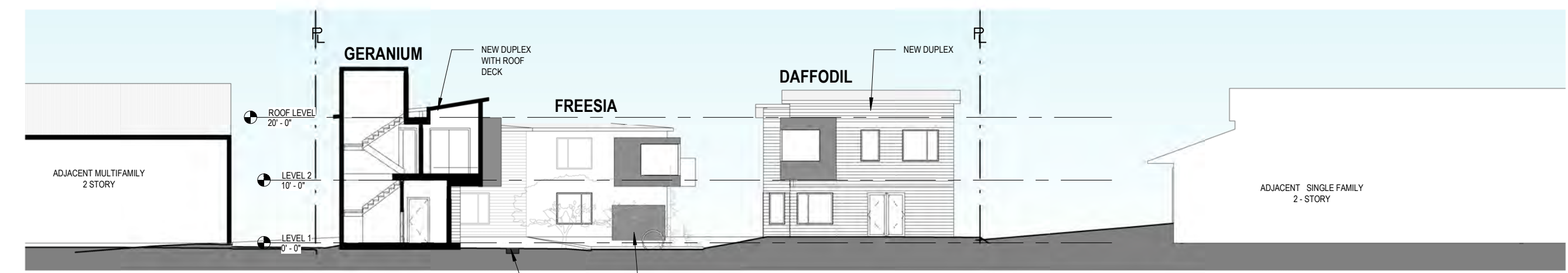
SCALE: 1/16" = 1'-0"

A3.3



**1 Building Section Looking North Through Stair**  
1/16" = 1'-0"

RECTANGULAR SURFACE DRAINAGE W/STEEL GRATE



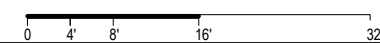
**2 Building Section Through Covered Parking Looking North**  
1/16" = 1'-0"

RECTANGULAR SURFACE DRAINAGE W/STEEL GRATE

SHARED SCREENED TRASH/RY ENCLOSURE

HEARST GARDENS

DEVI DUTTA ARCHITECTURE

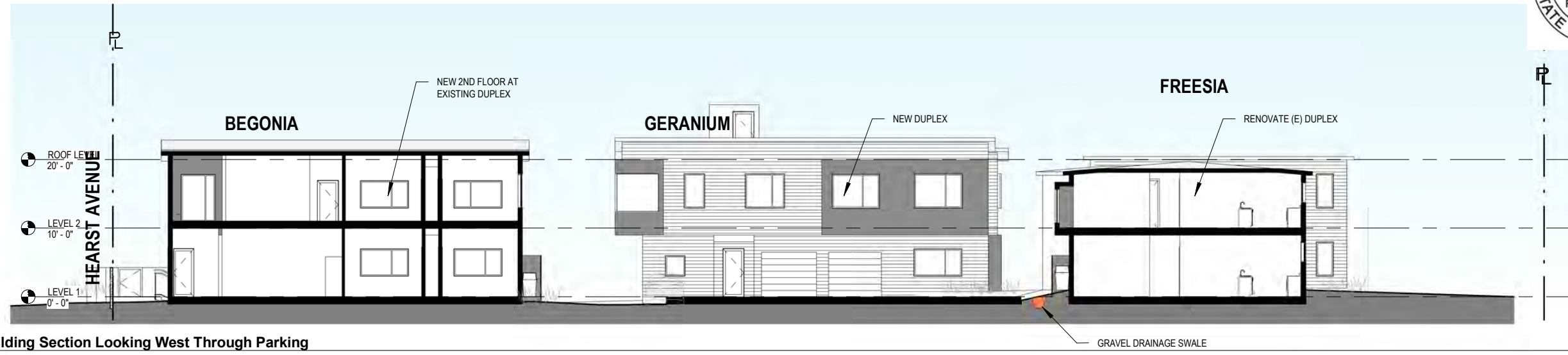


BUILDING SITE SECTIONS

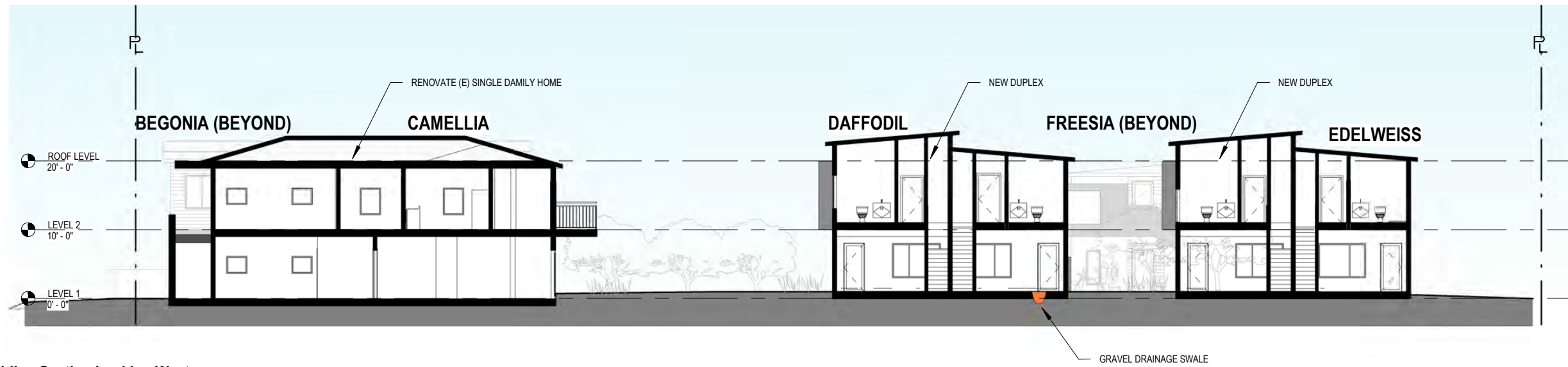
SCALE: 1/16" = 1'-0"

ZAB 6.8.2018

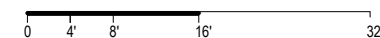




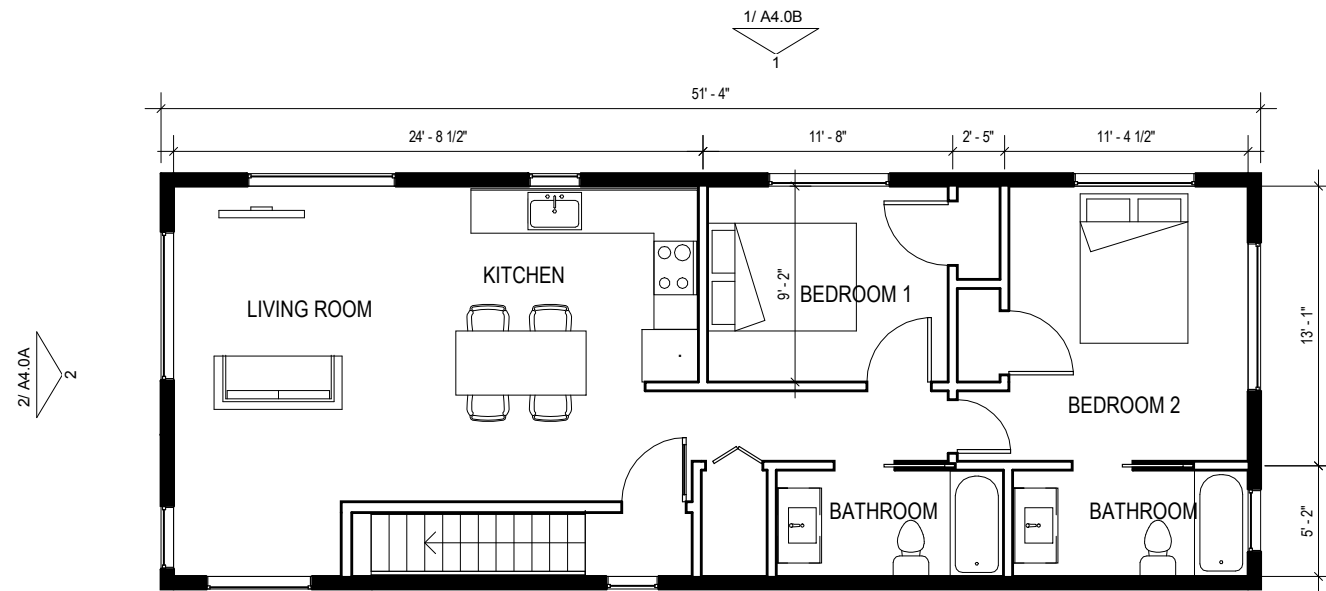
1 Building Section Looking West Through Parking  
1/16" = 1'-0"



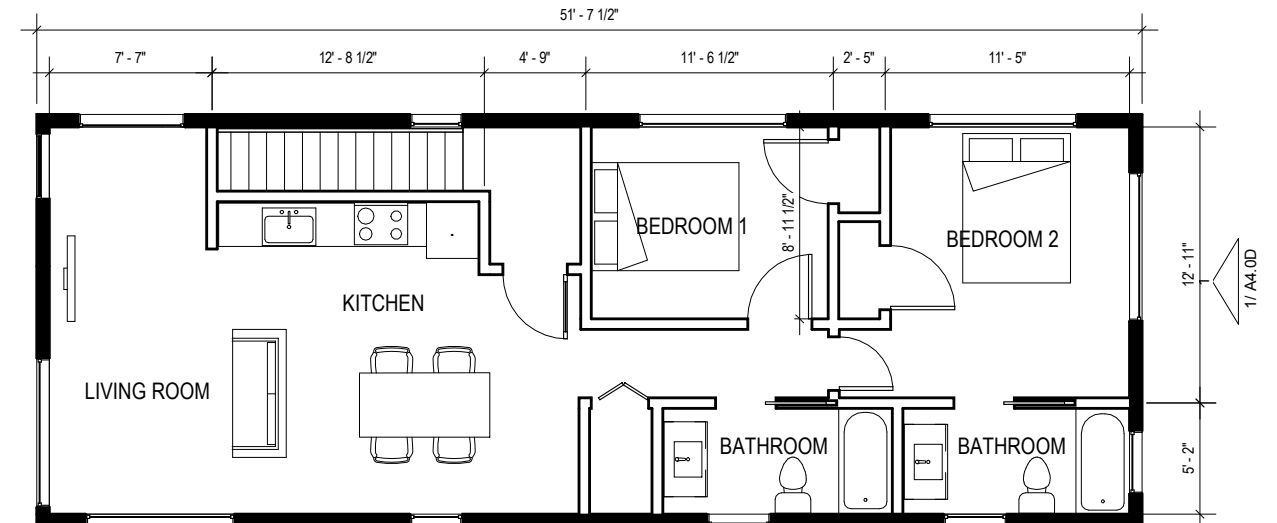
2 Building Section Looking West  
1/16" = 1'-0"



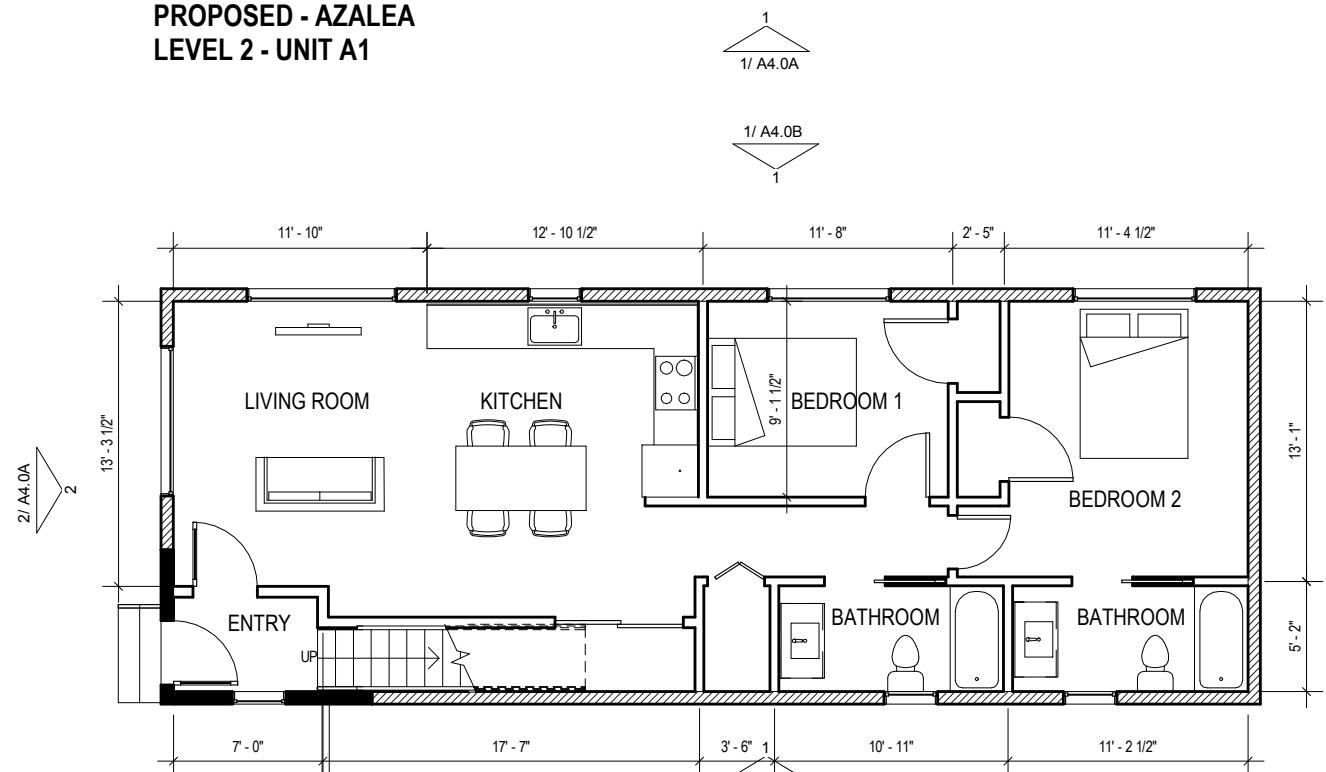
- LEGEND**
- NEW EXTERIOR WALL
  - ▨ (E) WALL
  - NEW INTERIOR WALL
  - - - SEE SITE PLAN FOR NON-CONFORMING SETBACK
  - - - REQUIRED SETBACK
- 2/ A4.0D A4.0 SERIES FOR ENLARGED UNIT PLANS



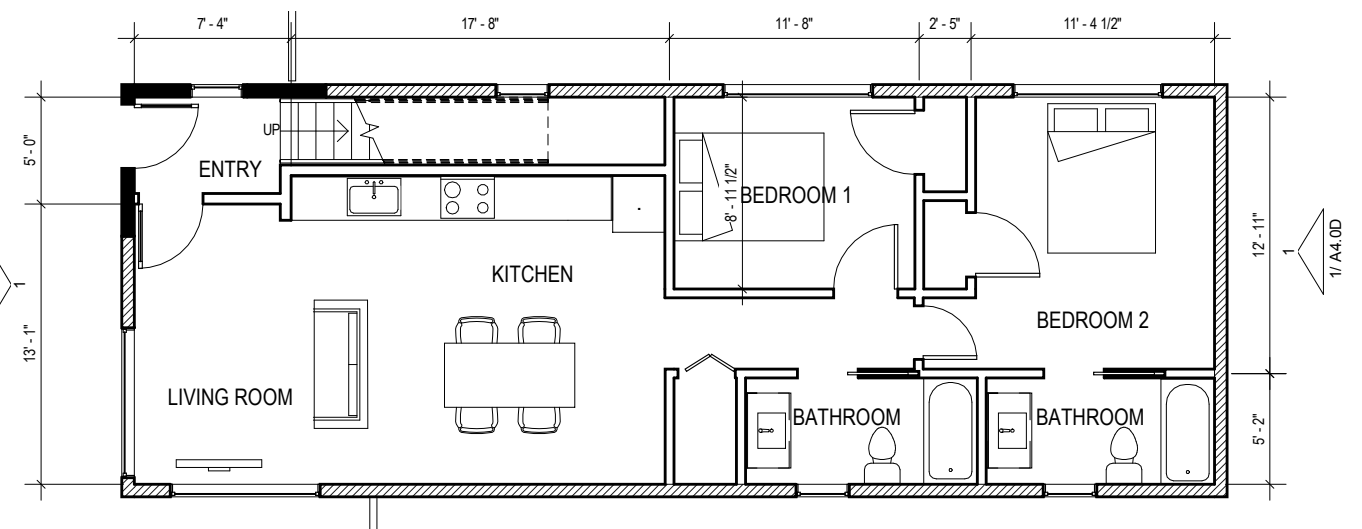
PROPOSED - AZALEA  
LEVEL 2 - UNIT A1



PROPOSED - BEGONIA  
LEVEL 2 - UNIT B2



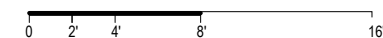
PROPOSED - AZALEA  
LEVEL 1 - UNIT A1



PROPOSED - BEGONIA  
LEVEL 1 - UNIT B1

HEARST GARDENS

DEVI DUTTA ARCHITECTURE







AZALEA & BEGONIA PLANS

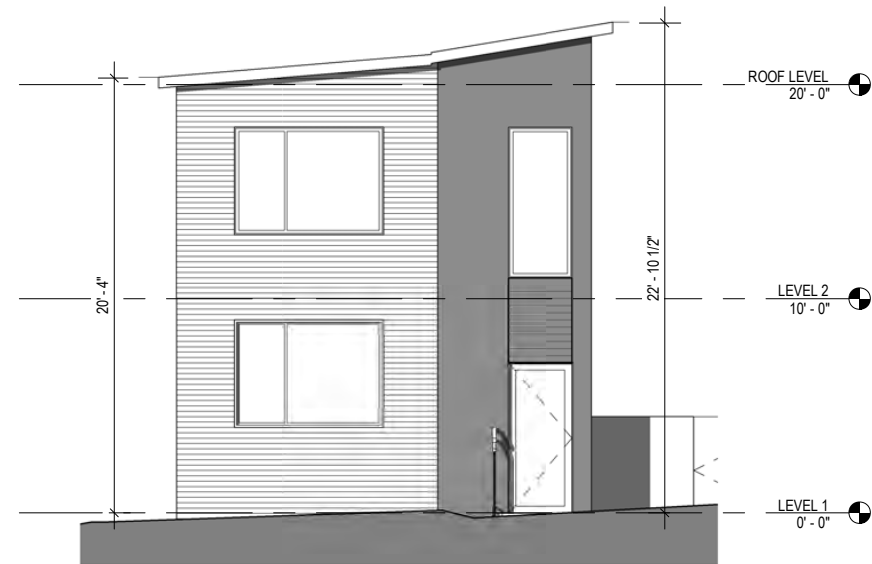
SCALE: As indicated



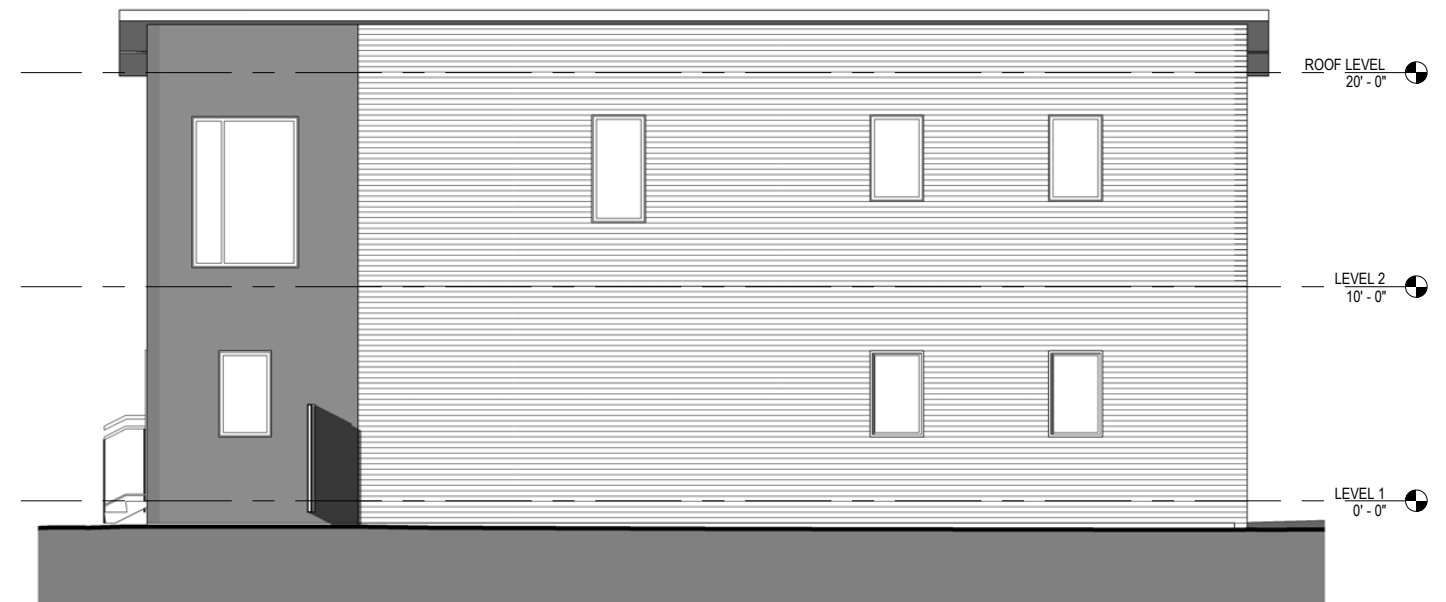




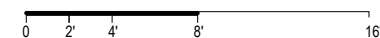
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER







**2 AZALEA SOUTH ELEVATION**  
1/8" = 1'-0"

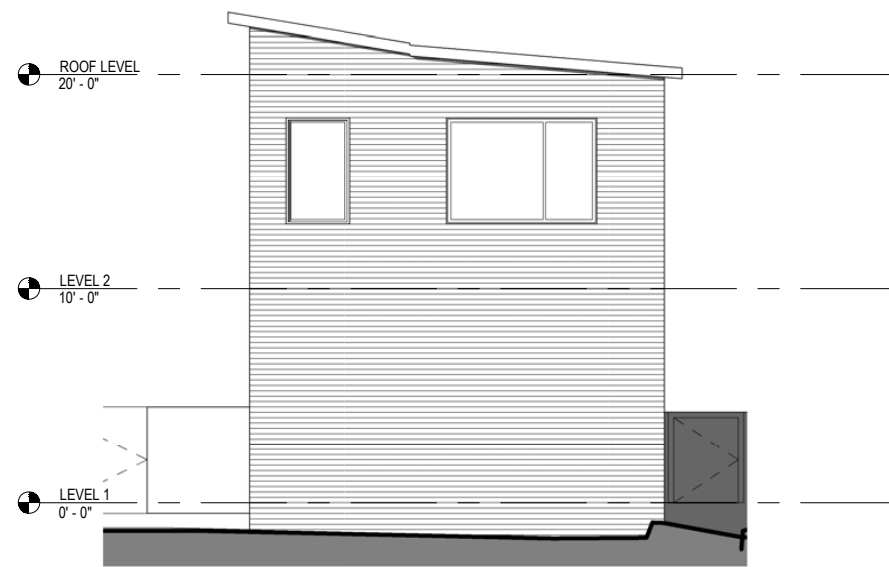


**1 AZALEA EAST ELEVATION**  
1/8" = 1'-0"





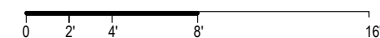
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER







**2 AZALEA NORTH ELEVATION**  
1/8" = 1'-0"

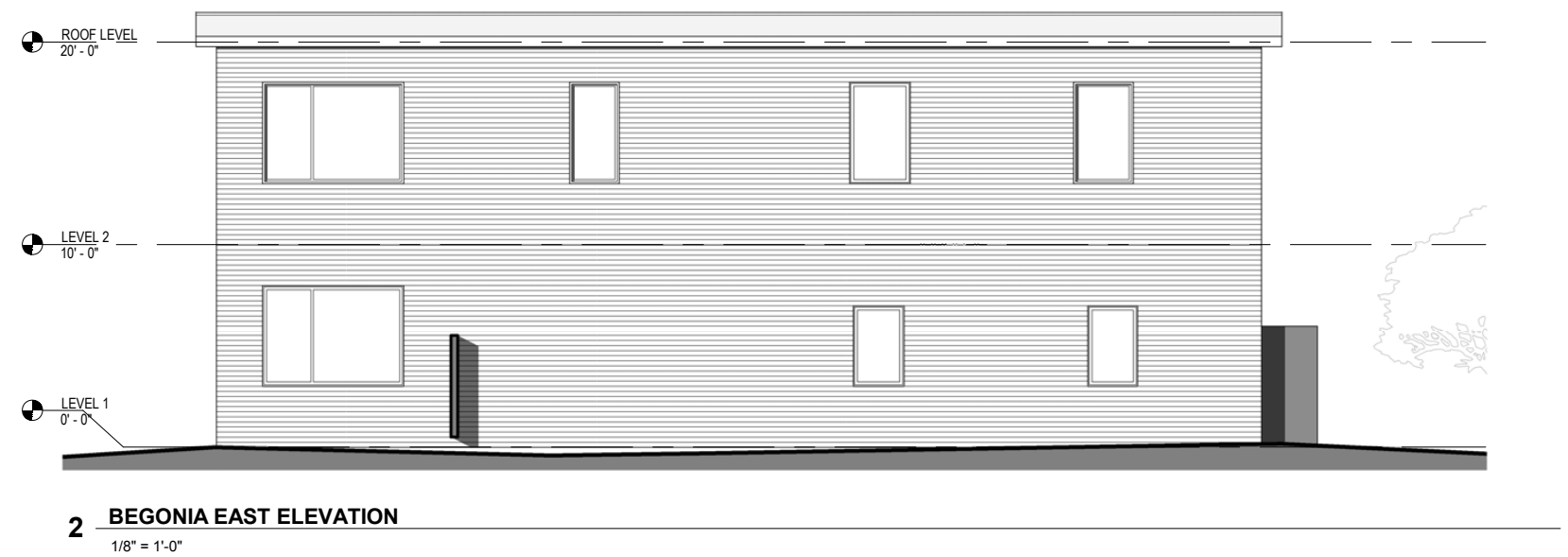
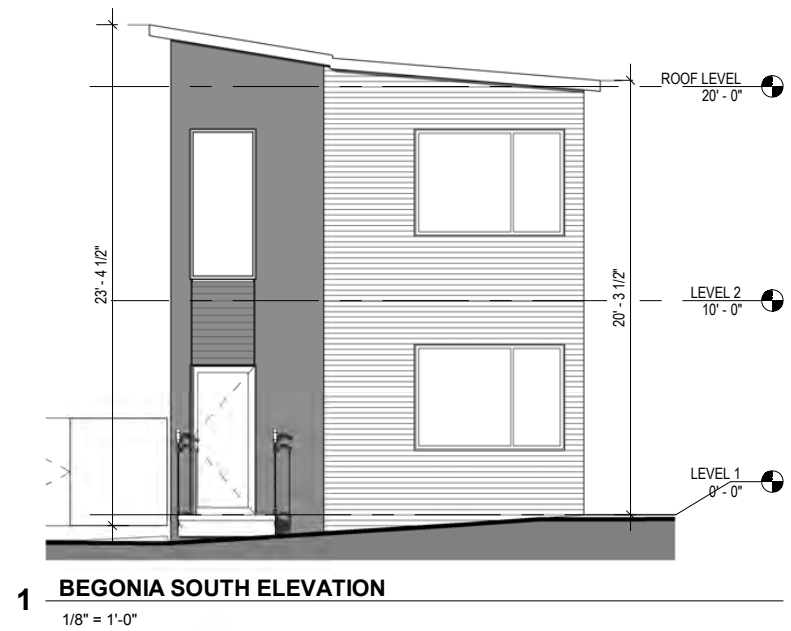


**1 AZALEA WEST ELEVATION**  
1/8" = 1'-0"







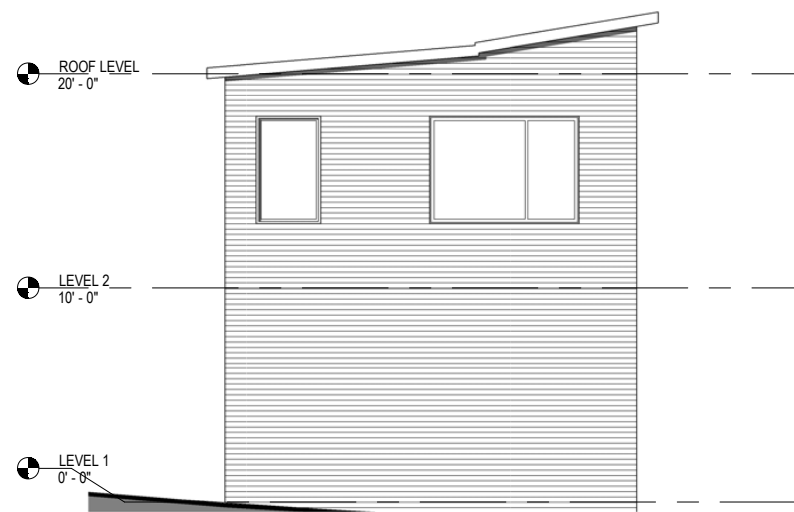


- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER

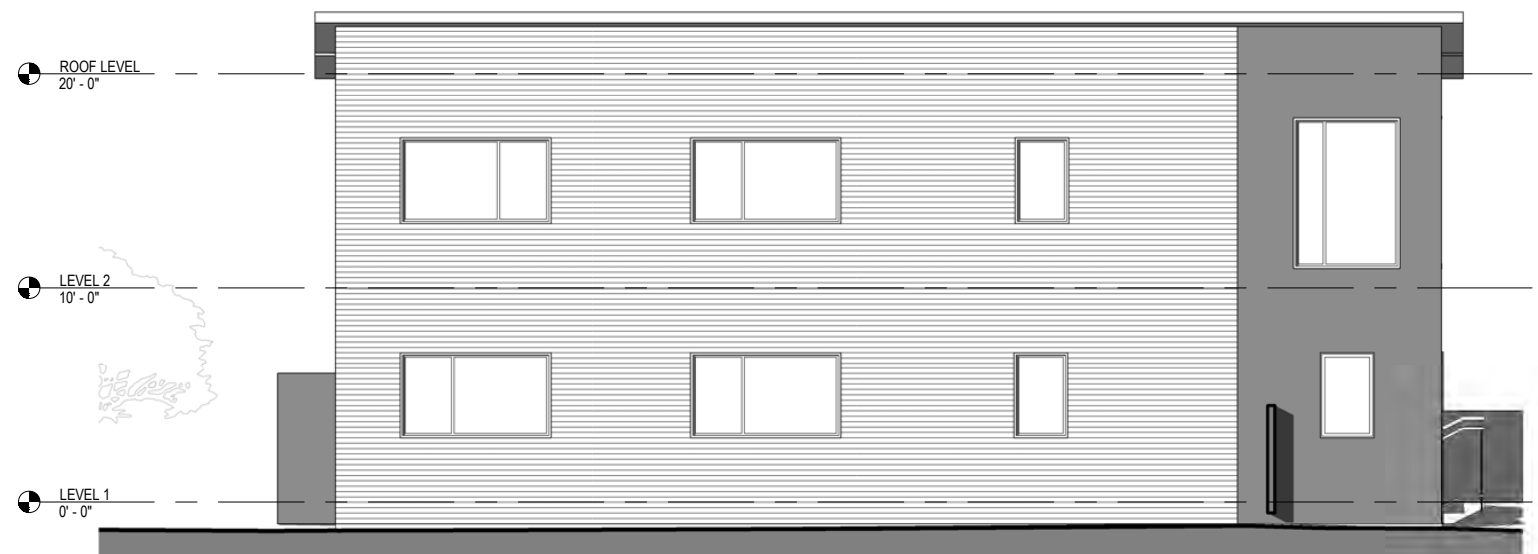




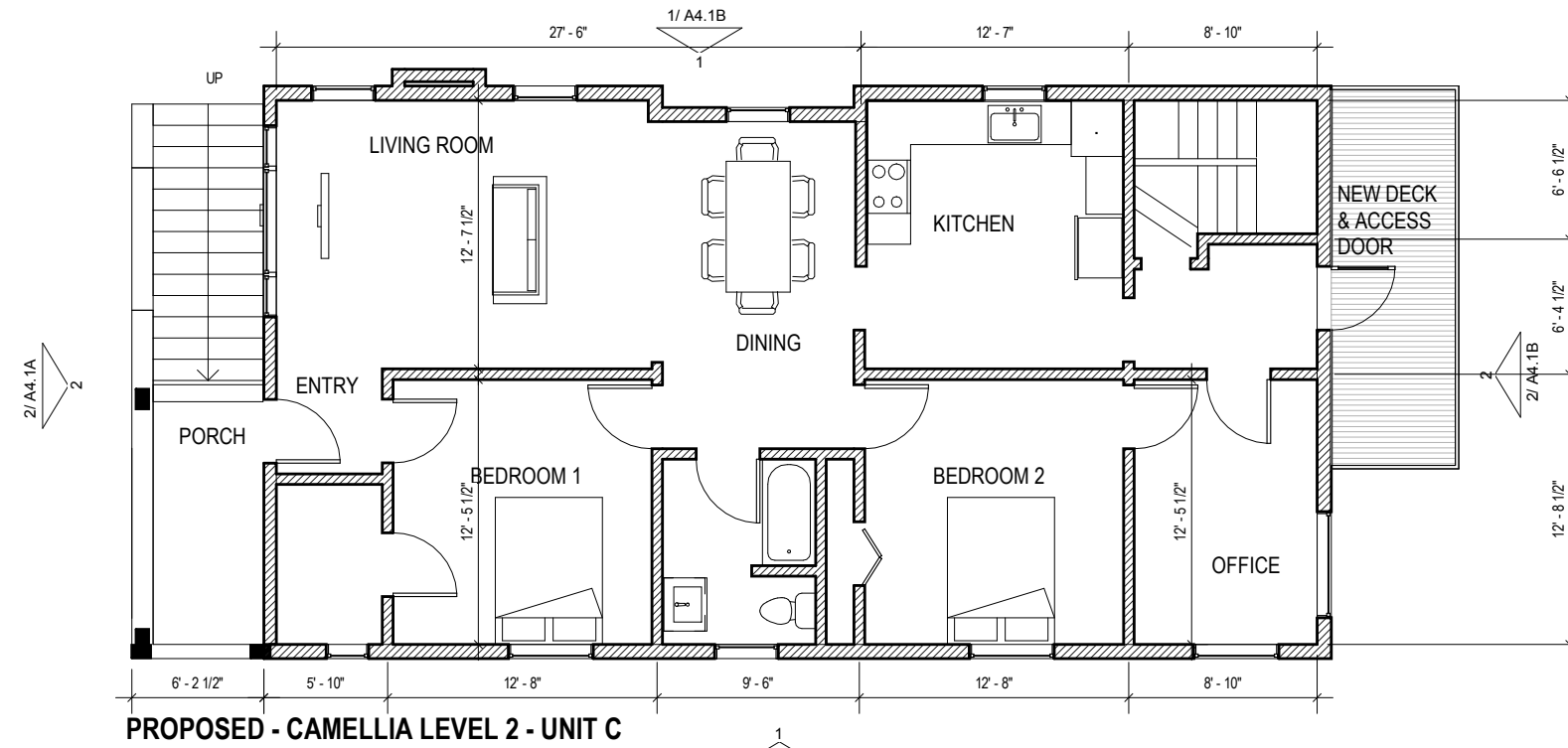
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER



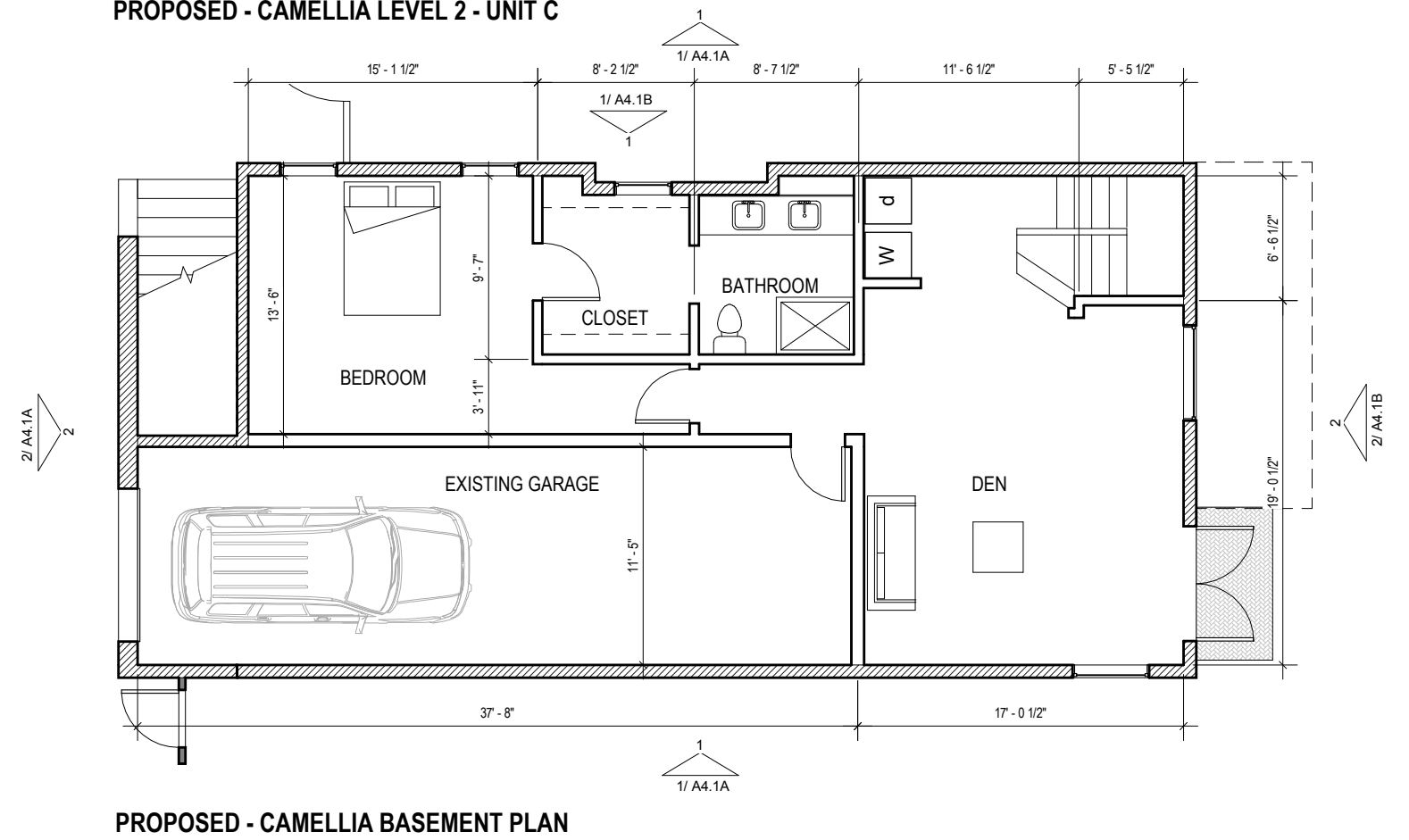
**1 BEGONIA NORTH ELEVATION**  
1/8" = 1'-0"



**2 BEGONIA WEST ELEVATION**  
1/8" = 1'-0"

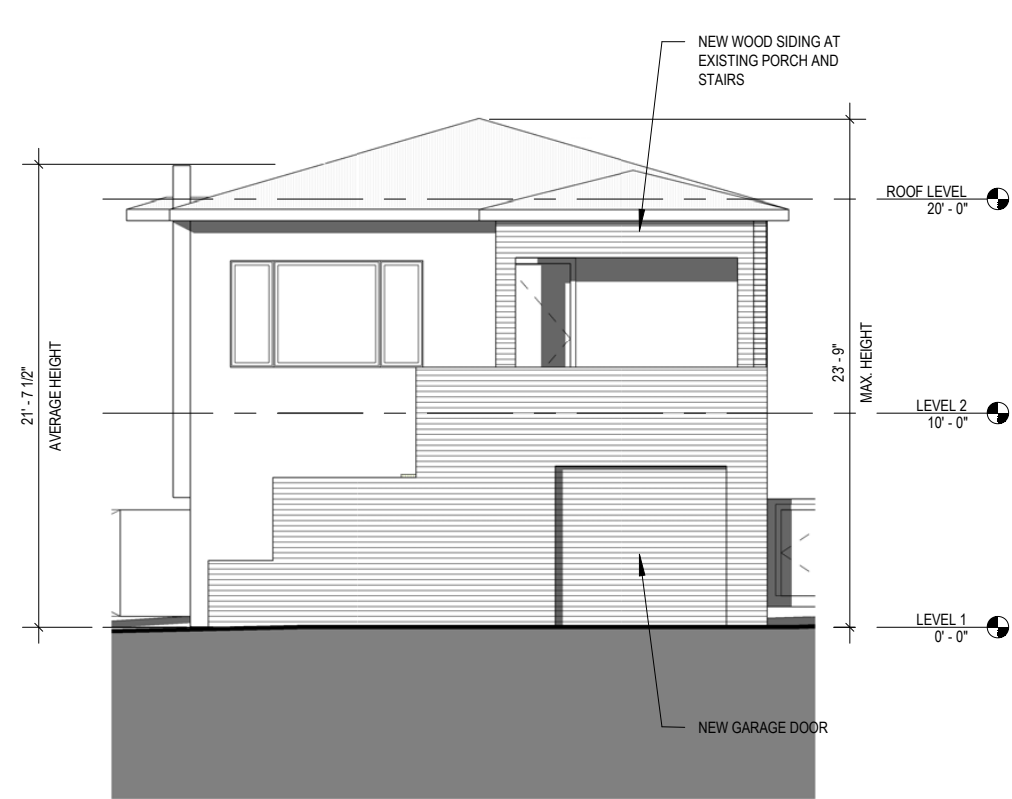


- LEGEND**
- NEW EXTERIOR WALL
  - ▨ (E) WALL
  - NEW INTERIOR WALL
  - - - SEE SITE PLAN FOR NON-CONFORMING SETBACK
  - - - REQUIRED SETBACK
- SEE A4.0 SERIES FOR ENLARGED UNIT PLANS

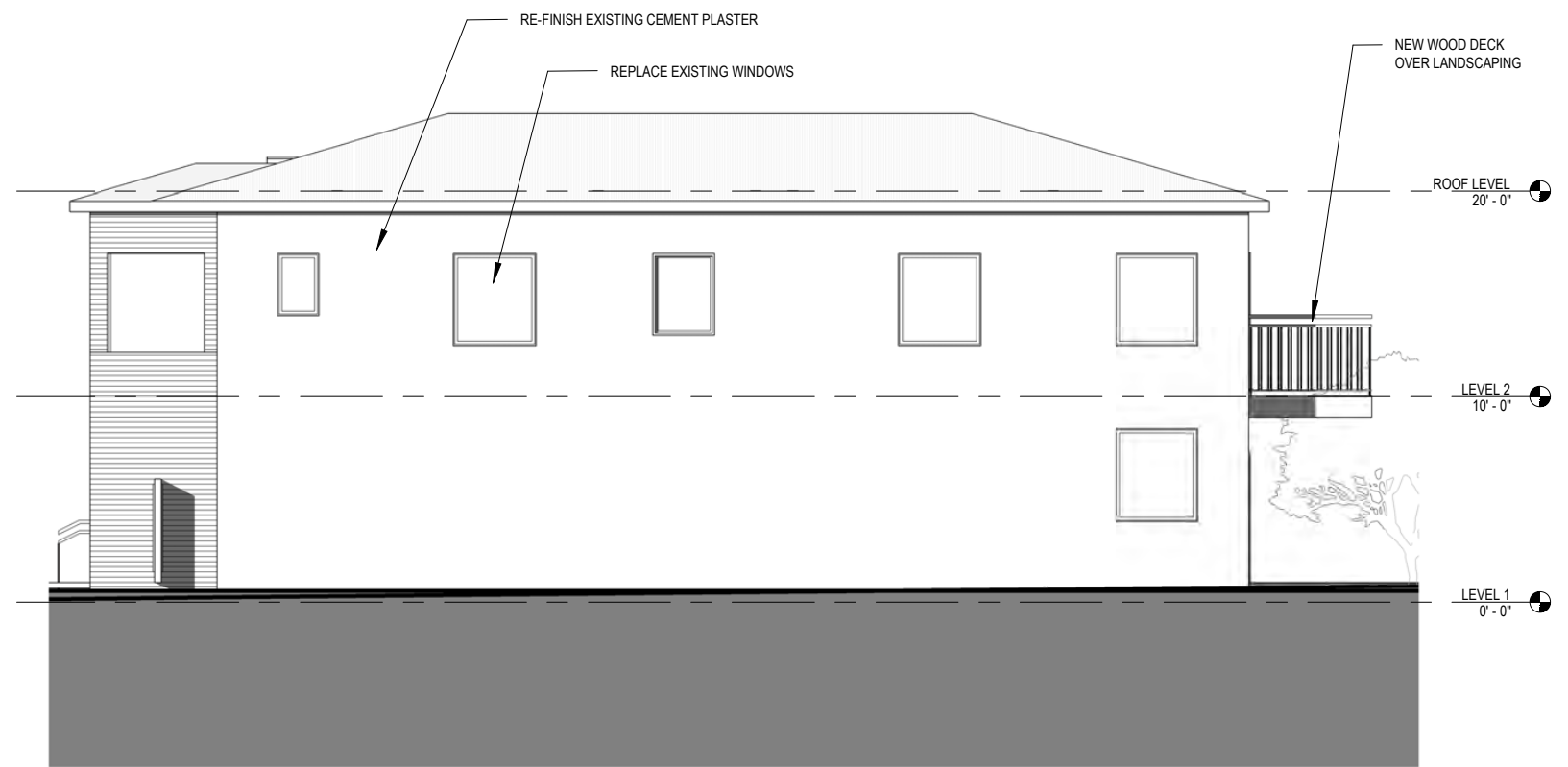




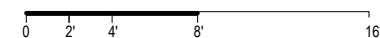
- MATERIAL LEGEND**
- PAINTED WOOD SIDING
  - WOOD PATTERNED FIBER CEMENT
  - CEMENT PLASTER
  - CEMENT PLASTER



**2 CAMELLIA SOUTH ELEVATION**  
1/8" = 1'-0"



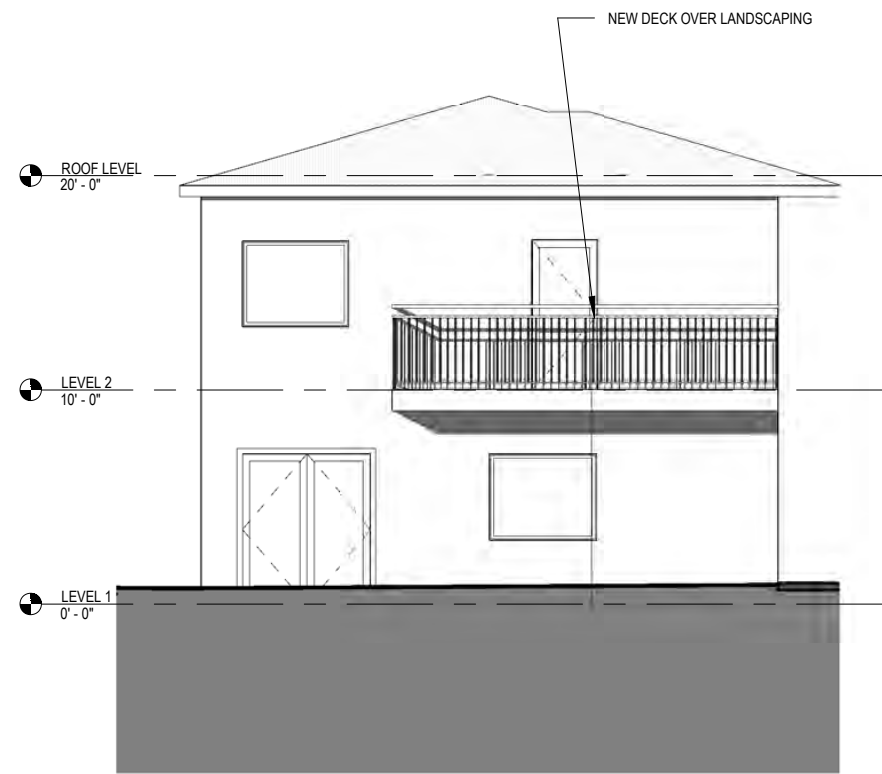
**1 CAMELLIA EAST ELEVATION**  
1/8" = 1'-0"



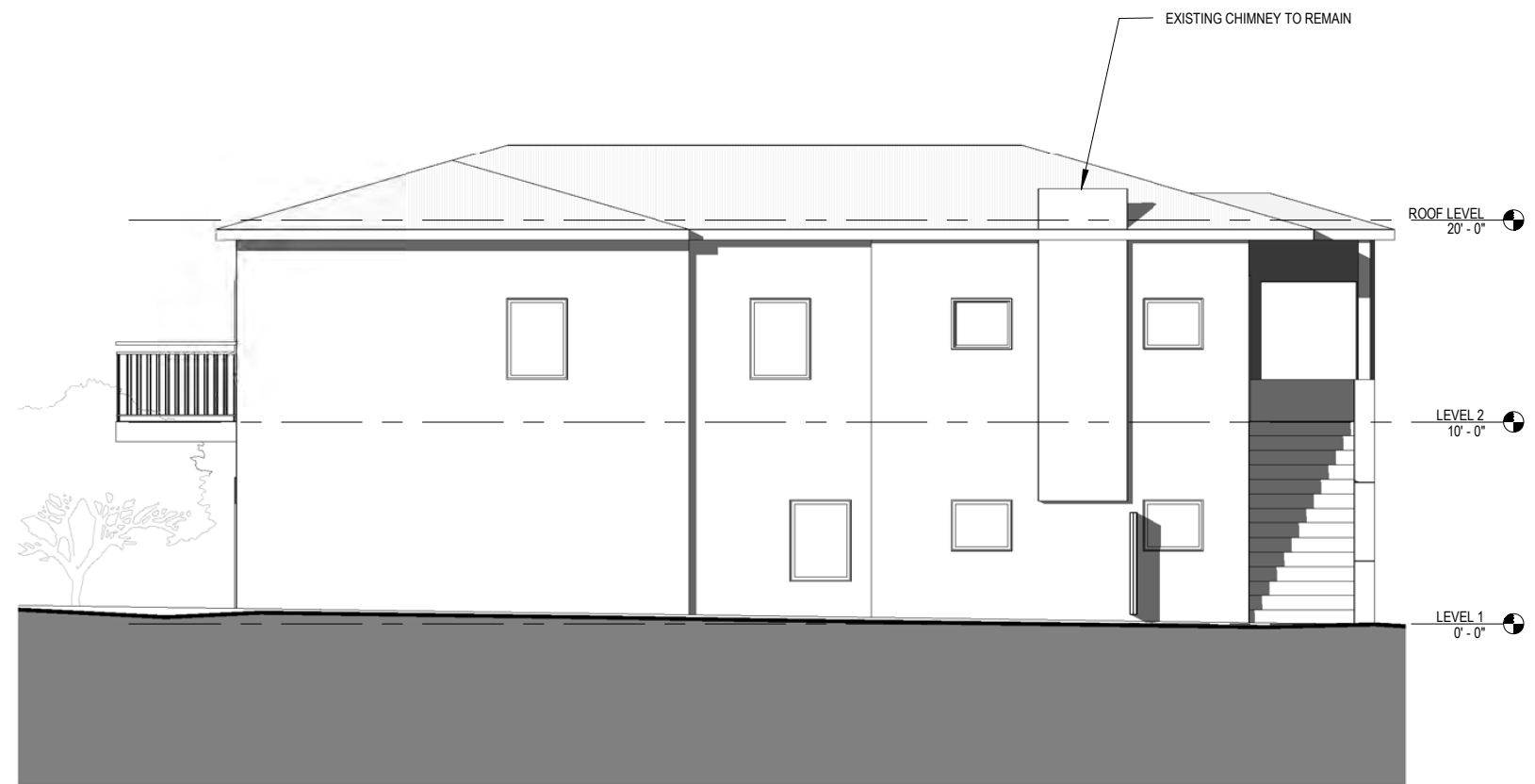


- MATERIAL LEGEND**
- PAINTED WOOD SIDING
  - WOOD PATTERNED FIBER CEMENT
  - CEMENT PLASTER
  - CEMENT PLASTER

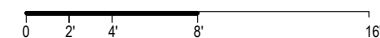
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS



**2 CAMELLIA NORTH ELEVATION**  
1/8" = 1'-0"

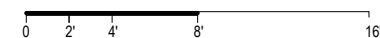
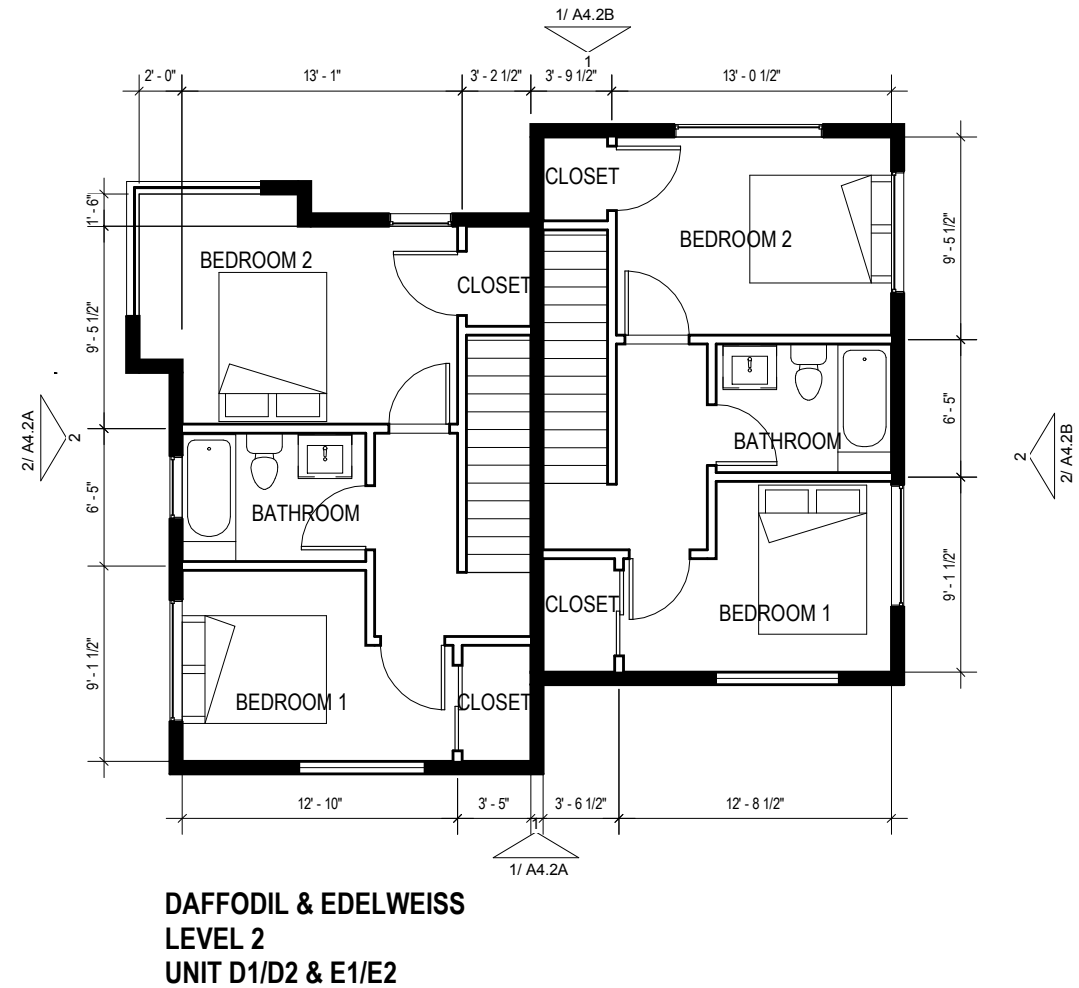
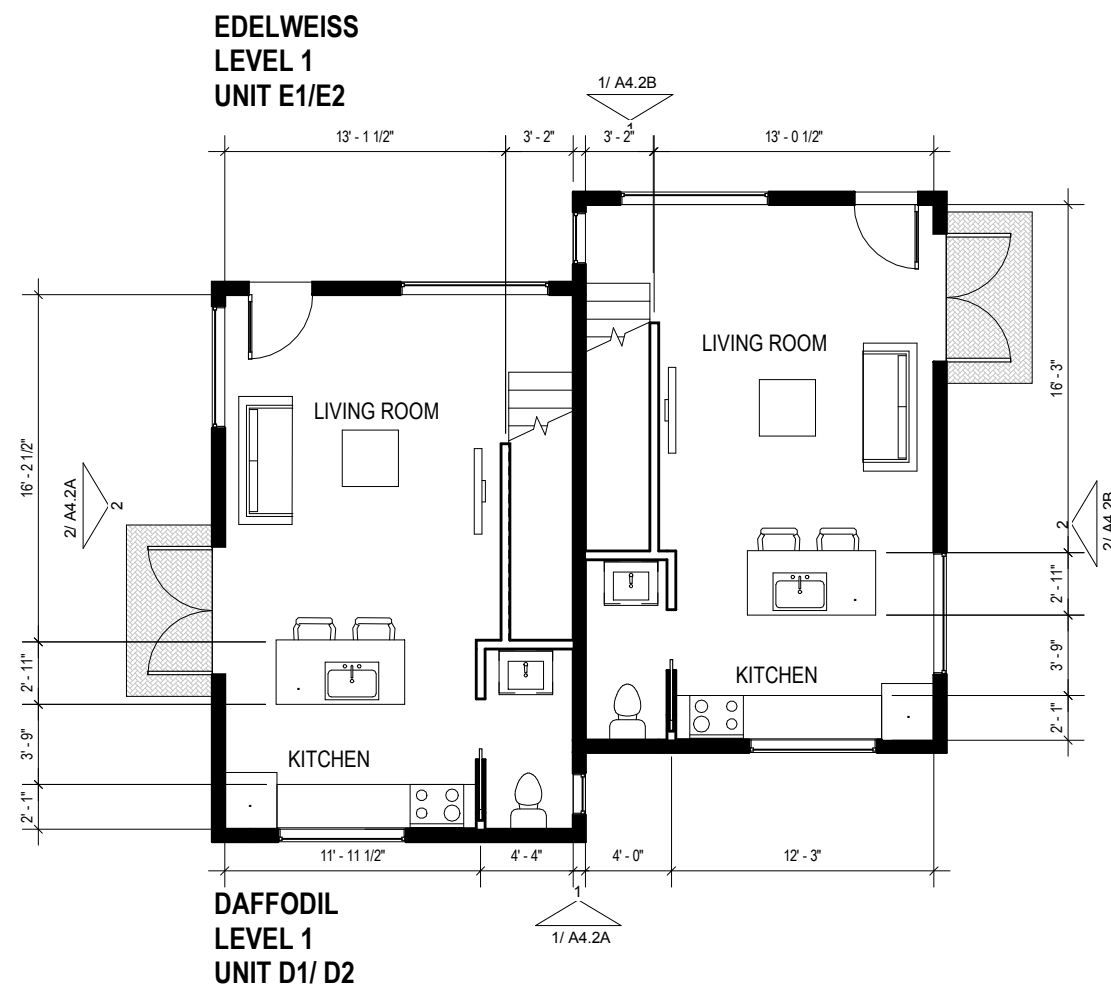
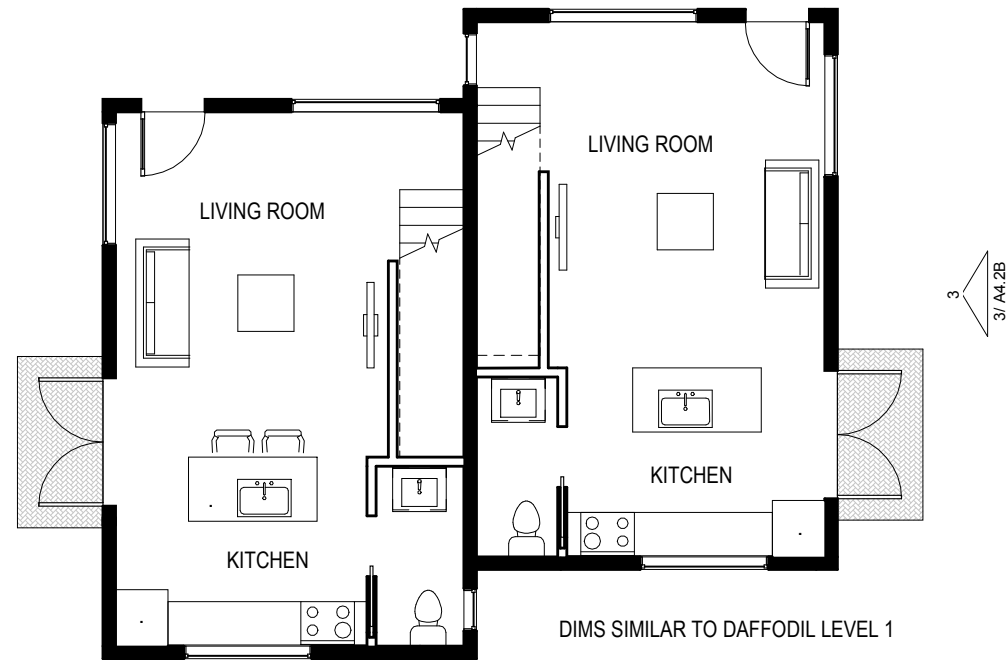


**1 CAMELLIA WEST ELEVATION**  
1/8" = 1'-0"









- LEGEND**
- █ NEW EXTERIOR WALL
  - ▨ (E) WALL
  - NEW INTERIOR WALL
  - - - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
  - - - REQUIRED SETBACK







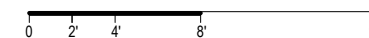
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER







**2 DAFFODIL & EDELWEISS SOUTH ELEVATION**  
1/8" = 1'-0"

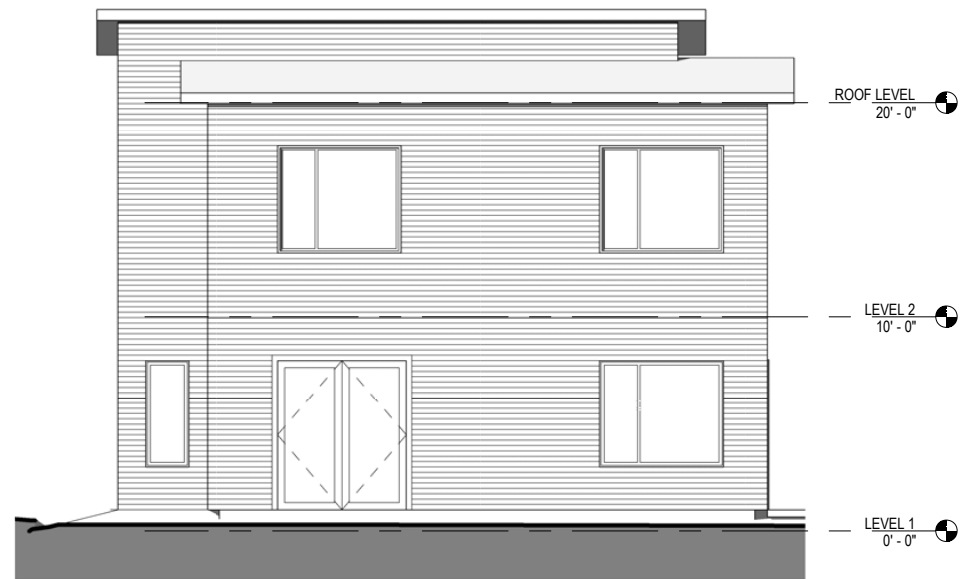


**1 DAFFODIL & EDELWEISS EAST ELEVATION**  
1/8" = 1'-0"





- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER



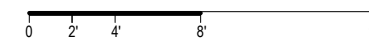
**3 EDELWEISS NORTH ELEVATION**  
1/8" = 1'-0"

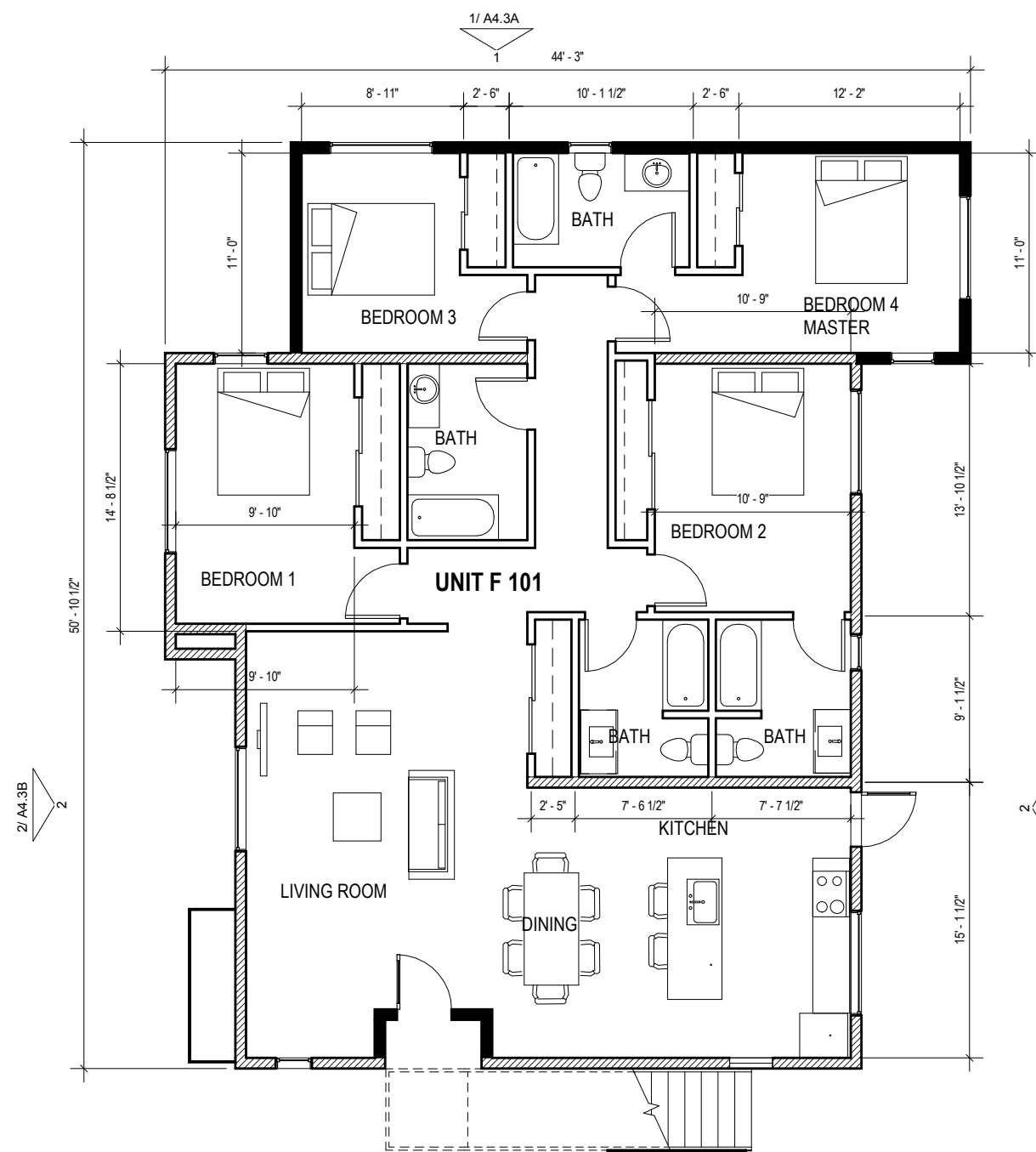


**2 DAFFODIL NORTH ELEVATION**  
1/8" = 1'-0"

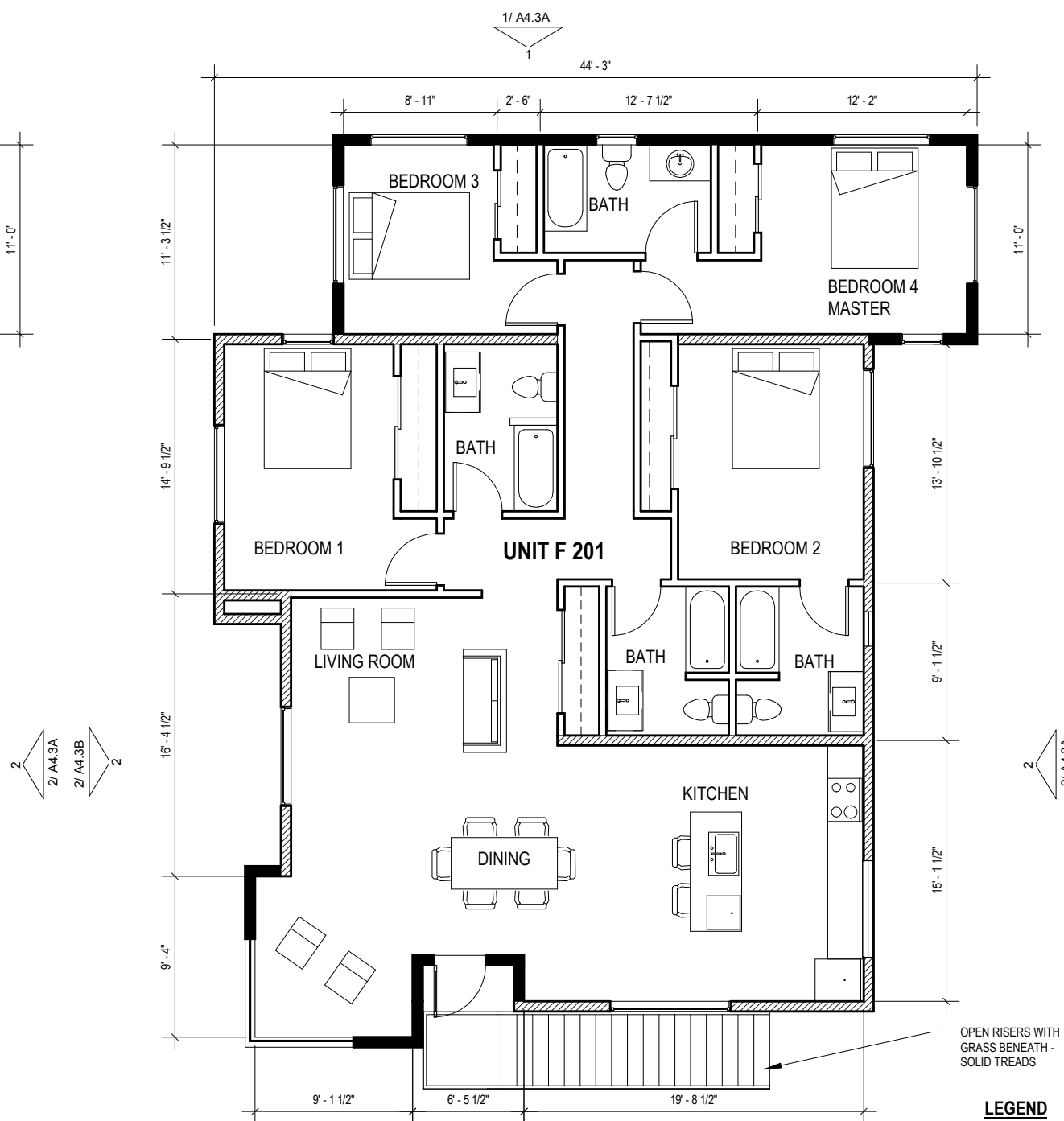


**1 DAFFODIL & EDELWEISS WEST ELEVATION**  
1/8" = 1'-0"





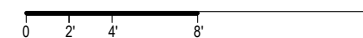
FRESIA  
LEVEL 1 - UNIT F1







FRESIA  
LEVEL 2 - UNIT F2

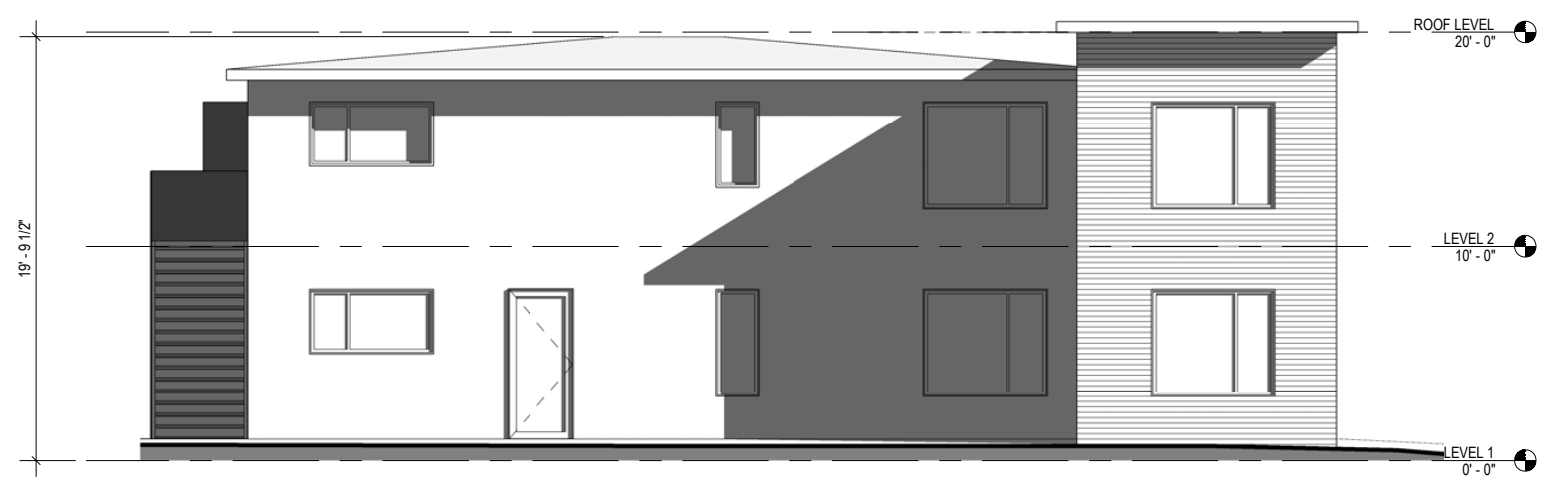


- LEGEND**
- NEW EXTERIOR WALL
  - ▨ (E) WALL
  - NEW INTERIOR WALL
  - - - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
  - REQUIRED SETBACK





- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER



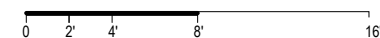
**2 FREESIA NORTH ELEVATION**  
1/8" = 1'-0"



**1 FREESIA WEST ELEVATION**  
1/8" = 1'-0"

HEARST GARDENS

DEVI DUTTA ARCHITECTURE







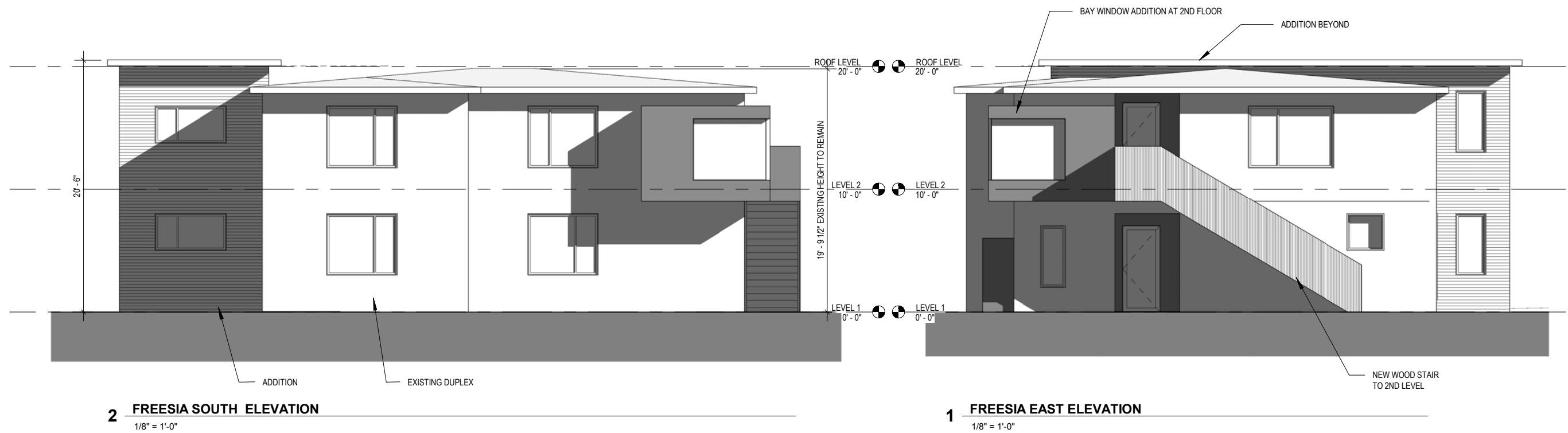
FREESIA ELEVATIONS

SCALE: As indicated

**A4.3A**

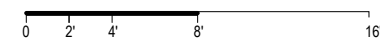


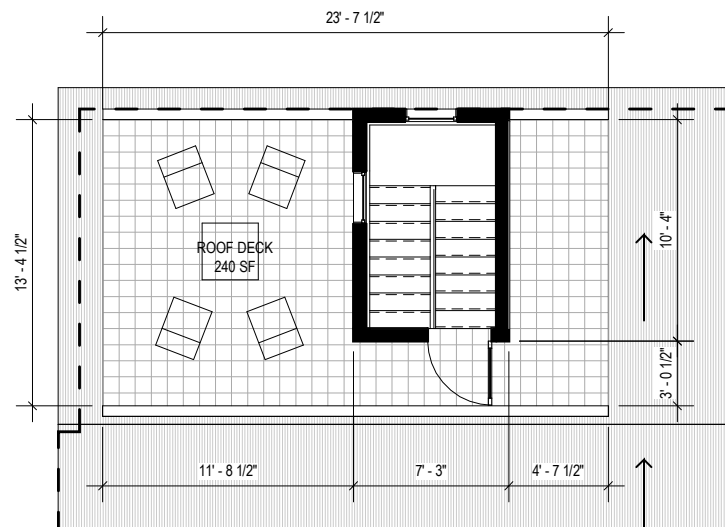
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER



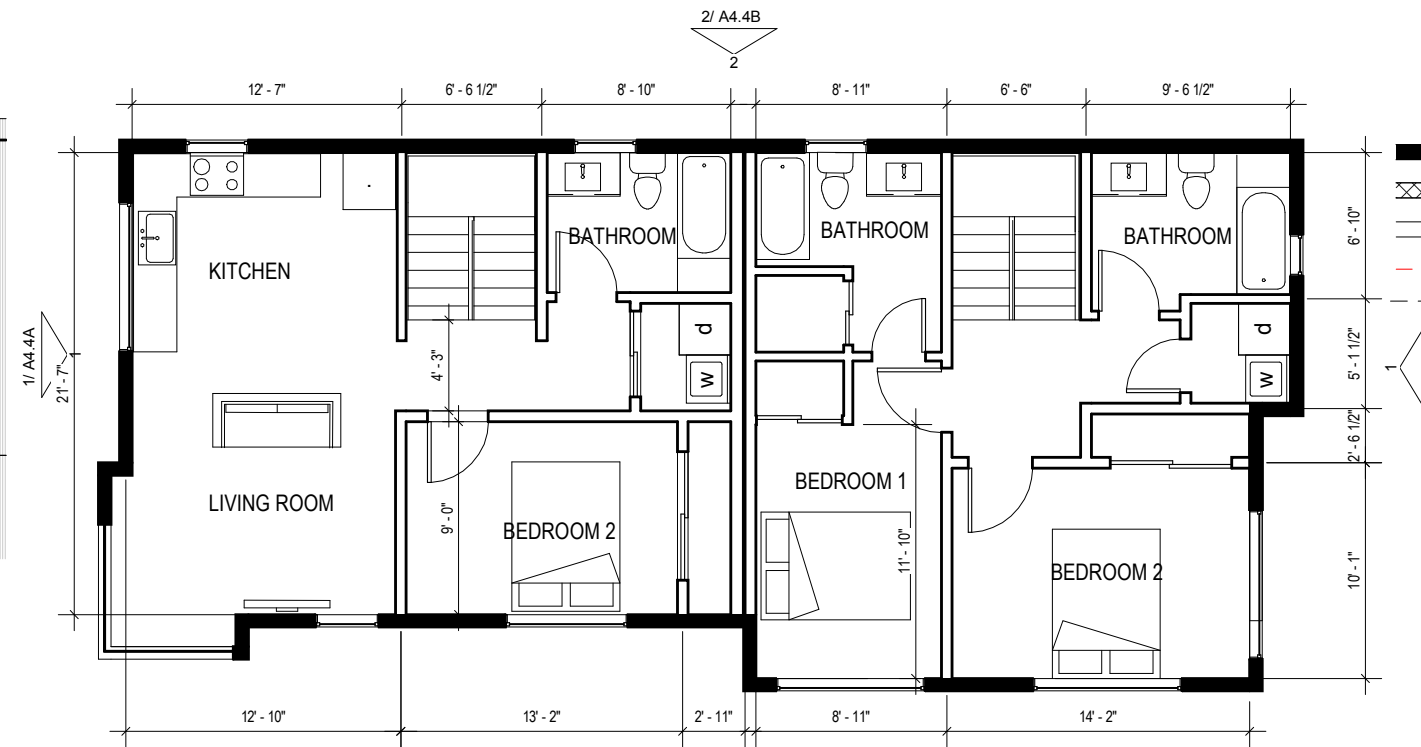
**2 FREESIA SOUTH ELEVATION**  
1/8" = 1'-0"

**1 FREESIA EAST ELEVATION**  
1/8" = 1'-0"



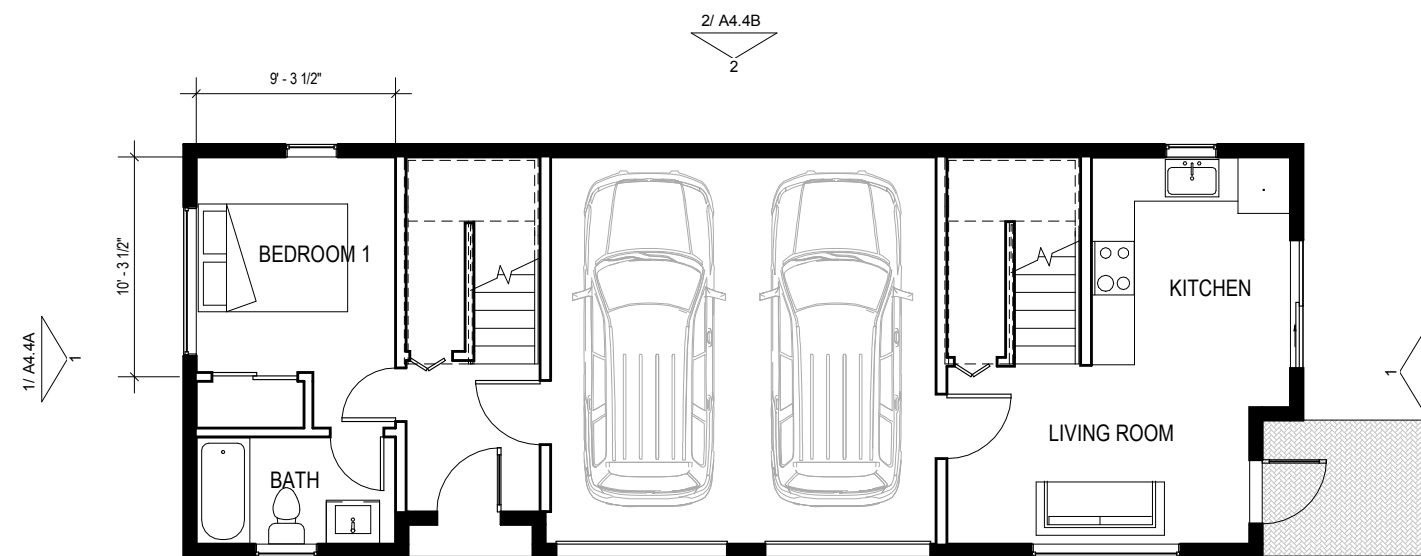


**3 ROOF DECK - PARTIAL PLAN**  
1/8" = 1'-0"



**2 GERANIUM LEVEL 2**  
1/8" = 1'-0"





- LEGEND**
- NEW EXTERIOR WALL
  - (E) WALL
  - NEW INTERIOR WALL
  - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
  - REQUIRED SETBACK

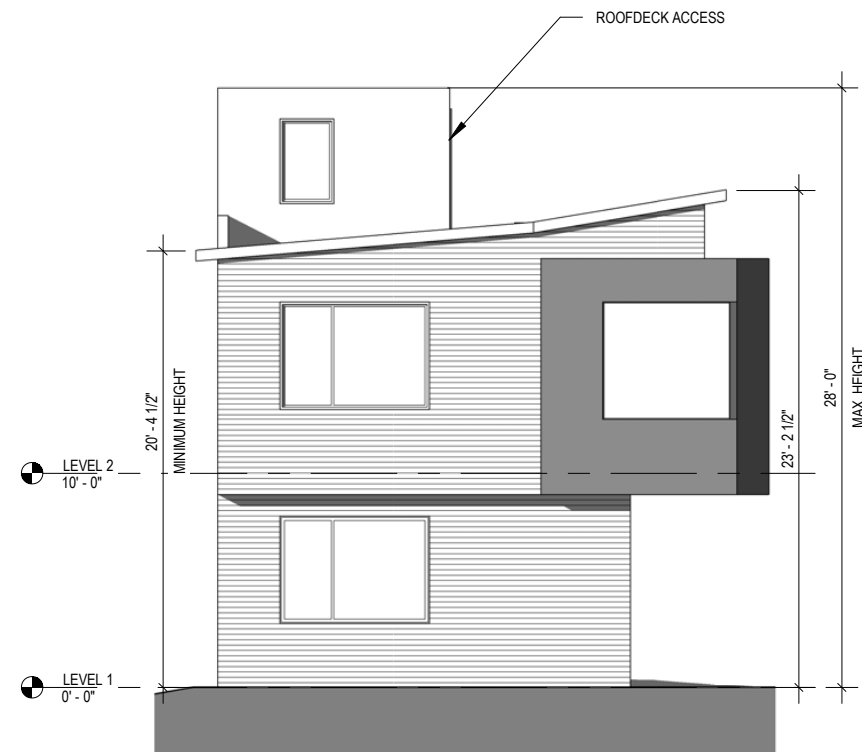


**1 GERANIUM LEVEL 1**  
1/8" = 1'-0"

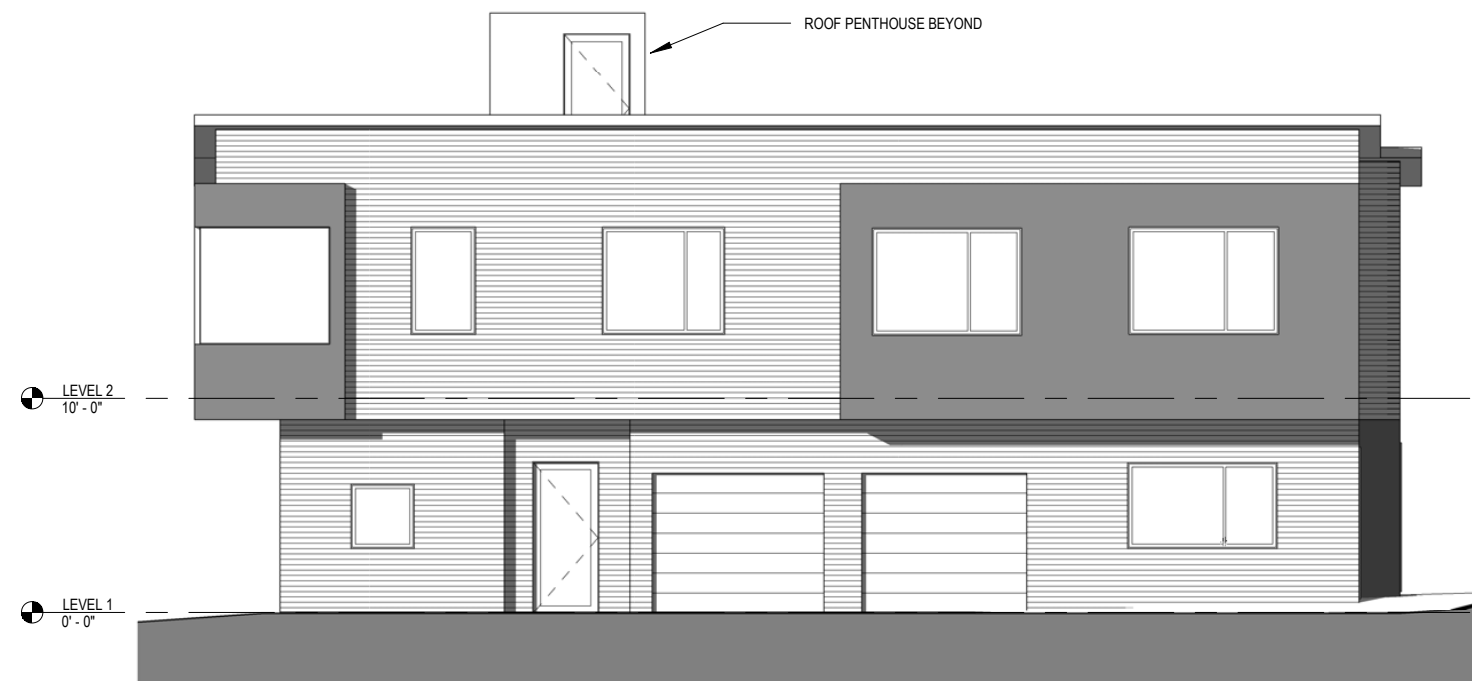


**MATERIAL LEGEND**

-  PAINTED WOOD SIDING
-  WOOD PATTERNED FIBER CEMENT
-  CEMENT PLASTER
-  CEMENT PLASTER







**1 GERANIUM SOUTH ELEVATION**  
1/8" = 1'-0"



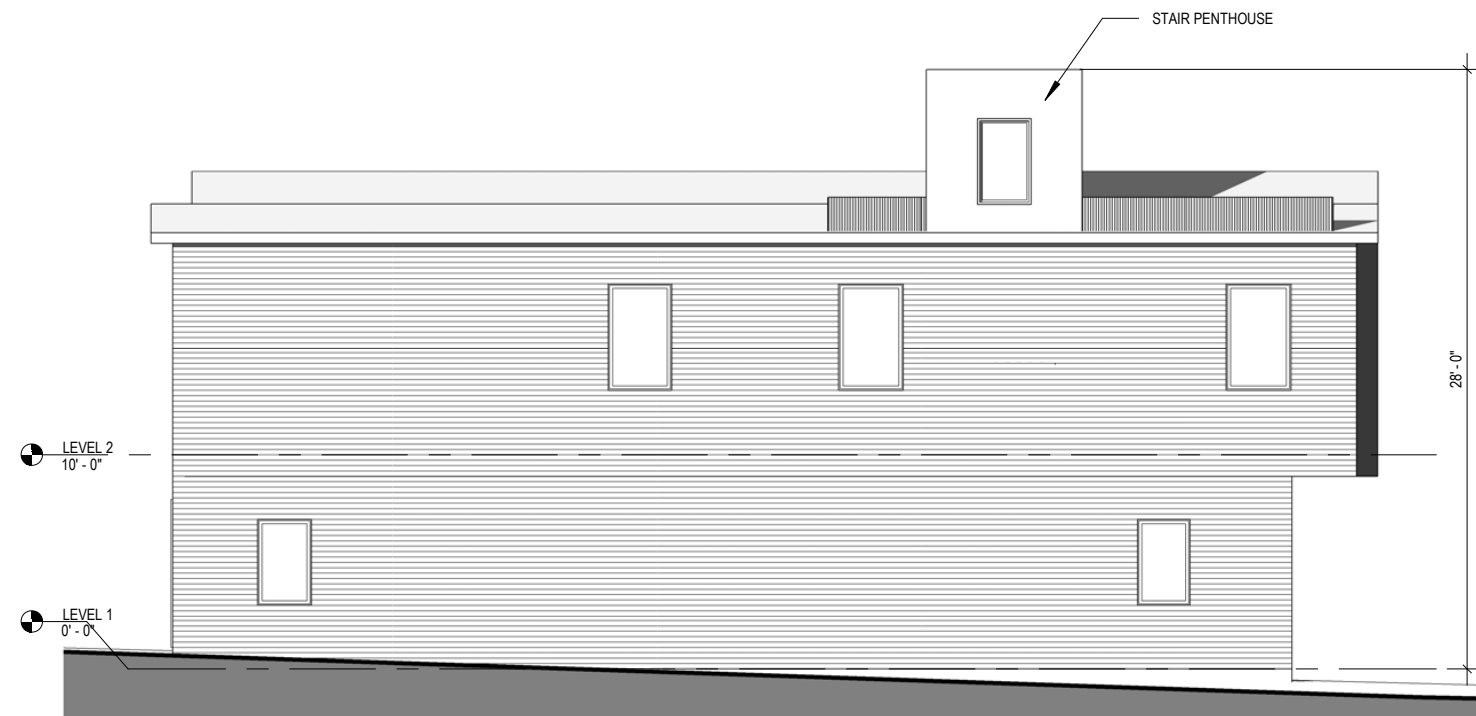
**2 GERANIUM EAST ELEVATION**  
1/8" = 1'-0"



- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
  -  WOOD PATTERNED FIBER CEMENT
  -  CEMENT PLASTER
  -  CEMENT PLASTER

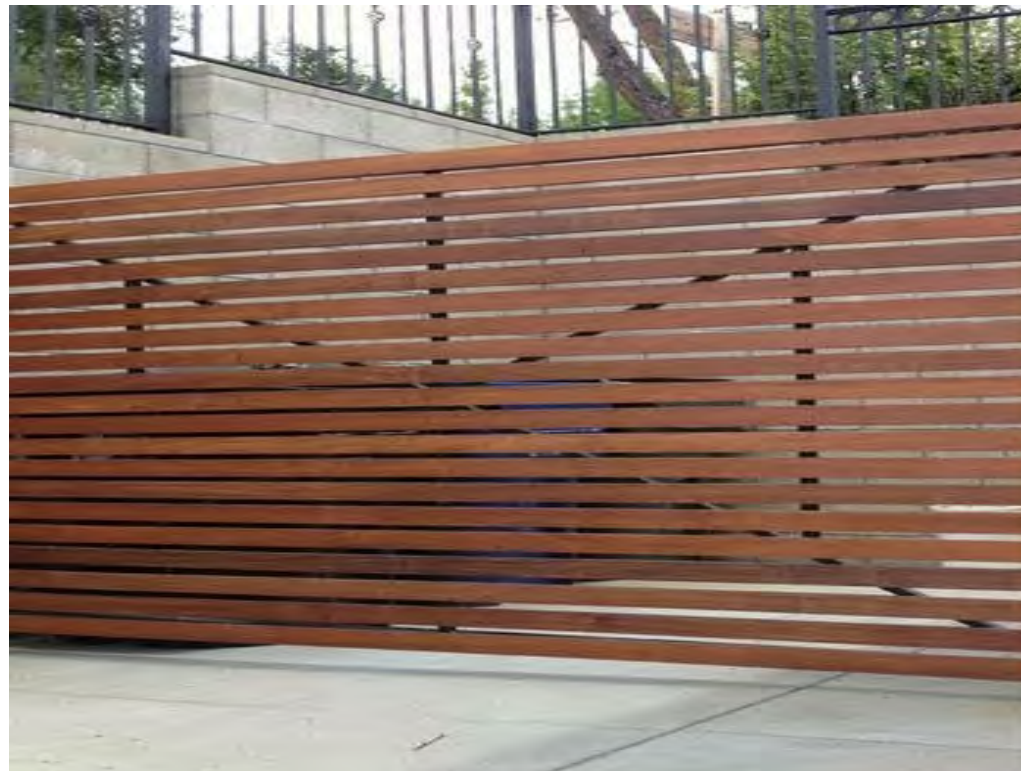


**1 GERANIUM NORTH ELEVATION**  
1/8" = 1'-0"

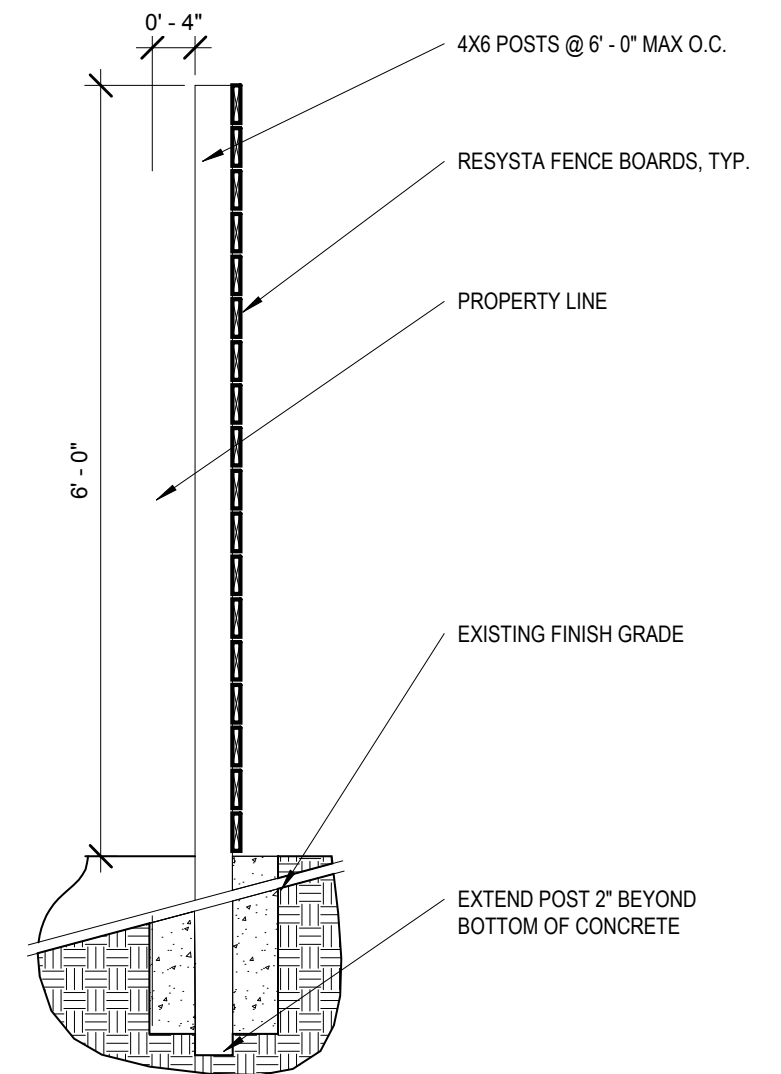


**2 GERANIUM WEST ELEVATION**  
1/8" = 1'-0"





CEDAR FENCE ALONG PROPERTY LINE

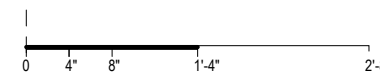


1 CEDAR FENCE DETAIL

3/4" = 1'-0"

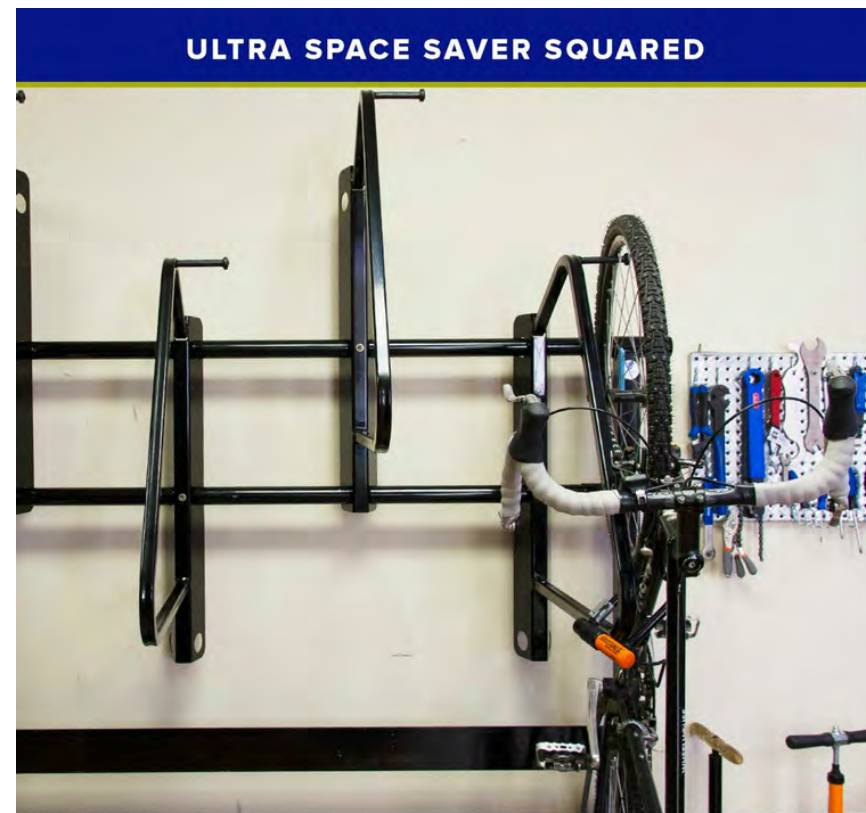
HEARST GARDENS

DEVI DUTTA ARCHITECTURE



FENCE DETAIL

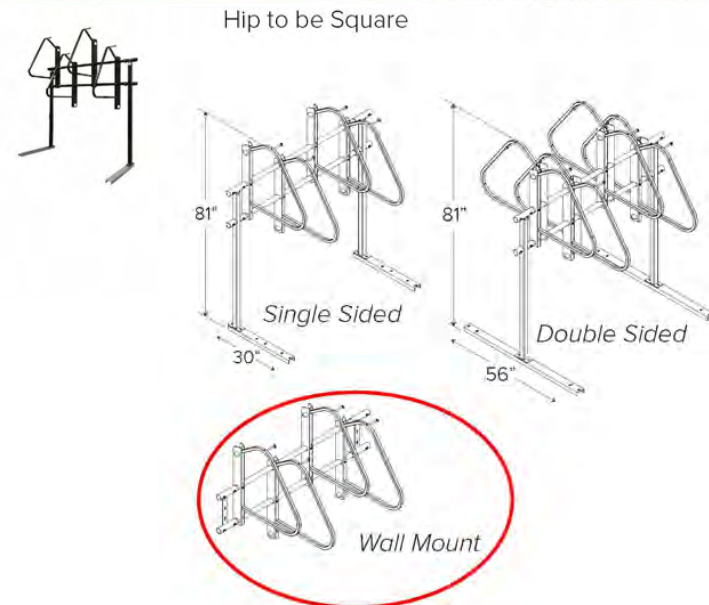
SCALE: 3/4" = 1'-0"



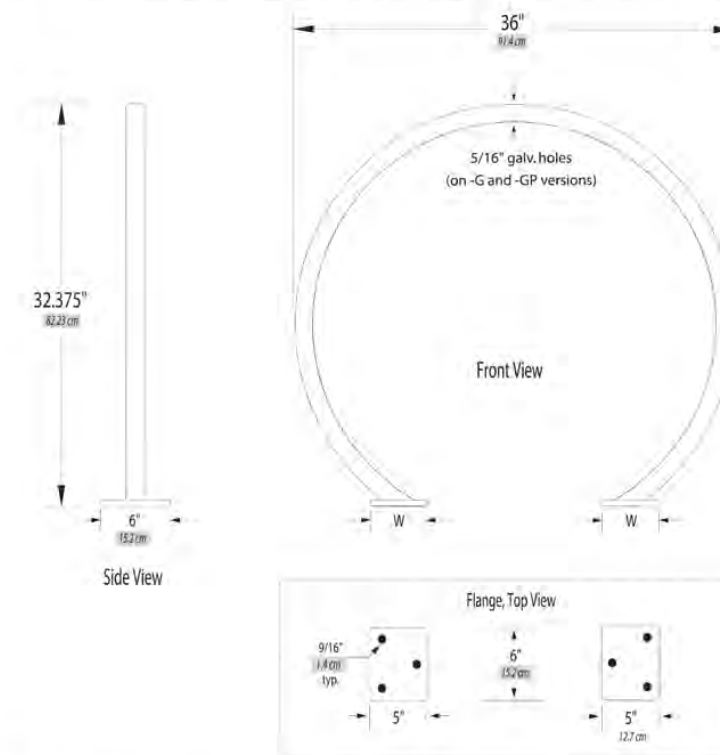
**ULTRA SPACE SAVER SQUARED**



DARK GREY POWDERCOAT FINISH AT BIKE STORAGE



WALL MOUNT, SQUARE PROFILE BIKE STORAGE. LOCATED ON EAST WALL OF BEGONIA BUILDING.



| Welle™ Circular Rack Square Tube Surface Flange |            |                   |                                                                                                                                                      |                                                                                                                                                             |                                                                                   |                                                                                          |
|-------------------------------------------------|------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Tubing                                          | Model      | Weight            | Finish Options                                                                                                                                       | Hoop                                                                                                                                                        | Surface Mount Flanges<br><small>(Same material as Hoop)</small>                   | Anchors<br><small>(Not Provided)</small>                                                 |
| Square Tube                                     | WC02-SQ-SF | 38 lbs<br>17.1 kg | -G Hot Dipped Galvanized<br>-P Powder Coated (color)<br>-GP Hot Dipped Galvanized with Powder Coat (color) Top-Coat<br>-SS Stainless #4 Brush Finish | -G, -P, -GP 2" x 2" x 0.188" Square Tube (Regular Steel) 127mm<br>5.1cm x 5.1cm x 5mm<br>-SS 2" x 2" x 0.188" Square Tube (304 SS Alloy) 51cm x 5.1cm x 3mm | (2) 5" x 6" x 3/8" Plates, 127mm x 152mm x 10mm<br>each with (3) 9/16" Holes 14mm | (2) 1/2" x 2.75" 13mm x 7cm Rawl Spike<br>(4) 1/2" x 3.75" 13mm x 81mm Wedge Anchor Bolt |

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2012.04.11

GROUND ANCHORED, SQUARE PROFILE BIKE STORAGE CIRCULAR RACK. 2 BIKES PER RACK. LOCATED ALONG THE PASEO, AND FLANKING THE DRIVEWAY BETWEEN AZALEA AND BEGONIA.





|           | OCCUPANCY | SPRINKLERED? | CONST. TYPE | HEIGHT & NUMBER OF STORIES  |
|-----------|-----------|--------------|-------------|-----------------------------|
| AZALEA    | R-3       | SPRINKLERED  | V-B         | 2-STORIES                   |
| BEGONIA   | R-3       | SPRINKLERED  | V-B         | 2-STORIES                   |
| CAMELLIA  | R-3       | SPRINKLERED  | V-B         | 2-STORIES                   |
| DAFFODILE | R-3       | SPRINKLERED  | V-B         | 2-STORIES                   |
| EDELWEISS | R-3       | SPRINKLERED  | V-B         | 2-STORIES                   |
| FREESIA   | R-3       | SPRINKLERED  | V-B         | 2-STORIES                   |
| GERANIUM  | R-3       | SPRINKLERED  | V-B         | 2-STORIES + STAIR PENTHOUSE |

ALL HOMES SUBJECT TO 2016 CALIFORNIA BUILDING CODE  
ALL HOMES TO BE EQUIPPED WITH RESIDENTIAL SPRINKLER SYSTEM

— EXIT PATH  
- - - ASSUMED PROPERTY LINE

**1** GROUND PLAN BUILDING CODE & EXITING  
3/64" = 1'-0"

Hussein M Saffouri  
Attorney

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Lafayette CA, 94549

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RAMSEY LAW GROUP  
A Professional Corporation



September 10, 2018

Berkeley City Council  
2180 Milvia Street  
First Floor  
Berkeley, CA 94704

2018 SEP 12 PM 1:26  
CITY OF BERKELEY

**Re: Appeal of Decision of Zoning Adjustments Board Dated August 23, 2018  
Concerning Use Permit #ZP2016-0028;  
Property Address: 1155-1173 Hearst Avenue**

Dear Members of the Berkeley City Council:

I am submitting this appeal of the decision of the Berkeley Zoning Adjustments Board (“ZAB”) concerning Use Permit #ZP2016-0028 pertaining to the property at 1155-1173 Hearst Avenue in Berkeley, on behalf of Rain Sussman who owns the home located at 1842 Curtis Street in Berkeley which is directly next door to the development project. As you can see from the signatures on this letter, most of the neighbors support this appeal. Many other neighbors will be submitting letters opposing the development project because the ZAB decision does not protect the neighborhood, its residents, and their property from the negative impact of this development project.

**A. ZAB erred in finding the project exempt from CEQA**

*1. The project does not qualify for a categorical exemption because there is substantial evidence that it will not be adequately served by the existing utility infrastructure*

CEQA Guidelines are clear that the proposed categorical exemption is not applicable in cases when a proposed project is located in a sensitive site or is subject to unusual circumstances: “...a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant”. (14 CCR § 15300.2.)

This proposed development site is located over a non-engineered buried branch of Strawberry Creek. There is a high likelihood that the fill placed in the channel was or still is unconsolidated. There is also significant evidence from the testimony of neighbors at the ZAB hearings held regarding the project, as well as video footage of flooding submitted to ZAB, that the site is prone to flooding and that the storm drain system is

September 10, 2018

Page 2

unable to address the runoff. The buried creek alignment is also associated with the potential presence of cultural and/or historic resources. Testimony was given that a portion of the property on which the project is proposed was the site of the original Chez Panisse garden.

As a result, the project does not satisfy requirement (e) of 14 CCR § 15332 for a CEQA categorical exemption as an urban infill project because there is substantial evidence that the Project is located in a sensitive location and approval of the project without further study could result in significant drainage and flooding impacts and will not be adequately served by existing utility infrastructure.

In this case, the historical flooding at the site and in the surrounding neighborhood reflects that the existing storm drain system would not adequately cope with the added runoff anticipated as a result of the additional hardscape included in the Project. Existing hydrology studies substantiate this concern.

Those studies establish that the project would increase in impervious cover and result in a significant loss of existing permeable areas, and associated detention/sub-surface storage (current plan includes loss of large vegetated open space area and creation of significant additional roof area, driveways, parking areas, walkways). The site runoff co-efficient would increase. Proposed impervious surfaces and foundations would exacerbate existing flooding conditions.

Previous mapping and records the City maintains demonstrate that a historic tributary/northern fork of Strawberry Creek underlies the proposed development site. The creek was subject to uncontrolled fill when the area was originally developed. However, there are no records of engineered fill, culvert, or storm drain installation. The current existing curb and gutter street drainage system serving this area is subject to frequent flooding. Surface flooding occurs during even modest storm conditions as the subsurface is saturated.

Furthermore, the testimony of neighbors, as well as of the developer-applicant himself, at the ZAB hearings that the area proposed for development forms a "lake" seasonally, indicates that the area may qualify as a potential jurisdictional wetland subject to additional review and permitting requirements.

In sum, there is significant evidence that the project will not be adequately served by the existing storm drain infrastructure. As a result, it does not qualify for the in-fill development categorical exemption of 14 CCR § 15332.

2. *Even if the project qualifies for a categorical exemption, it is subject to the unusual circumstances exception because there is substantial evidence of an unusual circumstance and of a fair argument that there may be a significant effect on the environment*

Even if the project were exempt under 14 CCR § 15332, it falls under the unusual circumstances exception under 14 CCR § 15300.2(c). The unusual circumstances exception to the categorical exemption applies if 1) there is substantial evidence of an unusual circumstance; and 2) there is substantial evidence in the record of a fair argument that there may be a significant effect on the environment. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105; see also *World Bus. Acad. v. California State Lands Comm'n*, (2015) 24 Cal.App.5th 476, 499.) In this case there is ample evidence of both an unusual circumstance and of a fair argument that there may be a significant effect on the environment.

September 10, 2018

Page 3

Moreover, because there is substantial evidence of an unusual circumstance, and there is substantial evidence supporting the conclusion that there may be an impact on the environment, the City must apply the exception to the categorical exemption even if there may be evidence in the record that the project will not have a significant environmental effect. “Under [the “fair argument”] standard, “ ‘an agency is merely supposed to look to see if the record shows substantial evidence of a fair argument that there may be a significant effect. ... In other words, the agency is not to weigh the evidence to come to its own conclusion about whether there will be a significant effect.’ ” (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th. at p. 1104.) An agency must find a “fair argument” if there is any substantial evidence to support that conclusion, even if there is competing substantial evidence in the record that the project will not have a significant environmental effect. (*Id.* at p. 1111.)” (*World Bus. Acad. v. California State Lands Comm'n*, (2018) 24 Cal.App.5th 476, 499.)

The Project is proposed on a site that sits on an undergrounded branch of historic Strawberry Creek, and has been subject to significant historical flooding. Existing studies and direct observations by existing residents in the area reflect that as a result of this location, the project would be subject to flooding, soil instability and subsidence risks. The Urban Creeks Council previously determined that this particular northern branch of Strawberry Creek was filled with non-engineered soil and debris prior to development in the area. They classified the area as “filled wetlands” and as “seismically unstable and subject to liquefaction”. Site-specific soils and groundwater data have not been collected and a comprehensive geotechnical investigation is warranted. This evidence suggests that the proposed project and the increased impervious surfaces would increase the runoff coefficient and have potentially adverse impacts on sub-surface drainage which would exacerbate existing flooding conditions.

This evidence, which was submitted to ZAB in connection with the two hearings it held relating to this project, constitutes substantial evidence of an unusual circumstance at the site due to the known and unknown sub-surface and associated hydrologic conditions. In fact, at the second hearing, City of Berkeley Zoning Department Staff recognized and agreed that the “level of water in the area” constitutes an unusual circumstance. The evidence, moreover, is more than adequate to reflect a fair argument that, as a result of the unusual hydrologic circumstances of the site, the anticipated impacts of the increased impervious surfaces and the unknown sub-surface conditions associated with the buried creek, there may be a significant effect on the environment.

Because there is substantial evidence that the site is subject to unusual circumstances, and may have a significant effect on the environment, the City must find that it does not qualify for the categorical exemption as a result of the applicable unusual circumstances exception. ZAB erred in not doing so.

**B. If the project is exempt from CEQA appropriate conditions must be imposed under BMC § 23B.32.040 to ensure the project is not detrimental to the health, safety, comfort or general welfare of the neighborhood or injurious to the adjacent properties, the surrounding area or neighborhood**

Even if the Project were exempt from CEQA’s environmental impact reporting requirements, the City has the authority and the obligation under the Berkeley Municipal Code (the BMC) to require additional testing and engineering consistent with the recommendations of that testing, as a result of the evidence reflecting that the project will have an adverse effect on the neighborhood and surrounding properties, and more generally on health and safety.

September 10, 2018

Page 4

BMC § 23B.32.040 provides that a use permit may be approved as submitted or modified only if the proposed project will not be detrimental to the health, safety, comfort or general welfare of the neighborhood or injurious to the adjacent properties, the surrounding area or neighborhood. In this case there is substantial evidence that the project will have a detrimental impact on safety and will be injurious to the neighboring properties due to flooding. As a result, unless these impacts are mitigated, the project does not satisfy the zoning requirements of the BMC. The City must therefore impose requirements to address these concerns. This includes the following studies, and engineering consistent with recommendations drawn from those studies.

A focused geotechnical and groundwater investigation is necessary to address the following:

- A detailed geotechnical and groundwater evaluation is necessary to determine subsurface drainage conditions so that existing groundwater release preferential pathways are not impacted during construction of the project. A geotechnical and groundwater evaluation would allow for a proper evaluation of the surface and subsurface conditions of the site to determine impacts of the proposed development on the surrounding properties and to establish additional engineering controls necessary to avoid future risks. Additional information on site soil properties and depth to groundwater is also needed to support design of proposed site facilities as previously noted.
- Characterize on-site soil conditions to support site-specific geotechnical structural design and storm-water management/low impact development (LID) measures.
- Identify the precise location of the filled former creek channel alignment in order to design the project accordingly in order to avoid placing structures directly over the historic creek or to design engineering controls to mitigate future risks of building over the former creek channel.
- Characterize local groundwater/subsurface conditions and associated wet weather flow paths.
- Develop geotechnical site-specific design recommendations to support structural stability of the proposed development and proper foundation design.

ZAB acknowledged these concerns during the hearing on the use permit application for this project, and acknowledged that the developer should conduct appropriate geotechnical studies and engineering consistent with the recommendations of such studies as a condition of, and thus prior to the issuance of, a use permit. This condition would exceed the typical requirement for such studies and engineering for the issuance of a building permit. However, condition number 13 of the ZAB Decision only requires the geotechnical study and engineering prior to issuance of a building permit, as would be typical, and in conflict with the ZAB decision expressed at the hearing. Additionally, the Decision contains a further condition inconsistent with the intent to require a comprehensive geotechnical study and further engineering. Condition 21 provides that the developer's drainage plan shall be as presented in the current design the developer has submitted, unless modified by the City's Building and Safety Decision. However, agreed by ZAB at the hearing, the study and engineering are to precede issuance of a use permit for the project. Thus, the drainage plan may have to be modified in accordance with the study and engineering prior to issuance of the use permit – and therefore prior to submission to the Building and Safety Division.



September 10, 2018

Page 5

Conditions numbers 13 and 20 are inconsistent with the actual conditions required by ZAB and voted on at the hearing. Moreover, those two conditions are internally inconsistent. Finally, as drafted, the Decision would not protect the neighborhood and neighboring properties from detrimental health and safety impacts because it does not require an adequate level of geotechnical review and scrutiny.

As a result, appellant appeals to the City Council to properly apply CEQA to this project and subject the project to appropriate environmental impact reporting requirements. In the alternative, and at a minimum the City Council should require further testing, and engineering consistent with the recommendations of the testing reports, as a condition of approval pursuant to its authority under the BMC.

Very truly yours,



Hussein Saffouri

Very truly yours,




Rain Sussman

Signatures in Support on Following Page.

September 10, 2018  
Page 6

Signatures in Support:

No. 1

Signed: 

Name: Pite Pan

Address: 1155 Hearst Ave

Date: 09/10/2018

No. 2

Signed: 

Name: Sandra Hrdlicka

Address: 1827 Curtis St.

Date: 9/10/18

No. 3

Signed: 

Name: Teal Major

Address: 1814 Curtis St

Date: 9/10/18

No. 4

Signed: 

Name: Wayne Cory

Address: 1159B Hearst Ave

Date: 9-10-18

September 10, 2018  
Page 7

No. 5

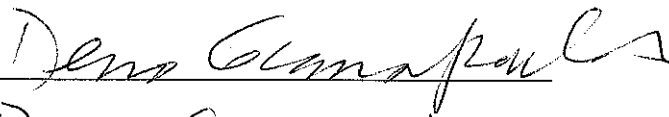
Signed: 

Name: Joseph Chen

Address: 1159 Hearst Ave B

Date: 9/10/18

No. 6

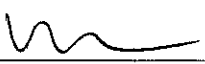
Signed: 

Name: Demo Giannopoulos

Address: 1151 Hearst Ave

Date: 9-10-18

No. 7

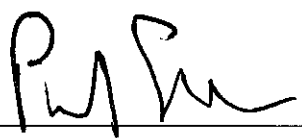
Signed: 

Name: Yashu Jiang

Address: 1163 Hearst Ave

Date: 9/10/18

No. 8

Signed: 

Name: PAUL STRAIN

Address: 1146 DELAWARE ST

Date: 9/10/18

September 10, 2018  
Page 8

No. 9

Signed: Tracey Emerson

Name: Tracey Emerson

Address: 1157 Hearst Ave.

Date: 9/10/18

No. 10

Signed: Barbara Getz

Name: Barbara Getz

Address: 1146 Delaware St

Date: 09/10/18

No. 11

Signed: Bill Oies

Name: Bill Oies

Address: 1143 HEARST ave

Date: 9/10/18

No. 12

Signed: Jonathan Redden

Name: Jonathan Redden

Address: 1139 Hearst Ave apt A

Date: 9/10/18

September 10, 2018  
Page ~~11~~ 9

No. 13

Signed: Blaze Woodley

Name: Blaze Woodley

Address: 1812 CURTIS STREET

Date: 9-10-18

No. 14

Signed: Madison Williams

Name: Madison Williams

Address: 1814 Curtis St

Date: 9/10/18

No. 15

Signed: Rolf Williams

Name: Rolf Williams

Address: 1814 Curtis St

Date: 9/10/18

No. 16

Signed: Alma Parris

Name: Alma Parris

Address: 1812 Curtis St.

Date: 9/10/18

September 10, 2018  
Page 10

No. 17

Signed: Stacey Shulman

Name: Stacey Shulman

Address: 1818 Curtis St.

Date: 9/10/18

No. 18

Signed: Alan Specter

Name: Alan Specter

Address: 1818 Curtis St.

Date: 9/10/18

No. 19

Signed: Damien Curry

Name: Damien Curry

Address: 1815 Curtis St

Date: 9/10/18

No. 20

Signed: Amy Billstrom

Name: Amy Billstrom

Address: 1815 Curtis St.

Date: 9/10/18

September 10, 2018  
Page No 11

No. 21

Signed: A. Stukin

Name: ANIA STUKIN

Address: 1145 HEARST

Date: 9/10/2018

No. 22

Signed: MA

Name: MALGORZATA KACPRZAK

Address: 1147 HEARST AV.

Date: 9/10/2018

No. 23

Signed: Masanori Oba

Name: MASANORI OBA

Address: 1159 HEARST AV APT A, Berkeley

Date: 09/10/2018.

No. 24

Signed: Pam Ormsby

Name: Pam Ormsby

Address: 1148 Delaware St.

Date: 9/10/18

September 10, 2018  
Page 12

No. 25

Signed: Vijay

Name: VIJAY VENUGOPAL

Address: 1826 CURTIS ST, BERKELEY, CA 94702

Date: 9/11/18

No. 26

Signed: Joseph Michael

Name: Joseph Michael

Address: 1819 1/2 Curtis St, Berkeley, Ca. 94702

Date: 9/11/18

No. 27

Signed: Sylvie Woog

Name: Sylvie Woog

Address: 1210 Hearst Ave.

Date: Sept. 11, 2018

No. 28

Signed: Claude Sprague

Name: Claude Sprague

Address: 1210 Hearst Ave

Date: Sept 11 2018



September 10, 2018  
Page 13

No. 29

Signed: Dale Ananici

Name: Dale Ananici

Address: 1819 Curt's St Berkeley 94702

Date: 9/11/18

No.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

No.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

No.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_





# 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  
AUGUST 23, 2018

## 1155-1173 Hearst Avenue

Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new dwelling units.

### I. Background

#### A. Land Use Designations:

- General Plan: HDR – High Density Residential
- Zoning: R-2A – Restricted Multiple-Family Residential

#### B. Zoning Permits Required:

- Use Permit for construction of dwelling units, under BMC Section 23D.32.030
- Use Permit for the addition of a sixth or greater bedroom in existing dwellings on a parcel, under BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming front and side yard, BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", BMC Section 23D.32.070.D.4

#### C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

#### D. Parties Involved:

- Applicant / Property Owner      Hearst Avenue Cottages, LLC c/o Rhoades Planning Group, 46 Shattuck Square, Suite 11, Berkeley, CA 94704

Figure 1: Vicinity and Zoning Map

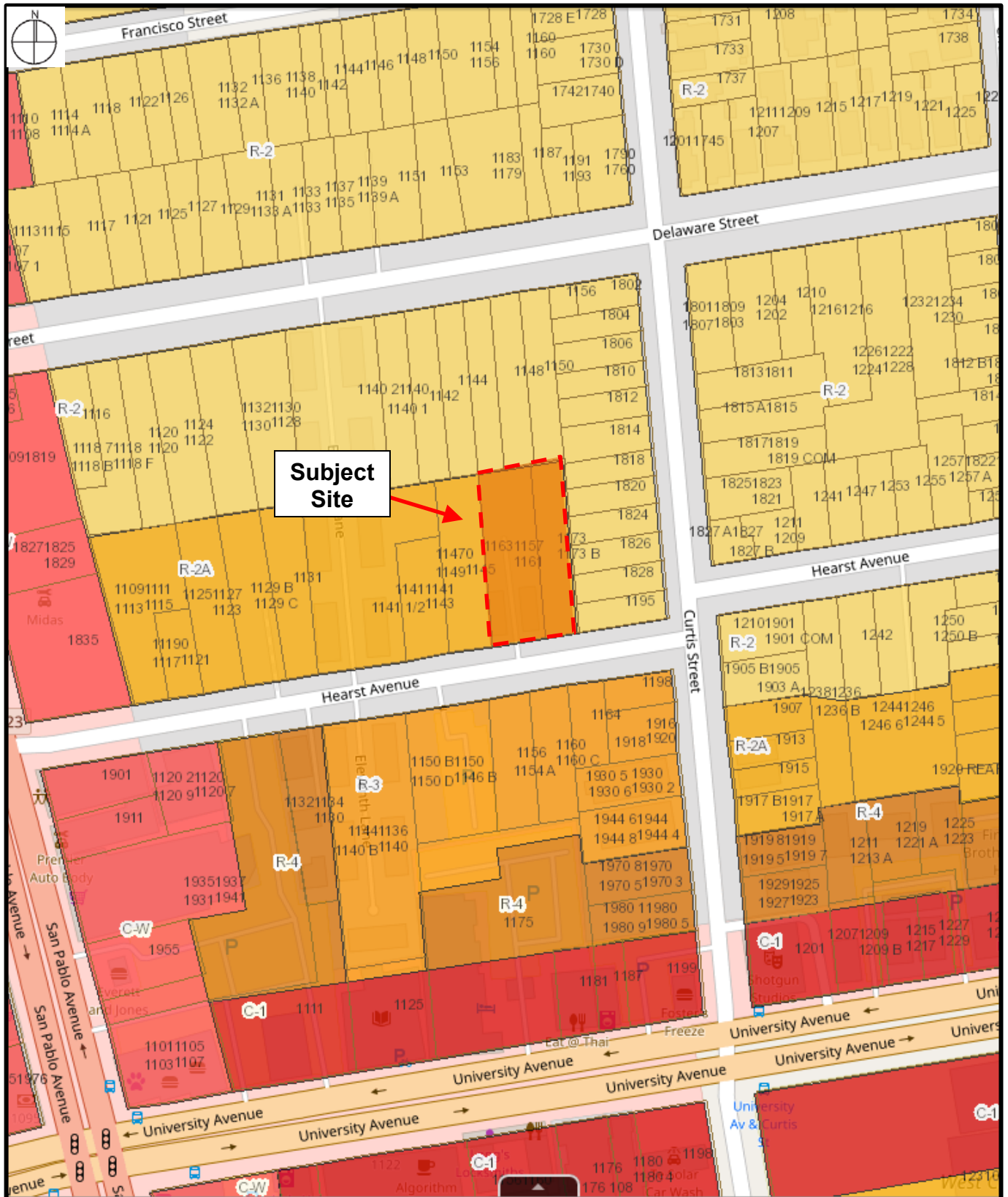
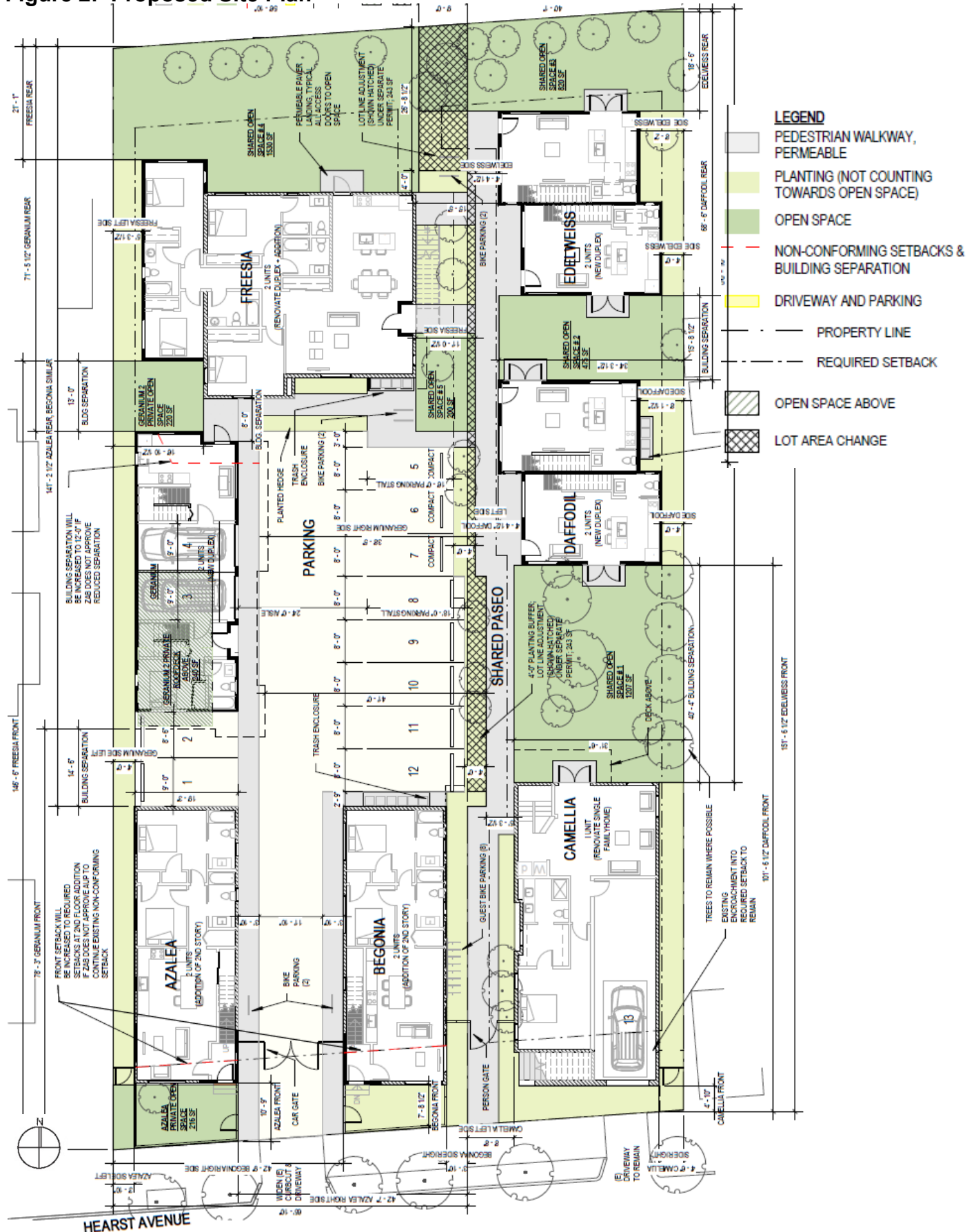


Figure 2: Proposed Site Plan



**Table 1: Land Use Information**

| Location               |       | Existing Use                               | Zoning Districts | General Plan Designations  |
|------------------------|-------|--------------------------------------------|------------------|----------------------------|
| Subject Property       |       | three duplexes, one single family dwelling | R-2A             | High Density Residential   |
| Surrounding Properties | North | single family dwellings                    | R-2              | Medium Density Residential |
|                        | South | multi-family dwellings                     | R-3              | High Density Residential   |
|                        | East  | single family dwellings                    | R-2              | Medium Density Residential |
|                        | West  | multi-family dwelling                      | R-2A             | High Density Residential   |

**Table 2: Special Characteristics**

| Characteristic                                                                                                             | Applies to Project? | Explanation                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Child Care and Affordable Housing Fee for non-residential projects (Per Resolution 66,617-N.S. and 66,618-N.S.) | No                  | Proposed project includes 1,500 square feet of commercial space, which is less than the 7,500 square feet requirement.                                                            |
| Affordable Housing Mitigations for rental housing projects (Per BMC Section 22.20.065)                                     | No                  | The project is not subject to the affordable housing provisions of BMC 22.20.065.                                                                                                 |
| Inclusionary Housing Requirements (BMC Chapter 23C.12)                                                                     | Yes                 | The project is subject to the inclusionary housing provisions of BMC Chapter 23C.12.                                                                                              |
| Housing Accountability Act [Gov't Code Section 65589.5.(j)]                                                                | No                  | Project is a "Housing development project" consisting of dwelling units only. However, there are elements which do not meet the regulatory standards of the BMC. See Section V.G. |
| Creeks                                                                                                                     | No                  | The property does not fall within a creek buffer zone. See Hydrology in Key Issues below.                                                                                         |
| Density Bonus                                                                                                              | No                  | No density bonus is being proposed.                                                                                                                                               |
| Historic Resources                                                                                                         | No                  | There are no historic resources on the site.                                                                                                                                      |
| Oak Trees                                                                                                                  | No                  | There are no Coast Live Oaks on or adjacent to the property.                                                                                                                      |
| Rent Controlled Units                                                                                                      | Yes                 | The six dwelling on the western parcel are under rent control. See discussion in Key Issues below.                                                                                |
| Seismic Hazards (SHMA)                                                                                                     | No                  | Project site is not in a landslide, liquefaction or earthquake fault rupture zone.                                                                                                |
| Soil/Groundwater Contamination                                                                                             | No                  | Project site is not in an Environmental Management Area. There is no record of soil/ground water contamination on the site.                                                       |

**Table 3: Project Chronology**

| Date               | Action                                           |
|--------------------|--------------------------------------------------|
| February 2, 2016   | Application submitted                            |
| May 17, 2017       | Application deemed complete                      |
| August 10, 2017    | ZAB Public hearing notices mailed/posted         |
| August 24, 2017    | ZAB hearing continued item to September 28, 2017 |
| September 28, 2017 | ZAB hearing, item continued off calendar         |
| March 6, 2018      | Revised Application submitted                    |
| July 3, 2018       | Revised Application deemed complete              |
| August 8, 2018     | ZAB Public hearing notices mailed/posted         |
| August 23, 2018    | ZAB hearing                                      |

**Table 4: Lot Development Standards 1155-1163 Hearst (APN 057 208601400)**

| R-2A Standard<br>BMC Sections 23D.32.070-080 | Existing | Proposed | Permitted/<br>Required            |
|----------------------------------------------|----------|----------|-----------------------------------|
| Lot Area (sq. ft.)                           | 13,469   | 13,469   | 5,000 min.                        |
| Gross Floor Area (sq. ft.)                   | 5,300    | 9,665    | ---                               |
| Dwelling Units                               | 6        | 8        | 8 max.                            |
| Lot Coverage (%)                             | 32.8     | 38.7     | 40 max.<br>for 2-story main bldg. |
| Usable Open Space (sq. ft.)                  | 2,560    | 2,409    | 300 per d.u.<br>2,400 min.        |
| Automobile Parking                           | 6        | 12       | 8 (@ 1 per d.u.)                  |

**Table 5: Lot Development Standards 1173 Hearst (APN 057 208601300)**

| R-2A Standard<br>BMC Sections 23D.32.070-080 | Existing | Proposed | Permitted/<br>Required            |
|----------------------------------------------|----------|----------|-----------------------------------|
| Lot Area (sq. ft.)                           | 8,204    | 8,204    | 5,000 min.                        |
| Gross Floor Area (sq. ft.)                   | 3,323    | 6,042    | ---                               |
| Dwelling Units                               | 1        | 5        | 5 max.                            |
| Lot Coverage (%)                             | 17.5     | 39.9     | 40 max.<br>for 2-story main bldg. |
| Usable Open Space (sq. ft.)                  | 5,599    | 2,502    | 300 per d.u.<br>2,400 min.        |
| Automobile Parking                           | 1        | 1        | 5 (@ 1 per d.u.)                  |

**Table 6: Building Development Standards**

| <b>AZALEA<br/>1555-57 HEARST AVE.</b>  | <b>Existing</b>                 | <b>Proposed</b> | <b>Permitted/Required</b>                        |
|----------------------------------------|---------------------------------|-----------------|--------------------------------------------------|
| Building Height (#) Stories            | 1                               | 2               | 3 max.                                           |
| Average (ft.)                          | 12'-11"                         | 21'-6"          | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                          | 12'-11"                         | 22'-10.5"       | n/a                                              |
| Font Yard Setback (ft.)                | 10'-6"                          | no change       | 15 min.                                          |
| Left (ft.)                             | 3'-10"                          | no change       | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                            | 42'-7"                          | no change       |                                                  |
| Rear yard setback (ft.)                | 141'-2.5"                       | no change       | 15 min.                                          |
| <b>BEGONIA<br/>1161-63 HEARST AVE.</b> | <b>Existing</b>                 | <b>Proposed</b> | <b>Permitted/Required</b>                        |
| Building Height (#) Stories            | 1                               | 2               | 3 max.                                           |
| Average (ft.)                          | 12'-11"                         | 21'-9"          | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                          | 12'-11"                         | 23'-4.5"        | n/a                                              |
| Font Yard Setback (ft.)                | 7'-8.5"                         | no change       | 15 min.                                          |
| Left (ft.)                             | 42'-9"                          | no change       | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                            | 3'-10"                          | no change       |                                                  |
| Rear yard setback (ft.)                | 145'-2"                         | 141'-8"         | 15 min.                                          |
| <b>CAMELLIA<br/>1173 HEARST AVE.</b>   | <b>Existing</b>                 | <b>Proposed</b> | <b>Permitted/Required</b>                        |
| Building Height (#) Stories            | 2                               | no change       | 33 max.                                          |
| Average (ft.)                          | 21'                             | 21'-3.5"        | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                          | 23'-6"                          | no change       | n/a                                              |
| Font Yard Setback (ft.)                | 11' to House<br>4'-10" to Stair | no change       | 15 min.                                          |
| Left (ft.)                             | 8'-8"                           | 5'-3.5"         | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                            | 4'-6"                           | no change       |                                                  |
| Rear yard setback (ft.)                | 143'-8"                         | no change       | 15 min.                                          |
| <b>DAFFODIL</b>                        | <b>Existing</b>                 | <b>Proposed</b> | <b>Permitted/Required</b>                        |
| Building Height (#) Stories            | N/A                             | 2               | 3 max.                                           |
| Average (ft.)                          | N/A                             | 21'-5"          | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                          | N/A                             | 23'-4.5"        | n/a                                              |
| Font Yard Setback (ft.)                | N/A                             | 101'-6.5"       | 15 min.                                          |
| Left (ft.)                             | N/A                             | 4'-4.5"         | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                            | N/A                             | 4'              |                                                  |
| Rear yard setback (ft.)                | N/A                             | 68'-6"          | 15 min.                                          |



| <b>EDELWEISS</b>                              | <b>Existing</b> | <b>Proposed</b> | <b>Permitted/Required</b>                        |
|-----------------------------------------------|-----------------|-----------------|--------------------------------------------------|
| Building Height (#) Stories                   | N/A             | 2               | 3 max.                                           |
| Average (ft.)                                 | N/A             | 24'-6"          | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                                 | N/A             | 24'-6"          | n/a                                              |
| Font Yard Setback (ft.)                       | N/A             | 151'-6.5"       | 15 min.                                          |
| Left (ft.)                                    | N/A             | 4'-4.5"         | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                                   | N/A             | 4'              |                                                  |
| Rear yard setback (ft.)                       | N/A             | 16'-8"          | 15 min.                                          |
| <b>FREESIA<br/>1159 A &amp; B HEARST AVE.</b> | <b>Existing</b> | <b>Proposed</b> | <b>Permitted/Required</b>                        |
| Building Height (#) Stories                   | 2               | 2               | 3 max.                                           |
| Average (ft.)                                 | 19'-1"          | 20'             | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                                 | 19'-9"          | 20'-6"          | n/a                                              |
| Font Yard Setback (ft.)                       | 136'-11"        | no change       | 15 min.                                          |
| Left (ft.)                                    | 16'-11"         | 5'-3.5"         | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                                   | 10'-6"          | 11'-0.5"        |                                                  |
| Rear yard setback (ft.)                       | 27'-10"         | 21'-1"          | 15 min.                                          |
| <b>GERANIUM</b>                               | <b>Existing</b> | <b>Proposed</b> | <b>Permitted/Required</b>                        |
| Building Height (#) Stories                   | N/A             | 2 + roof patio  | 3 max.                                           |
| Average (ft.)                                 | N/A             | 23'-6"          | 28 max. (35 w/AUP)                               |
| Maximum (ft.)                                 | N/A             | 28'             | n/a                                              |
| Font Yard Setback (ft.)                       | N/A             | 78'-3"          | 15 min.                                          |
| Left (ft.)                                    | N/A             | 4'              | 4 min. @ 1 <sup>st</sup> & 2 <sup>nd</sup> story |
| Right (ft.)                                   | N/A             | 38'-5"          |                                                  |
| Rear yard setback (ft.)                       | N/A             | 71'-5.5"        | 15 min.                                          |

## II. Project Setting

**A. Neighborhood/Area Description:** The property is located in a West Berkeley neighborhood; University Avenue is located one block to the south and San Pablo Avenue (State Highway 123) is located one block to the west. The neighborhood consists predominantly of modest one- to two-story single and multi-family dwellings, with a few three- and four-story structures located towards the west/San Pablo Avenue. As can be seen from the Vicinity Map in Figure 1 above, the neighborhood is comprised by a mix of zoning districts ranging in residential density from R-2, R-2A, R-3 and R-4, with the neighboring commercial C-1 and C-W Districts to the south and west. The neighborhood is in close proximity to several bus transit lines, commercial businesses, and the West Berkeley library.

**B. Site Conditions:** The site consists of two separate parcels located on the north side of Hearst Avenue on the block bound by San Pablo Avenue to the west and Curtis Street to the east. The parcel to the west (1155-63 Hearst, APN 057 208601400) is a 66' x 204.58' slight parallelogram shaped lot with one two-story duplex towards the

rear of the lot and two single-story duplexes situated towards the front of the lot, separated by a paved parking area. The parcel to the east (1173 Hearst, APN 057 208601300) is narrower ( $\approx 40' \times 204'$ ) and is developed with a two story single family dwelling with an attached tandem car garage. The single family dwelling is currently vacant; the six units in the duplexes are occupied by renters.

### III. Project Description

The project proposes to rehabilitate the seven existing dwelling units (three duplexes and one single-family dwelling) and add three two-story duplexes as a common interest development (i.e. condominiums) for a total of seven buildings and 13 dwellings as configured in Table 7 below.

**Table 7: Existing and Proposed Buildings and Dwellings**

| Building  | Unit # | Unit Type       |                 | Unit Gross Floor Area |          |
|-----------|--------|-----------------|-----------------|-----------------------|----------|
|           |        | Existing        | Proposed        | Existing              | Proposed |
| Azalea    | A1     | 1 Bed, 1 Bath   | 2 Bed, 2 Bath   | 499                   | 995      |
| Azalea    | A2     | 1 Bed, 1 Bath   | 2 Bed, 2 Bath   | 496                   | 995      |
| Begonia   | B1     | 1 Bed, 1 Bath   | 2 Bed, 2 Bath   | 499                   | 995      |
| Begonia   | B2     | 1 Bed, 1 Bath   | 2 Bed, 2 Bath   | 496                   | 995      |
| Camelia   | C      | 2 Bed, 1.5 Bath | 3 Bed, 2 Bath   | 2,293*                | 2,293*   |
| Daffodil  | D1     | n/a             | 2 Bed, 1.5 Bath | n/a                   | 940      |
| Daffodil  | D2     | n/a             | 2 Bed, 1.5 Bath | n/a                   | 883      |
| Edelweiss | E1     | n/a             | 2 Bed, 1.5 Bath | n/a                   | 940      |
| Edelweiss | E2     | n/a             | 2 Bed, 1.5 Bath | n/a                   | 883      |
| Freesia   | F1     | 2 Bed, 1 Bath   | 4 Bed, 4 Bath   | 1,372                 | 1,837    |
| Freesia   | F2     | 2 Bed, 1 Bath   | 4 Bed, 4 Bath   | 1,372                 | 1,877    |
| Geranium  | G1     | n/a             | 2 Bed, 2 Bath   | n/a                   | 1,001*   |
| Geranium  | G2     | n/a             | 2 Bed, 2 Bath   | n/a                   | 966*     |

\*Does not include garage area

The applicant revised the project in response to comments received by the ZAB in September 2017. The main project revisions are summarized below:

- The overall project unit count was reduced from 18 units to 13; there is no Density Bonus request.
- The two parcels would not be merged. 1157 Hearst and 1173 Hearst would remain as separate parcels. However, to accommodate the required four-foot side yard landscape screening for uncovered parking, the project proposed a lot line adjustment that would provide for this while retaining the net square footage of each lot. An access agreement for parking will be provided for the units in Daffodil and Edelweiss.

- All three story elements have been removed; all buildings are proposed with two stories and a maximum height of 28 feet (Geranium).
- All current residents can remain in their homes for as long as they wish, with rehabilitation and/or sale of condominium units occurring only when current residents voluntarily vacate, subject to BMC Section 13.76 and the Berkeley Rent Stabilization Board regulations.
- Azalea and Begonia, the two existing duplexes on the 1157 Hearst parcel, would be renovated into two-flat duplexes with front entries (after existing residents voluntarily vacate).
- Camelia, the single family home on the 1173 parcel, would be renovated (instead of demolished) within the existing footprint, with the addition of a back deck.
- Daffodil and Edelweiss, the two new duplexes at the rear yard of the 1173 parcel, have been located further back in the yard and have been slightly reduced in size. The rooflines have been adjusted to provide a more residential-scale feature.
- Freesia, the existing duplex at the rear of the 1157 Hearst parcel, would be renovated within its existing footprint and would also have an addition of two bedrooms to create large, family-friendly units with a large back yard (after existing residents voluntarily vacate).
- Geranium, a new duplex, was moved from the east side along the paseo, to the west side, to create a larger central space.
- Parking is now located internal to the development and is accessed from the paseo. A total of 13 spaces would be provided, one per unit.
- All units now feature a complementary color and materials palette of deep blues, browns and whites in siding and cement plaster. Bay windows are design features in almost every unit.
- A total of 4,911 square feet of Useable Open Space would be provided and a minimum of 13 secure bicycle parking spaces.

#### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application to the City, the applicant erected a yellow pre-application poster at the site. The project team has held numerous meetings with neighbors, including a large community meeting. A series of meetings has been held with individual neighbors to the north and the east of the project site to address issues of massing, parking, and hydrology. The proposed site plan responds to those meetings and issues.

The large community meeting was held on November 30, 2015. Prior to the meeting, notices were sent to all property owners and occupants within 300 feet of the site based on a list of addresses provided by the City of Berkeley. The meeting was held in the driveway at the project site. About 25 area residents stopped by the site during the meeting time. To each of these neighbors, the project applicant and the architect presented the project. Draft floor plans and renderings were posted for attendees to view and the project team answered questions and discussed the proposal with the attendees. The sign in sheet and flier that was mailed are included in this application. A couple of neighbors expressed enthusiasm about the redevelopment of this

historically troublesome property. Other neighbors expressed concerns about massing and parking. A second community meeting was held on August 3, 2017 at 1173 Hearst Avenue to provide a project status and process update to the neighbors. Subsequent to the feedback received at the September 28, 2017 Zoning Adjustments Board Meeting, a third neighborhood meeting was held on November 15, 2017 at the Berkeley Public Library West Branch to present the revised 13 unit project. About 14 people attended the meeting and the proposed revisions, such as reduction in unit count and building heights, were well received by the neighbors. Some neighbors still have concerns primarily regarding hydrology and existing tenants. All correspondence received since the September 28 ZAB meeting can be found in Attachment 7.

On August 8, 2017, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations.

**B. Committee Review:** This project is not subject to committee review.

## V. Issues and Analysis

**A. Housing Accountability Act Analysis:** The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;<sup>1</sup> and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The following elements of the project do not comply with the objective general plan and zoning standards:

- Vertical extension of existing non-conforming front and side yard setbacks (for Azalea and Begonia);
- Reduction of the building to building separation (between Geranium and Freesia);
- Construct an addition greater than 14 feet in average height (for Azalea, Begonia, and Geranium); and
- Add a fifth or greater bedroom to existing dwellings on a parcel (in Azalea, Begonia and Geranium).

Therefore, §65589.5(j) does not apply to this project as proposed.

**B. District Purposes:** The proposed project would meet the purposes of the Restricted Multiple-family Residential District as it would provide smaller multiple-family garden-type apartment structures with the maximum feasible amount of useable open space

<sup>1</sup> As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

on the property. The buildings would be constructed with sufficient separation on the subject lot, and with ample distance with abutting single-family neighbors. Light and air, therefore, would not be unreasonably obstructed, as described in greater detail below.

- C. Tenant Protections:** As of the writing of this staff report, the single-family dwelling is vacant and all six rent controlled units have existing tenants that have been there since the before the date of application. The applicant has met with the tenants on several occasions and informed them that the development plan is to construct the new buildings first and leave the existing units as they are until such time that the owners decide to renovate and add on to the existing buildings. The applicant has stated that the existing rental units would remain as rent controlled rental units after renovation and as would be required for units constructed prior to 1985. The applicant has committed to providing notice in advance of the City's noticing requirements both before construction commences on the new buildings as well as before tenants might be relocated for construction on their units (see Condition of Approval 15, below), and has confirmed that all tenants would be relocated voluntarily or temporarily as provided for in Condition of Approval 12 below, as recommended by the Rent Control Board (see RSB Memorandum in Attachment 5).

- 12. Tenant Relocation.** *Prior to building permit issuance for any interior improvements, renovations or addition to the three existing duplexes (1955-57 Hearst, 1959 A & B Hearst, 1961-63 Hearst) the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation.*
- 15. Construction Noise Management - Public Notice Required.** *At least thirty calendar days prior to initiating any construction activities at the site, the applicant shall provide notice to existing residents on the project site, including (1) description of construction activities, (2) daily construction schedule (i.e., time of day) and expected duration (number of months), (3) the name and phone number of the Noise Management Individual for the project, and (4) designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.*

The applicant has mentioned that the owner may wish to convert the existing units to condominiums but has stated that similar to rehabilitation, condominium conversion of existing units would only occur when current residents voluntarily vacate. Staff is not proposing a condition of approval related to condominium conversion, as if it were to occur during occupancy, tenants are protected under BMC 21.28, which states that tenants have the right to continue to occupy the unit as their principal residence both during and after the completion of the conversion process. Neither the current owner nor the new owner, if the unit is sold, can evict the tenant as long as the unit remains the tenant's principal place of residence and remain a tenant in good standing. In addition, the units will stay under rent control.

- D. Creek/Hydrology:** As discussed in the ZAB staff report of September 2017, although the creek ordinance does not apply to this application, there is recurrent flooding in the area. The applicant submitted a stormwater and flooding assessment and mitigation design for the proposed project prepared by Clearwater Hydrology. The storm drainage system design proposed and analyzed would still be applicable to the reduced intensity and density of the current project. Balance Hydrologics peer reviewed the hydrology analysis for the City and concurred with the findings in the report. The hydrology report summarized that, the capacity of the system would likely be greater than that of a 25-yr. storm and that the proposed design would also reduce the severity of flooding on the neighboring properties to the east along Curtis Street. Staff has conditioned the project to include all recommendations of the hydrology analysis and the subsequent peer review including the drainage design as presented in the report, allowing modifications if required by the City's Building & Safety Division and Department of Public Works. A copy of the hydrology report and peer review can be found on the project webpage:  
[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/1155-1173\\_Hearst.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1155-1173_Hearst.aspx)

A neighbor submitted a separate hydrology study from Terraphase Engineering and discussed its conclusions with the City's Associate Civil Engineer, Vincent Chen, who reviews developments requiring creek permits. Mr. Chen did not concur with several of Terraphase Engineering conclusions, but did express his belief that a soils report (i.e. geotechnical report) be prepared for the project (see correspondence in Attachment 6). This project, however, is not required to provide a geotechnical report as it is not located in the Earthquake Fault Rupture (Alquist-Priolo) Zone or within a Landslide or Liquefaction Zone as identified by the Seismic Hazards Mapping Act. If a geotechnical report is to be required prior to issuance of a building permit, it would be upon assessment of the Building Official, where the classification, strength or compressibility of the soil is in doubt or where a load-bearing value superior to that specified in this CBC is claimed (CBC 1803.5.2).

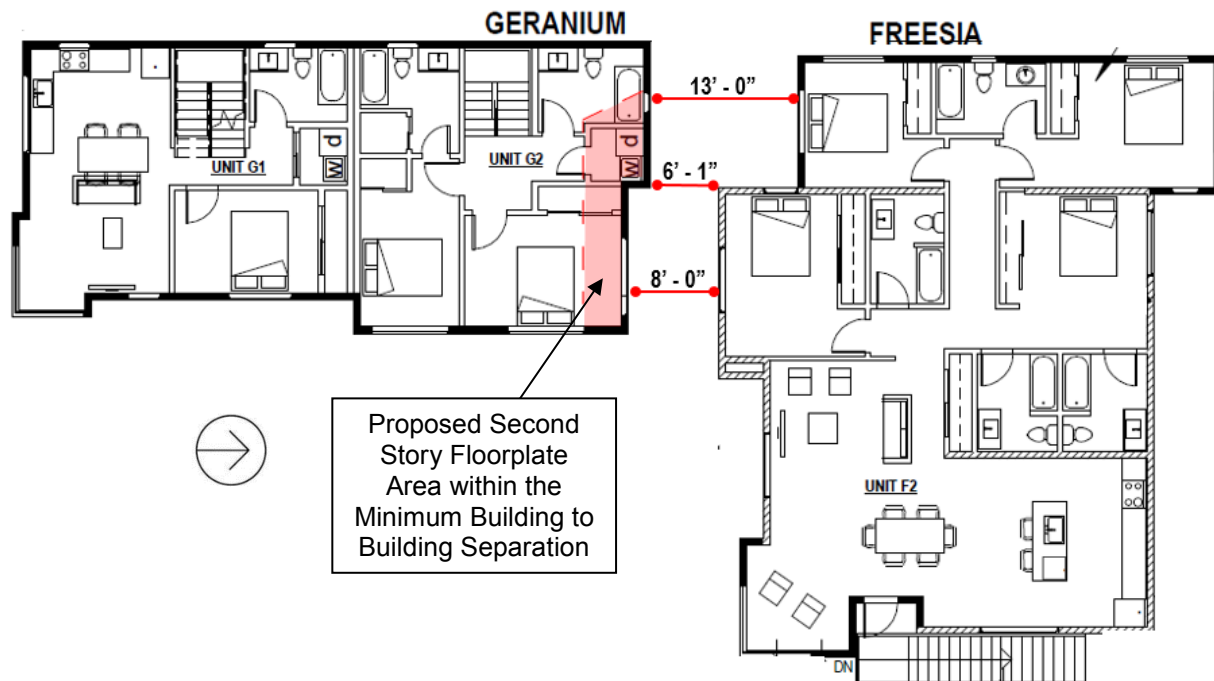
- E. Sunlight/Shadows:** The project would result in three new two-story buildings and second stories on three existing one-story buildings. As such, it would create greater shadowing impacts compared to existing conditions. The applicant has submitted the required shadow studies to assess the anticipated impacts of the project.

The shadow studies illustrate that the four dwellings on the abutting property to the west (1145-1151 Hearst Avenue), would be the most impacted by new shadows in the morning hours throughout the year. The six abutting properties fronting Curtis Street (1195 Hearst Avenue and 1818-1828 Curtis Street), would be subject to new shadows during the evening hours throughout the year. However, due to the orientation of the Curtis Street neighbors, the majority of new shading will fall on the rear yard areas of these abutting properties. Only during the spring and fall would the shadows reach the windows on the rear facades of these homes, and only during the evening hours.

Although shadow impacts from the project are expected to affect direct sunlight on certain residential windows, these areas would still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year would

the proposed project cause adjacent properties to lose access to direct sunlight from all windows at any time of the year. Such shading impacts are to be expected from infill development within an urbanized area.

- F. Views:** Based on the proposed two-story heights of the buildings, the existing structures around the site, mature vegetation, and the generally flat topography of the neighborhood, the project would not affect significant views enjoyed by neighboring residents.
- G. Vertical Extension of Non-Conforming Setbacks:** The existing duplexes Azalea (1155-57 Hearst) and Begonia (1161-63 Hearst) are both 995-square-foot, one-story duplexes constructed with non-conforming front yard setbacks (10'-9" and 7'-8.5" respectively, where 15' minimum is the District standard) and non-conforming side yard setbacks (3'-10" left side for Azalea, and 3'-10" right side for Begonia, where a minimum of 4' is the District standard). The project involves renovation and construction of a second story addition that would vertically extend the existing non-conforming setbacks and create two two-story flats. Pursuant to BMC 23C.04.070.C, the proposed vertical extensions of the non-conforming setbacks are permissible as they would not further reduce existing non-conforming yards.
- H. Addition of Bedrooms to a Parcel:** The western parcel (1155-1163 Hearst) is developed with three duplexes that have a total of eight bedrooms (four one-bedroom units and two two-bedroom units). The project proposes renovations and additions to the three buildings that would result in the addition of eight more bedrooms to the existing dwelling units on the property. Pursuant to BMC Section 23D.32.050, the addition of any bedroom beyond the fifth bedroom to a parcel within in existing dwelling units requires Use Permit approval. The Bedroom Ordinance, as it is referred to, allows the City to assess the potential detriment to the surrounding neighborhood in increasing the potential of unrelated adults residing on a parcel. The project, when completed, would change the existing configuration of the duplexes to four two-bedroom dwelling units and two four-bedroom dwelling units. Both the two-unit layout and the four-unit layout are designed to be occupied by single households within a development of six other newly constructed two-bedroom units. The renovated dwellings are designed to provide for a range of family composition and is not expected to lead to formation of a mini-dorm.
- I. Reduction in Building to Building Separation:** Pursuant to BMC 23D.070.D.4 the project is requesting Administrative Use Permit approval to reduce the building to building separation between Freesia and Geranium from the District minimum of 8' on the first floor and 12' on the second floor down to 6'-1". As can be seen in Figure 3 below, although the building to building separation is 6' – 1", this minimum distance is only at one horizontal plane between the buildings; otherwise the separation ranges from 8 feet to 13 feet. Staff believes that as proposed, the building separation provides adequate air and light between the buildings. With the proposed added condition that the north facing window of the northeast bedroom in Geranium be a minimum of 68 inches from finished floor level, privacy between residents of the two opposing units would be ensured.

**Figure 3: Second Floor Building to Building Separation: Geranium and Freesia**

**J. General Non-Detriment:** The project would further not be detrimental to the neighborhood as it would be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would 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.

**K. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.



4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The project's proposed massing contributes to the continued evolution of the City's development landscape. The project design was modified in several ways (see Project Description above) to respect the lower density single-family dwellings fronting Curtis Street. The final development plan would renovate and rehabilitate the existing dwellings to match the style and materials of the new construction for a cohesive street presence that fits well with the surrounding mix of architectural styles

5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: Shadow impacts from the project are expected to affect direct sunlight on certain residential windows. However, these areas would still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight from all the windows throughout the whole day at any time of the year. Such shading impacts are to be expected in an infill urbanized area.

6. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.

7. Policy H-12 Transit-Oriented New Construction: Encourage construction of new medium and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.

8. Policy T-16 Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.

Staff Analysis: The project site is located one block east of San Pablo Avenue and one block north of University Avenue, two major transit thoroughfares. The project would add six residential units located within one quarter mile of the San Pablo/University intersection that is served by the following AC Transit bus lines: 72 Rapid, 49, 51B, 52, FS, G, 72, 72M, 800 and 802.

9. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.

Staff Analysis: The project will add six new housing units to the City's housing stock and will comply with the City's Inclusionary Ordinance by either providing one below market rate unit for a Low Income Household and payment into the

Affordable Housing Trust Fund of the remainder 0.2 unit fee, or payment of the in-lieu fee.

10. Policy H-8–Maintain Housing: Maintain and preserve the existing supply of housing in the City.

Staff Analysis: Upon vacancy of the existing buildings, the project will rehabilitate and upgrade the existing seven dwelling units.

11. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

12. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project proposes a score of 133 on the GreenPoint Rated Checklist, New Home Multifamily Checklist with a Gold certification level.

## 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 Use Permit ZP2016-0028 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, dated June 8, 2018
3. Shadow Studies, dated April 18, 2018
4. Notice of Public Hearing
5. Memorandum from the Rent Stabilization Board, dated July 3, 2018
6. Stormwater and Flooding Assessment Correspondence (Hydrology Assessments and Peer Review available online:  
[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/1155-1173\\_Hearst.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1155-1173_Hearst.aspx))
7. Correspondence Received after September 28, 2017 ZAB meeting

**Staff Planner:** Leslie Mendez, LMendez@cityofberkeley.info, (510) 981-7426



Administrative Record  
ZAB Appeal:  
1155-1173 Hearst Ave.

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**

**ZAB APPEAL: USE PERMIT #ZP 2016-0028, 1155-73 HEARST STREET**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY JANUARY 29, 2019 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #2016-0028, to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new, for-sale dwelling units.

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 **January 17, 2019**

For further information, please contact Leslie Mendez, Project Planner at (510) 981-7426. 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](mailto:clerk@cityofberkeley.info) for further information.

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Mark Numainville, City Clerk

Mailed: January 15, 2019

**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 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 at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*



Office of the City Manager

**15**PUBLIC HEARING

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department

Subject: Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That ordinance (Section 23C.12.050: State of California Density Bonus Requirements) was most recently amended in 2005 and needs updating because it references obsolete State regulations and includes requirements that are no longer in effect. The proposed amendments (see *Attachment 1*) create a stand-alone Density Bonus chapter in the Zoning Ordinance that accurately reflects and complies with State law.<sup>1</sup>

The proposed amendments comprise the first part of Planning Commission's response to six Density Bonus-related City Council referrals. Some of these referrals specifically mention modifications to Density Bonus, whereas others suggest modifying Berkeley's development standards. The common thread that ties the referrals together is clarity around density standards or increased residential densities in return for community benefits most often valued as affordable housing (see *Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the six referrals and developed a multi-phase approach to address referrals through an updated Density Bonus ordinance:

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<sup>1</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65915&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV)

- 1) Bring the Zoning Ordinance into compliance with State Density Bonus requirements and document existing practices;
- 2) Develop a local density incentive program that would result in affordable housing production in excess of what is provided by State Density Bonus; and
- 3) Analyze and recommend modifications to Berkeley’s density standards.

The proposed Zoning Ordinance amendment included with this report, if adopted, will complete Phase 1. This step is necessary to set a new framework within which Phase 2 and Phase 3 policies can be implemented.

**BACKGROUND**

State Density Bonus provides incentives for developers to include affordable housing units within market-rate projects by granting increased density, and relief through concessions related to financial feasibility of the proposed project and waivers to development standards.

Density bonuses of up to 35% of the base project are mandated by the State and are based on the percentage of affordable units provided at various income levels<sup>2</sup>. See below for a summary of the relationship between income levels for the inclusionary units, the percentage of affordable units provided, and the density bonus awarded.

| Summary of Density Bonus Awards |                                                        |                                   |
|---------------------------------|--------------------------------------------------------|-----------------------------------|
| Household Income Level          | Percentage of Affordable Units in Base Project (range) | Density Bonus (market rate units) |
| Very Low Income                 | 5%                                                     | 20%                               |
| Very Low Income                 | 11%                                                    | 35%                               |
| Low Income                      | 10%                                                    | 20%                               |
| Low Income                      | 20%                                                    | 35%                               |
| Moderate Income                 | 10%                                                    | 5%                                |
| Moderate Income                 | 40%                                                    | 35%                               |

To illustrate how this works, a 100-unit base project with 11 very low income units would receive a 35-percent density bonus, resulting in 135 units (11 affordable and 124 market rate). If that same 100-unit base project included 10 moderate income units, it would only receive a 5-percent density bonus, resulting in 105 units (10 affordable and 95 market rate). This structure balances the public and private outcomes based on the

<sup>2</sup> Very Low Income is defined as 30-50% of Area Median Income, Low Income is defined as 50-80% Area Median Income, and Moderate Income is defined as 80-120% Area Median Income.

assumed value and cost of the affordable units, targeted income levels, and remaining market rate units.

All cities and counties are required to adopt an ordinance specifying how they will comply with State Density Bonus regulations.

On December 6, 2017, and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing (the Subcommittee) reviewed the City's Density Bonus zoning language and related referrals. Due to the complexity of State Density Bonus regulations and the scope of the six referrals, the Subcommittee suggested a three-phased approach to accomplish this work. This multi-stage approach is currently underway. Below is a summary of the work that has been accomplished to date and on-going research that will inform next steps:

- Phase 1: Develop Zoning Ordinance Amendments and Administrative Regulations

Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. Planning Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of Density Bonus. Along with Zoning Ordinance amendments, staff revised Administrative Regulations (see *Attachment 3*) to document the process by which the Planning Department evaluates density bonus projects. Administrative Regulations are intentionally written in simple terms and provide a step-by-step procedure for staff to follow, maintaining consistency between projects and amongst staff. Administrative Regulations also allow the Planning Department to remain nimble in its workflow as State Density Bonus law continues to change.

- Phases 2 & 3: Conduct Research to Guide Local Enhancements to Density Bonus

In April 2018, the Joint Subcommittee for the Implementation of State Housing Law (JSISHL) inherited the work of the Planning Commission's Subcommittee on Affordable Housing. JSISHL considered modifications to Berkeley's Density Bonus program at its May and July meetings. During the July meeting, a number of questions were posed that either related to on-going projects or prompted new research. These efforts are described below. As information is collected and analyzed, staff will share results with JSISHL and Planning Commission. Phases 2 and 3 are expected to be completed in 2019.

### **Analysis of State Laws**

In October 2017, the California legislature passed and the Governor signed a package of 15 housing bills, all of which went into effect on or before January 1, 2018. These laws addressed a variety of issues related to California's housing crisis, such as the timing of land use approvals, limits on local discretionary authority over housing projects, requirements and reporting deadlines for Regional Housing Needs

Allocation (RHNA) and housing element reports, and new funding measures. Staff presented an analysis of these laws to JSISHL on May 17, 2018 (see *Attachment 4*). This analysis included a discussion of Density Bonus.

One year later, the Governor signed into law 16 new housing laws that went into effect on January 1, 2019. Four of these bills amend State Density Bonus law (e.g. allow use of floor area ratio (FAR) and student housing projects in Density Bonus) and relate directly to Berkeley's Density Bonus efforts. This package of housing legislation is intended to further the effectiveness of the bills introduced in 2017 and increase affordable housing production in the state. The Planning Department has developed a matrix of 2017 and 2018 State housing legislation (see *Attachment 5*) to track newly adopted regulations and determine steps necessary to comply with changing State law.

Separately, in an effort to understand the challenges of administering State Density Bonus in the context of Berkeley's zoning regulations, the Planning Department has been analyzing proposed, entitled and completed Density Bonus projects applications. This effort includes review of best practices from neighboring and similar cities, and conversation with staff and developers to better understand how Density Bonus is being administered and its outcome in Berkeley.

### **Analysis of Development Standards**

Parallel to the work mentioned above, the Planning Department is analyzing existing development standards in order to address the referrals presented in *Attachment 2*. Described below are four separate yet related projects that aim to better understand existing conditions and inform development of Density Bonus policies in Phase 2 and Phase 3.

Student Housing in the Southside – Staff is researching a number of questions in order to respond to ideas presented in the *More Student Housing Now Resolution* (see *Attachment 6*) and in Southside-focused referrals. The overarching theme of this work focuses on mechanisms that allow for increased density to accommodate new and affordable student housing. Research ranges from a capacity analysis to better understand built conditions in the Southside to interviews with property-owners to gauge interest in development incentives that could be implemented in Phase 2.

Density Standards in Commercial Corridors – The City of Berkeley has not established parcel-based density standards for higher density residential districts (R-3 and above) or for commercial/mixed-use zoning districts. Density Bonus projects rely on zoning development standards and basic Building Code considerations to define a “base project” from which bonus calculations are derived. The Planning Department is currently working with a consultant to assess Density Bonus project outcomes along Berkeley's commercial corridors,



where most high-density residential projects are locating. These results will be compared to best practices from other cities and will guide development of potential new density standards in Phase 3.

GIS Analysis of Development Standards – In order to evaluate referrals that request additional density and/or modifications to development standards, the Planning Department is collaborating with Berkeley’s Information Technology Department to use available technology and data to visualize existing development conditions. This same methodology will be used to evaluate future scenarios that reflect findings from concurrent research projects mentioned in this report. This effort will inform Phases 2 and 3.

Adeline Corridor Plan – During the Adeline Corridor planning process the community has voiced their desire for community benefits, including affordable housing for displaced residents and communities of color, in return for development in the Adeline Corridor. Although not directly related to the referrals presented in *Attachment 2*, the work informing the community benefit structure and/or zoning regulations can be used to guide city-wide proposals related to Phases 2 and 3.

### **Analysis of Development Fees**

In order to understand the City’s ability to incentivize affordable housing development, the Planning Department has hired a consultant to analyze fees imposed on Berkeley development projects and assess development feasibility under a variety of fee scenarios. The results of this study will be used in Phase 2 to help develop policies that encourage construction of affordable housing above and beyond the parameters of State Density Bonus.

### ENVIRONMENTAL SUSTAINABILITY

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley’s Climate Action Plan goal to increase compact development patterns throughout the City.

### RATIONALE FOR RECOMMENDATION

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

### ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7400

Steven Buckley, Land Use Planning Manager, Land Use Planning Division, 510-981-7411

Alene Pearson, Principal Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: Council Referrals
- 3: Administrative Regulations
- 4: May 17, 2018 JSISHL Staff Report on 2017 Housing Package
- 5: Matrix of 2018 & 2019 Housing Regulations
- 6: *More Student Housing Now* City Council Resolution
- 7: Public Hearing Notice

ORDINANCE NO. -N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE REGARDING DENSITY BONUS

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

Section 1. That Section 23C.12.050 of the Berkeley Municipal Code is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 23C.14 Density Bonus**

|                   |                                                  |
|-------------------|--------------------------------------------------|
| <b>23C.14.010</b> | <b>Purpose</b>                                   |
| <b>23C.14.020</b> | <b>Definitions</b>                               |
| <b>23C.14.030</b> | <b>Application Requirements</b>                  |
| <b>23C.14.040</b> | <b>Density Bonus Calculations and Procedures</b> |
| <b>23C.14.050</b> | <b>Incentives and Concessions</b>                |
| <b>23C.14.060</b> | <b>Waivers and Reductions</b>                    |
| <b>23C.14.070</b> | <b>Qualifying Units</b>                          |
| <b>23C.14.080</b> | <b>Special Provisions</b>                        |
| <b>23C.14.090</b> | <b>Regulatory Agreements</b>                     |

**23C.14.010 Purpose**

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

**23C.14.020 Definitions**

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or,

where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.
- F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

### **23C.14.030 Application Requirements**

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915.
- B. For those districts without density standards, a density bonus schematic as set forth in the administrative regulations;
- C. The proposed size of the Density Bonus pursuant to Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
- F. Any requested additional bonus units under Section 65915(n).

- G. Any requested parking reductions under Section 65915(p).
- H. An applicant may elect in writing to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In such cases, the applicant will retain their entitlement to Incentives and Concessions.
- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

**23C.14.040 Density Bonus Calculations and Procedures**

- A. Density Bonuses must be calculated as set forth in Section 65915 and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development applications and will be decided upon by the highest governing body.

**23C.14.050 Incentives and Concessions**

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
  - 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
  - 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, FAR, and/or number of stories but would count as one Incentive and Concession for height).
  - 3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer.
- B. In determining whether it can make the finding set forth in Section 65915(d)(1), the City will base its determination and any finding on a comparison of the project including the Density Bonus and requested Incentives and Concessions to the Base Project.
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1).

- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than design review.
- E. Incentives and Concessions must be justified based on the financial needs of the project, including reduced costs and increased revenue, to provide for the affordable housing costs of the qualifying units and for the project overall.

**23C.14.060 Waivers and Reductions**

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a development project meeting the criteria of Section 65915(b).
- B. The applicant may request, and the City shall hold, a meeting to discuss Waivers and Reductions.
- C. The City may deny Waivers and Reductions if a Waiver or Reduction would have adverse impacts and/or no mitigation for such impacts, as described in Section 65915(e)(1).

**23C.14.070 Qualifying Units**

Qualifying Units must be reasonably dispersed throughout the Housing Development, be of the same size and contain, on average, the same number of bedrooms as the non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units in terms of design, use, appearance, materials and finish quality. In determining whether dispersal of Qualifying Units is reasonable, the decision-making body may consider special benefits provided by, as well as special constraints on, the project.

**23C.14.080 Special Provisions**

In addition to requirements set forth in Section 65915 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED]
- B. In addition to other required findings, Special Provisions may be awarded only when the City finds that the Density Bonus project complies with the purposes of the district in which the project is located.

**23C.14.090 Regulatory Agreements**

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Section 65915 and this Chapter.

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



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7170, FAX 510-981-7177, EMAIL  
 kworthington@ci.berkeley.ca.us

### ACTION CALENDAR

July 12, 2016

*(Continued from May 24, 2016)*

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

### RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

### FINANCIAL IMPLICATIONS:

Minimal.



ENVIRONMENTAL SUSTAINABILITY:

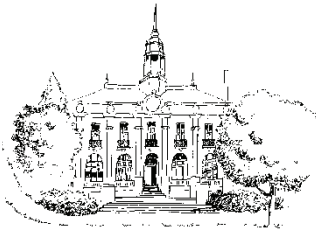
Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Kriss Worthington  
 Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7170, FAX 510-981-7177, EMAIL  
 kworthington@ci.berkeley.ca.us

CONSENT CALENDAR

May 30, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin

Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, July 11, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 6:03 p.m.

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

**Absent:** Harrison

Councilmember Harrison present 6:14 p.m.

**Ceremonial Matters:**

- 1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

**City Auditor Comments:**

- 1. Recognition of Public Works for completing the Equipment Fund Audit

**City Manager Comments:**

- 1. Launch of Berkeley Bike Share Program on July 11, 2017

**Public Comment on Non-Agenda Matters:** 3 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 1 speakers.

**Consent Calendar**

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

**Vote:** All Ayes.

## Action Calendar – Old Business

29. **Housing Accountability Act** (*Continued from June 13, 2017. Item includes supplemental materials.*)

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zoning standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

**Vote (Paragraphs 1-3):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.

**Vote (Paragraph 4):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** (*Continued from June 13, 2017*)

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

**Action:** Moved to Consent Calendar. No action taken by the City Council on this item.

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



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7170, FAX 510-981-7177,  
 EMAIL [kworthington@ci.berkeley.ca.us](mailto:kworthington@ci.berkeley.ca.us)

CONSENT CALENDAR  
 10/31/2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin  
 Subject: City Manager and Planning Commission Referral: Facilitate primarily Student Housing by a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton

RECOMMENDATION: Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust the Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

BACKGROUND:

In the last few years, students have become increasingly active in proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing for students and can decrease academic performance or leave students without affordable and safe places to live.

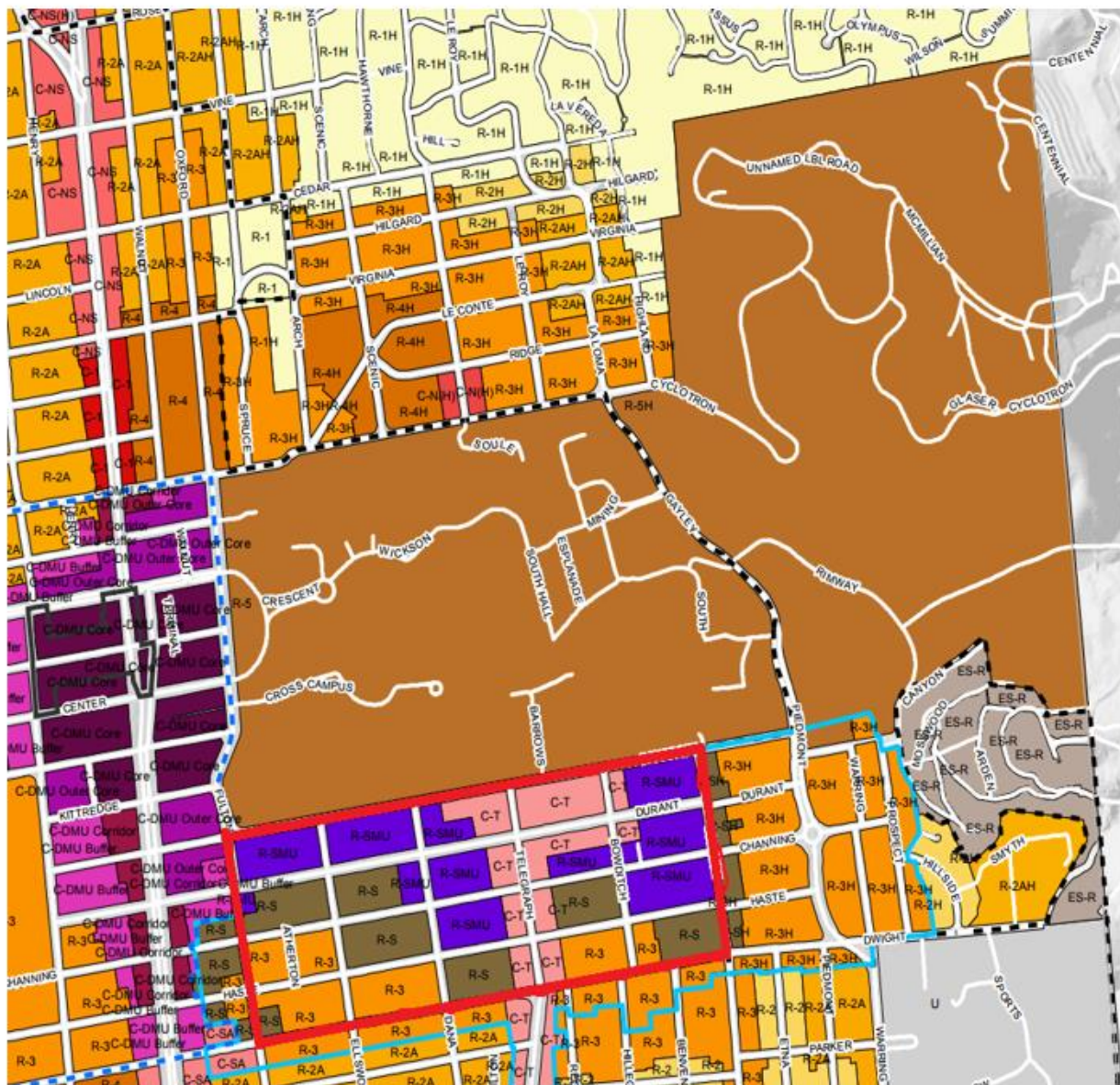
Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers, which supports the local economy. Previous efforts to increase south-side campus housing improved project viability specifically for the very small area of the C-T zoned blocks. Unfortunately, even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS: Minimal.

ENVIRONMENTAL SUSTAINABILITY: Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

Attachment:



|  |       |                                  |
|--|-------|----------------------------------|
|  | R-3   | Multiple-family Residential      |
|  | R-S   | Residential High Density Subarea |
|  | R-SMU | Residential Mixed Use Subarea    |
|  | C-T   | Telegraph Avenue Commercial      |

Proposed Area: South-North Boundary ---- Dwight to Bancroft  
 East-West Boundary ---- College to Fulton 10007

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, November 28, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO

DISTRICT 2 – CHERYL DAVILA

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – KRISS WORTHINGTON

DISTRICT 8 – LORI DROSTE

### **Preliminary Matters**

**Roll Call:** 6:04 p.m.

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

**Absent:** Maio, Wengraf

### **Ceremonial Matters:**

1. Recognition of Tom Kelly
2. Recognition of Berkeley Humane
3. Recognition of Berkeley Fire Department/Berkeley Police Department Responders to North Bay Fires

### **City Auditor Comments:**

1. The Auditor highlighted the importance of funding the reserves in light of pension liabilities and possible economic slowdowns. The Auditor also provided an update on the Measure GG audit report.

### **City Manager Comments:**

1. Planning Department Open House – 12/6 from 3:00 - 6:00 p.m. at 1947 Center Street
2. Grove Park Reopening – 12/2 at 11:00 a.m. – 1:00 p.m.
3. Live Oak Holiday Tots Carnival – 12/2 at 10:00 a.m. – 2:30 p.m. at Live Oak Recreation Center
4. Winter on the Waterfront – 12/9 at 1:00 p.m. – 6:30 p.m. at the Berkeley Yacht Club

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

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



## Action Calendar – Old Business

### 22. Implementation Plan for Affordable Housing Action Plan Referrals *(Continued from November 14, 2017. Item contains revised materials.)*

**From:** City Manager

**Recommendation:** Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

**Financial Implications:** None

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400, and Timothy Burroughs, Planning and Development, 981-7400

**Action:** On the severed portion to include density standards.

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

**Action:** On the severed portion regarding the California Construction Cost Index.

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

**Action:** 3 speakers. M/S/C (Arreguin/Davila) to Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

#### High Priority

1. Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. **A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.**
4. Examine and eliminate barriers to developing student housing and senior housing.
5. **Create specific per acre density standards, including standards for projects that include density bonus units.**
6. Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance for multi-unit properties with multiple units used as STRs that are out of compliance with the host ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).
7. Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) eviction, and other forms of displacement as defined by Council.

## Action Calendar – Old Business

8. Increase commercial linkage fee by California Construction Cost Index CCCI.
9. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
10. Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
11. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
12. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste); c) waive or reduce permit fees for affordable housing projects (Hahn), including previously adopted streamlining measures from 2017.
13. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
14. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
15. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

### Medium Priority

16. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
17. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
18. Amend Zoning code to allow housing and other non-commercial uses on the ground floor.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: creating a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

## Action Calendar – Old Business

23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

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

## Action Calendar – New Business

### 23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update

**From:** City Manager

**Recommendation:** 1. Adopt a Resolution allocating the General Fund excess equity as follows: \$1,930,415 to the General Fund Stability Reserve, \$1,579,430 to the General Fund Catastrophic Reserve and incorporate additional allocations as amended by subsequent Council action. 2. Discuss and determine funding allocations based on the Mayor's June 27, 2017, revised amendments to the FY 2018 & FY 2019 Biennial Budget and as amended by subsequent Council action.

**Financial Implications:** See report

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

**Action:** 3 speakers. M/S/C (Worthington/Arreguin) to continue the item to December 5, 2017 and include the allocations from Mayor Arreguin in Supplemental Reports Packet #2 including a new resolution for the allocation to Dorothy Day House.

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

### 24a. Recommendation for Audit and Legal Review of Measure GG Expenditures with Attention to Allocation of Measure GG Funds for Fire Department Overtime

**From:** Disaster and Fire Safety Commission

**Recommendation:** We recommend that City Council request from the City Auditor an audit of Measure GG expenditures specifically regarding the allocation of Measure GG funds for Fire Department overtime pay. We additionally suggest a legal review by the City Attorney to determine if the decreasing budget for Fire Department overtime in the General Fund and the coordinated increase of Measure GG funds allocated to overtime pay is in compliance with Measure GG and State and Federal laws, and to provide corrective guidance if it is not.

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, 981-3473

|                          | Bill (Sponsor)                          | Focus Area           | Title                                          | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Action Required by COB                                                                       | Next Steps                                                                                                                           |
|--------------------------|-----------------------------------------|----------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 2017 Housing Legislation | SB 35 (Wiener)                          | Streamline           | Streamline Approval Process                    | Creates a streamlined approval process for developments in localities that have not yet met their housing targets, provided that the development is on an infill site and complies with existing residential and mixed use zoning. Participating developments must provide at least 10 percent of units for lower-income families. All projects over 10 units must be prevailing wage and larger projects must provide skilled and trained labor.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Yes                                                                                          | Review SB35 applications as they are submitted.                                                                                      |
|                          | AB 73 (Chiu)                            | Overlay              | Streamline and Incentivize Housing Production  | Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning. Development projects must use prevailing wage and include a minimum amount of affordable housing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Optional                                                                                     | If COB wants to create overlay zone, identify resources.                                                                             |
|                          | SB 540 (Roth)                           | Specific Plan        | Workforce Housing Opportunity Zones            | Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review. Requires at least 50 percent of total housing units within that plan to be affordable to persons or families at or below moderate income, with at least 10 percent of total units affordable for lower income households. Developments projects must use prevailing wage.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Optional                                                                                     | If COB wants to create a WHOZ, identify resources.                                                                                   |
|                          | AB 1515 (Daly)                          | Approvals            | Reasonable Person Standard                     | States that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Yes                                                                                          | Review and update development standards.                                                                                             |
|                          | AB 1397 (Low)                           | Zoning               | Adequate Housing Element Sites                 | Requires cities to zone more appropriately for their share of regional housing needs and in certain circumstances require by-right development on identified sites. Requires stronger justification when non-vacant sites are used to meet housing needs, particularly for lower income housing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Yes                                                                                          | Review zoning during 2023 Housing Element updates                                                                                    |
|                          | SB 166 (Skinner)                        | Housing Element      | No Net Loss                                    | Requires a city or county to identify additional low-income housing sites in their housing element when market- rate housing is developed on a site currently identified for low-income housing.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Yes                                                                                          | Review zoning during 2023 Housing Element updates                                                                                    |
|                          | AB 879 (Grayson)                        | Housing Element      | Updates to Housing Element law                 | Make various updates to housing element and annual report requirements to provide data on local implementation including number of project application and approvals, processing times, and approval processes. Charter cities would no longer be exempt from housing reporting. Requires HCD to deliver a report to the Legislature on how local fees impact the cost of housing development.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Yes                                                                                          | Provide data to HCD as required. Waiting on updated guidelines from HCD.                                                             |
|                          | SB 2 (Atkins)                           | Funding              | Building Jobs and Homes Act                    | Imposes a fee on recording of real estate documents excluding sales for the purposes of funding affordable housing. Provides that first year proceeds will be split evenly between local planning grants and HCD's programs that address homelessness. Thereafter, 70 percent of the proceeds will be allocated to local governments in either an over-the-counter or competitive process. Fifteen percent will be allocated to HCD, ten percent to assist the development of farmworker housing and five percent to administer a program to incentivize the permitting of affordable housing. Fifteen percent will be allocated to CalHFA to assist mixed-income multifamily developments.                                                                                                                                                                                                                                                                                                                                         | Yes                                                                                          | Provide documentation to HCD in order to receive funding. Waiting on guidance from HCD.                                              |
|                          | SB 3 (Beall)                            | Funding              | Veterans and Affordable Housing Bond Act       | Places a \$4 billion general obligation bond on the November 2018 general election ballot. Allocates \$3 billion in bond proceeds among programs that assist affordable multifamily developments, housing for farmworkers, transit-oriented development, infrastructure for infill development, and homeownership. Also funds matching grants for Local Housing Trust Funds and homeownership programs. Provides \$1 billion in bond proceeds to CalVet for home and farm purchase assistance for veterans.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | No                                                                                           |                                                                                                                                      |
|                          | AB 1505 (Bloom)                         | Inclusionary Housing | Inclusionary Ordinances                        | Authorizes the legislative body of a city or county to require a certain amount of low-income housing on-site or off-site as a condition of the development of residential rental units.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Completed                                                                                    | COB has an Inclusionary Ordinance.                                                                                                   |
|                          | AB 1521 (Bloom)                         | Subsidized Housing   | Preserve the Existing Affordable Housing Stock | Requires the seller of a subsidized housing development to accept a bona-fide offer to purchase from a qualified purchaser, if specified requirements are met. Gives HCD additional tracking and enforcement responsibilities to ensure compliance.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Yes                                                                                          | Discuss next steps with HHCS.                                                                                                        |
|                          | AB 571 (Garcia)                         | Tax Credits          | Low Income Housing Credits for Farmworkers     | Makes modifications to the state's farmworker housing tax credit to increase use. Authorizes HCD to advance funds to operators of migrant housing centers at the beginning of each season to allow them to get up and running. Extends the period of time that migrant housing centers may be occupied to 275 days.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | No                                                                                           |                                                                                                                                      |
|                          | AB 2923 (Chiu and Grayson)              | BART zoning          | Development on BART-Owned Land                 | Gives BART the authority to rezone any BART-owned land within a half-mile of a BART station to set the lowest permissible limit for height, density and floor area ratio and the highest permissible parking minimums and maximums. Local jurisdictions must then adopt conforming zoning amendments within two years after BART adopts standards for a district. Qualifying projects may apply for streamlined, ministerial processing as specified in SB 35 – without having to otherwise qualify separately for ministerial processing under SB 35. Developers may also secure vested rights to develop in accordance with the newly adopted standards after entering into an exclusive negotiating agreement to develop an eligible project. Among the qualifying criteria, developers must make at least 20 percent of housing units affordable to very low-income and low-income households, with additional affordable requirements for projects that would displace housing or take place within the district's boundaries. | Not required, but COB will be actively engaged these efforts.                                | Collaboration with community, BART, City Council, HAC and PC on visioning and zoning of North Berkeley BART and Ashby BART stations. |
|                          | AB 2753 (Friedman)                      | Density Bonus        | State Density Bonus Process Reforms            | Expedites the processing of density bonus applications pursuant to the State Density Bonus Law. Amendments now require local governments to provide determinations to developers regarding the amount of density bonus for which a development is eligible, all reductions in parking requirements for which the applicant is eligible and whether the applicant has provided adequate information for the local government to make a determination regarding any requested incentives, concessions, waivers or reductions in required parking. The law further requires such determinations to be based on the development project at the time the application is deemed complete, and provides that the local government shall adjust the amount of density bonus and required parking based on any changes during the course of the development processing.                                                                                                                                                                      | Yes                                                                                          | Review and determine necessary modifications to policies and/or procedures.                                                          |
|                          | AB 2372 (Gloria)                        | Density Bonus        | State Density Bonus Law Floor Area Ratio Bonus | Authorizes cities or counties to grant a developer of an eligible housing development under the State Density Bonus Law a floor area ratio bonus in lieu of a bonus on the basis of dwelling units per acre. The floor area bonus is calculated based on a formula prescribed in the new statute (i.e., allowable residential base density x (site area in square feet / 43,500) x 2,250). An eligible housing development under the law is a multifamily housing development that provides at least 20 percent affordable units, is located within a transit priority area or a half-mile from a major transit stop, meets requirements for the replacement of existing units and complies with height requirements applicable to the underlying zone. The law also prohibits cities and counties from imposing parking requirements in excess of specified ratios and allows an applicant for an eligible development to calculate impact fees based on square feet and not per unit.                                             | Not required, but COB will be considering modifications to Berkeley's Density Bonus Program. | Review and determine Zoning Ordinance amendments needed to implement                                                                 |
|                          | SB 1227 (Sen. Nancy Skinner)            | Density Bonus        | Density Bonus for Student Housing              | Extends the State Density Bonus Law to apply to student housing. It allows student housing projects where at least 20 percent of the units are affordable for lower income students to receive a 35 percent density bonus. The law also provides that the development must provide priority to students experiencing homelessness. The density bonus under the law will be calculated based on the number of beds instead of units.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Yes                                                                                          | Review and determine Zoning Ordinance amendments needed to implement                                                                 |
|                          | AB 2797 (Assembly Member Richard Bloom) | Density Bonus        | State Density Bonus Law and the Coastal Act    | Reconciling the State Density Bonus Law and the Coastal Act requires the State Density Bonus Law to be harmonized with the California Coastal Act so that both statutes can be given effect within the coastal zone to increase affordable housing in the coastal zone while protecting coastal resources and access. This law supersedes the Second District Court of Appeal's opinion in <i>Kalnel Gardens, LLC v. City of Los Angeles</i> (2016) 3 Cal.App.5th 927, 944 holding that the State Density Bonus Law is subordinate to the Coastal Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No action required by COB.                                                                   |                                                                                                                                      |

## 2018 Housing Legislation

|                                       |                    |                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                            |                                                                                                              |
|---------------------------------------|--------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------------|
| AB 3194<br>(Assembly Member Tom Daly) | HAA                | Housing Accountability Act Amendments                                      | Strengthens the Housing Accountability Act (HAA). First, if the zoning for a project site is inconsistent with the general plan, a proposed housing development project cannot be considered "inconsistent" with a jurisdiction's zoning standards and cannot be required to seek a rezoning, as long as the project complies with the jurisdiction's objective general plan standards. Second, local agencies must now apply zoning standards and criteria to facilitate and accommodate development at the density allowed on the site by the general plan. Third, the Legislature declared its intent that a "specific, adverse impact on the public health and safety" – the only permissible basis on which a local government can reject or reduce the size of a project that complies with objective standards—will "arise infrequently."                                                                                                                                               | Yes                        | COB staff will review HAA to ensure modifications are understood and accurately communicated to applicants.  |
| SB 765 (Sen. Scott Wiener)            | SB 35              | SB 35 Amendments                                                           | Makes a series of "cleanup" revisions to SB 35 including 1) explicitly stating that the California Environmental Quality Act (CEQA) does not apply to the agency's determination of whether an application for a development is subject to the streamlined ministerial approval process and 2) stating that "it is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | COB staff will review SB35 to ensure modifications are understood and accurately communicated to applicants. |
| AB 2263<br>(Friedman)                 | Parking            | Parking Reductions for Historic Reuse Projects                             | Authorizes parking reductions for a development project in which a designated historical resource is being converted or adapted. For projects converting or adapting a designated historical resource to a residential use that is located within a half-mile of a major transit stop, an agency shall not require the project to provide parking spaces greater than the number of parking spaces that existed on the project site at the time the project application was submitted. For a project converting or adapting a designated historical resource to a nonresidential use, a local agency shall provide a 25 percent reduction in the amount of parking spaces that would otherwise be required.                                                                                                                                                                                                                                                                                    | Yes                        | Review historic re-use projects as they are submitted for compliance with State law.                         |
| AB 2162 (Chiu and Daly)               | Supportive Housing | Supportive Housing Use "By Right"                                          | Requires supportive housing to be considered a use "by right" in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development meets specified criteria. Supportive housing is housing linked to an onsite or offsite service that assists the resident in retaining the housing, improving his or her health status and ability to live and work in the community. Qualifying criteria relates to affordability, long-term deed restrictions, nonresidential floor use providing supportive services and other design requirements. The law requires a local government to approve, within specified periods, supportive housing developments that comply with these requirements. The law prohibits the local government from imposing any minimum parking requirement for units occupied by supportive housing residents if the development is located within a half-mile of a public transit stop. | Yes                        | Review Zoning Ordinance for required updates.                                                                |
| AB 829 (Chiu)                         | State Funding      | Prohibitions on Local Government Requirements for State Funding Assistance | Prohibits local governments from requiring a developer of obtain a letter of acknowledgment or similar document prior to applying for state assistance for a housing development. The law defines state assistance as any state funds, a state tax credit or a federal tax credit administered by the state. The legislative analysis for the bill explained that in at least one case in the state, city council members have delayed projects for supportive housing requiring financial assistance by conditioning a project to receive official sign-off from the local elected official in order to receive funding. This law ends that practice for all jurisdictions.                                                                                                                                                                                                                                                                                                                   | Yes                        | Review requirements for projects requesting state funding assistance to ensure compliance with State law.    |
| SB 828 (Wiener) and AB 1771 (Bloom)   | RHNA               | RHNA Process Amendments                                                    | Makes changes to the RHNA process to use more data to more accurately and fairly reflect job growth and housing needs, with an emphasis on fair housing goals. New amendments revise the data that the COG must provide to HCD as part of the RHNA process. That data must now include new information regarding overcrowding rates, vacancy rates and cost-burdened housing (among other new data points). This law adds more opportunities for public comment and HCD adjustments to the council of governments' methodology for selecting RHNA targets, as well an ability for local governments to appeal RHNA targets. Additionally, the law prohibits a council of governments from using prior underproduction of housing, or stable population numbers, as justification for a determination or reduction in a local government's share of the RHNA.                                                                                                                                   | No action required by COB. | COG and State will make modifications and share next steps with local municipalities as necessary.           |
| AB 686<br>(Santiago)                  | Fair Housing       | Affirmatively Further Fair Housing                                         | Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing and not take any action that is inconsistent with this obligation. "Affirmatively furthering fair housing" means, among other things, "taking meaningful actions ... that overcome patterns of segregation and foster inclusive communities" and "address significant disparities in housing needs and in access to opportunity." Additionally, an assessment of fair housing practices must now be included in upcoming housing elements.                                                                                                                                                                                                                                                                                                                                                                                  | Yes                        | Review and assess Fair Housing Practices during 2023 Housing Element updates                                 |
| SB 1333<br>(Wieckowski)               | General Plan       | Planning Requirements for Charter Cities                                   | Makes charter cities subject to a number of planning laws that previously only applied to general law cities. These include laws related to general plan amendment processing, accessory dwelling unit permitting and the preparation of housing elements. Notably, the new law now requires a charter city's zoning ordinances to be consistent with its adopted general plan.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | Ensure Zoning Ordinance is consistent with General Plan.                                                     |
| AB 1919 (Wood)                        | Disaster Planning  | Anti-"Price Gouging" During Emergencies                                    | Expands the existing crime of price gouging to include new rentals that were not on the market at the time of the emergency within the types of goods and services that are price-controlled in the immediate aftermath of an emergency. The law also makes other related reforms to limit rent increases and evictions following an emergency.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | Check with Rent Control Board on next steps.                                                                 |
| AB 2913 (Wood)                        | Building Permits   | Extending the Duration of Building Permits                                 | extends the duration of a building permit from six months (180 days) to 12 months, as long as construction has started and has not been abandoned. The law also provides that a permit is subject to the building standards in effect on the date of original issuance, and if the permit does expire, the developer may obtain approval from the local building official for one or more six-month extensions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Yes                        | Update BMC to reflect building permit time lines.                                                            |

## STAFF REPORT

DATE: May 17, 2018

TO: Joint Subcommittee on the Implementation of State Housing Law

FROM: Steve Buckley, Land Use Planning Manager  
Alene Pearson, Associate Planner

SUBJECT: State Housing Laws in the Berkeley Context

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### INTRODUCTION

The Legislature passed and the Governor signed a package of 15 housing bills last fall, all of which went into effect on or before January 1, 2018. These laws address a range of issues related to California's housing crisis, ranging from the timing of land use approvals to limits on local discretionary authority over housing projects to requirements and reporting deadlines for Regional Housing Needs Allocation (RHNA) and housing element reports to new funding measures. This report briefly summarizes the bills that relate to JSISHL's goals and explains the bills in the context of Berkeley's current practices and City Council's priorities. In the Discussion section, JSISHL will identify a focus area and future work based on the information presented in this memo and attachments.

### BACKGROUND

Bills from the 2017 Housing Package that relate to the work of JSISHL fall into four categories:

- Amendments to the Housing Accountability Act (HAA)
- Streamlining Approvals
- Inclusionary Housing Laws
- Enforcement Bills

Bills are explained below with commentary on their relevance to the City of Berkeley<sup>1</sup> and their relation to City Council Referrals and Housing Action Plan Items (See *Attachment 1: Referral Matrix* and *Attachment 2: Referral Table*). Some of the bills (e.g. SB 167, AB 678, AB 1515, SB 35, AB 494, and SB 229) obligate the city to specific actions and require

<sup>1</sup> Bills included in 2017 Housing Package are complex. This report was authored by City of Berkeley Land Use Planning staff and is intended to provide JSISHL with a cursory overview of the laws. It is intended for JSISHL discussion purposes only.

adjustments to current practices. Other bills provide new processes and mechanisms that Berkeley can employ to achieve State and local goal towards housing development.

### AMENDMENTS TO THE HOUSING ACCOUNTABILITY ACT (HAA)

#### **SB 167 / AB 678 / AB 1515 (Amendments to the Housing Accountability Act)**

jointly amend the Housing Accountability Act (HAA) to provide protections for housing development projects. Protections prohibit municipalities from denying a project or reducing its density if proposed project, regardless of affordability, adheres to General Plan and Zoning Ordinance “objective standards” and has no adverse impacts on public health and safety. For affordable projects, jurisdictions would have to make additional findings to deny a project or lower project density.

Berkeley Context: The HAA was passed to hold jurisdictions accountable for lack of housing construction. Jurisdictions -- although not in control of many factors that affect housing construction and developers choice – do control zoning approvals. It is in this context that Berkeley will need to review existing practices to stay in compliance with the HAA. Specifically:

*Applicability*: The HAA applies broadly to all residential development projects including mixed-use projects where 2/3 of the square footage is set aside for residential use. The HAA also applies to transitional and supportive housing, including emergency shelters.

*Objective Standards*: The HAA references “objective standards” without providing a definition of this term. See SB 35 under STREAMLINING BILLS for discussion of defining “objective standards” in the Berkeley context.

*Consistency*: The HAA changes the standards for determining whether or not a project conforms to local regulations. The HAA mandates that a project shall be deemed consistent with applicable standards if substantial evidence allows a reasonable person to conclude the project is consistent with local regulations. In addition, receipt of Density Bonus is not a basis for finding a housing project inconsistent with applicable development standards.

*Findings*: Currently, findings made to deny a housing project are supported by substantial evidence. The new legislation mandates that findings made to deny a housing project be supported by a preponderance of evidence. This is a less deferential standard of review and will make it difficult for staff to deny projects. It will also make it difficult for project opponents to challenge an approved project.

*Response Times*: The HAA requires jurisdictions to notify housing project applicants of compliance/non-compliance within 30-days (for projects with 150 or fewer units) or 60-days (for projects with more than 150 units). If a jurisdiction misses this deadline, the proposed project will default to an approval.

*Financial Repercussions:* Courts can issue a court order to approve a project if they rule that a jurisdiction's findings are not supported by a preponderance evidence. If the jurisdiction does not comply the court order, the jurisdiction can be fined \$10,000 per unit. Furthermore, if the court finds that the jurisdiction acted in bad faith in making these findings, the fine *must* be multiplied by 5.

*Overall:* The overall effect of these amendments to the HAA depends to some extent upon the definition of objective standards. Once this is established, the Planning Department will need to take extreme care to review and consider evidence, make findings through the lens of a reasonable person – as opposed to a technical expert – and to pay close attention to HAA response times. Depending upon the volume of applications, the City may need to identify resources to have staff available to address project workload.

*Relation to Council Referrals:* The following referrals are focused on establishing density standards and /or development standards and overlap with the HAA's importance of jurisdictions having clear objective standards:

- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

## STREAMLINING BILLS

**SB 35 (Streamlined Approval for Housing Projects)** allows a developer to request streamlined approval of eligible multi-family housing projects in a city that has 1) failed to issue enough building permits to meet its share of RHNA by income category or 2) has not submitted its Housing Element Annual Progress Report to the State for two consecutive years. Projects that are eligible to receive streamlining through SB 35 are granted ministerial approval without CEQA review or public input. See *Attachment 3* for SB 35 Eligibility Criteria List.

### Berkeley Context:

One of the first projects to request streamlining through SB 35 is located in the City of Berkeley. As Berkeley planners work through this application, the law is being tested. The specifics of the application will not be discussed with JSISHL; however, the following information provides background on SB 35 and explains the law in the context of Berkeley's Zoning Ordinance and current practices.

*City Obligation:* Berkeley is subject to SB 35 streamlining for proposed developments with  $\geq 50\%$  affordability. Berkeley has made insufficient progress towards issuing building permits for affordable housing -- units available to households making below 80 percent of the area median income. Insufficient



progress is defined as less than 25% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category in 2017. After Berkeley submits two consecutive annual progress reports (APRs) that show sufficient progress toward its Lower income RHNA (Very Low and Low income), the City will no longer be subject to SB 35 streamlining for proposed developments with at least 50% affordability.

*Site Criteria:* Eligible sites can be located in districts zoned for residential or mixed use. In Berkeley, this translates to all districts except Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MULI), Specific Plan (SP), or Unclassified (U). Within the eligible districts, development sites are not eligible if there is evidence of past/present soil or groundwater contamination (e.g. on the Cortese List) and the Department of Toxic Substance Control has not declared site clean for residential use. Furthermore, development sites are not eligible if a proposed project demolishes a historic structure<sup>2</sup>, any rental housing occupied by tenants in the last ten years, or any housing subject to rent or pricing control.

*Project Requirements:* Eligible projects must comply only with current zoning standards and other objective standards identified by the City. The project developer must pay prevailing wages and use a “skilled and trained” workforce. “Objective standards and objective design guidelines” need to be clearly documented in the Zoning Ordinance to ensure Berkeley processes applications accurately. The passage of SB 35 presents an opportunity for Berkeley to review/modify findings/standards and develop application checklists/procedures to ensure objective standards are explicit and used to expedite processing of streamlined projects. Some of the funds available through SB 2 can be used to make these modifications. Guidance on the application process will be published in 2018.

*Ministerial Approval:* If proposed development project conflicts with objective design and zoning standards, then the City needs to provide documentation to the applicant within 60 day (for projects with 150 units or less) or 90 days (for projects with more than 150 units). Approvals for qualifying projects must be completed within 90 days (for projects with 150 units or less) or 180 days (for projects with more than 150 units). Approvals last indefinitely for projects that include public investment in housing affordability beyond tax credits where 50% of the units are set aside for low income households (income is less than 80% of AMI). Approval of all other projects expire within three years, although a one year extension may be granted if significant progress has been made towards construction. This is an incredibly expedited timeline. The Planning Department will need to dedicate staff to SB 35 applications in order to ensure deadlines are met. Missing a deadline can result in an automatic project approval.

<sup>2</sup> The definition of “historic structure” is currently being evaluated. Staff has no information on the outcome of this discussion.

*Relation to Council Referrals:* The following referrals overlap in intent and action with the requirements of SB 35:

- Investigate and remove barriers to housing production. (Droste: December 1, 2015 and June 27, 2017 and Housing Action Plan Item 12)
- Streamline permit process for housing projects which include greater than 50% affordable units. (Worthington: January 19, 2016 and Housing Action Plan Item 12)
- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Allow ministerial approval of zoning-compliant affordable housing projects. (Droste: December 15, 2017)
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

**SB 540 (Streamlined Workforce Housing Zone Projects)** allows jurisdictions to establish Workforce Housing Opportunity Zones (WHOZs) which prioritize workforce and affordable housing in close proximity to jobs and transit. WHOZs must also conform to California's greenhouse gas reduction laws. WHOZ development requires environmental review (e.g. EIR) and public input, similar to the process of adopting a specific area plan. Once a WHOZ is established, WHOZ-consistent development projects are guaranteed a 60-day approval process and can be requested for 5-years after WHOZ adoption.

Berkeley Context: Berkeley's Planning Department is currently focused on a specific area plan for the Adeline Corridor. The next specific area plan that has been referred to the City Manager is focused on San Pablo Avenue. There is potential to evaluate the feasibility of including WHOZs into this specific area plan, although at this time, no resources have been allocated to this project.

*Relation to Council Referrals:* The following referrals overlap in intent and action with the requirements of SB 540:

- Initiate an area planning process with community outreach regarding future development on San Pablo Avenue. (Moore and Maio: July 14, 2015)
- Work with Berkeley Unified School District regarding housing affordability for local teachers in the context of SB 1413. (Worthington: September 27, 2016 and Housing Action Plan Item 11)

**AB 73 (Streamlined Housing Sustainability District Projects)** incentivizes municipalities to create housing in Housing Sustainability Districts (HSDs). An HSD in an overlay created with oversight from California State Housing and Community Development (HCD) on infill sites in close proximity to public transit. Establishing an HSD requires preparation of an EIR. Once established, 20% of the units built in an HSD must be affordable. Streamlined consideration of HSD housing projects are considered within 10 years of the HSD EIR and if the project pays prevailing wages.

Berkeley Context: Berkeley could leverage this law to establish an overlay in an area (near transit) where new development includes at least 20% affordable units. This could be implemented near BART, Amtrak, or bus stops that meet specific headway requirements. The City would need to identify resources for environmental analysis of proposed overlay zoning districts.

*Relation to Council Referrals:* The following referral tangentially overlaps in intent and action with the goals of AB 73:

- Create a zoning overlay for Adeline Corridor that would result in Community Benefits Agreements. (Bartlett: July 25, 2017)

**AB 494 / SB 229 (Streamlined Accessory Dwelling Units)** provides minor clarifications to State Accessory Dwelling Unit (ADU) regulations intended to streamline permitting of ADUs. Clarifications expand applicability to proposed single family homes and to residential districts where single family homes are allowed. These bills also reduce parking requirements for ADUs.

Berkeley Context: Modifications to Berkeley's ADU Ordinance that expand application to proposed single family homes and expand allowable districts for ADUs will be considered by City Council on May 15, 2018. Berkeley's ADU Ordinance currently requires no parking for ADUs.

*Relation to Council Referrals:* The following referrals overlap in intent and action with the goals of AB 494 and SB 229:

- Examine and eliminate barriers to building and renting Accessory Dwelling Units (ADUs). (Housing Action Plan Item 13).

## INCLUSIONARY HOUSING LAWS

**AB 1505: Inclusionary Housing Requirements for Rental Projects:** Allows jurisdictions to adopt ordinances that require a percentage of projects in rental development projects to be deed restricted as affordable. This law is considered a

“fix” to the Palmer Decision, which invalidated inclusionary housing ordinances that applied to rental properties.

Berkeley Context: The City of Berkeley has an Inclusionary Ordinance that requires payment of an Affordable Housing Mitigation Fee (AHMF) for 20% of the units, but allows in lieu on-site units instead of payment of the inclusionary fee for rental properties. Separate requirements apply to ownership and condominium conversion projects. The City is reviewing the existing ordinances and may need to amend them.

*Relation to Council Referrals:* The following short term referral tangentially overlaps in intent and action with the goals of AB 1505:

- Conduct a development feasibility study of the effect of existing fees and development costs. (Droste: December 5, 2017)

#### MONITORING / ENFORCEMENT BILLS

Several bills modify State housing element requirements and annual reporting standards and mechanisms with a focus on new enforcement measures and responsibilities. These bills mandate jurisdictions to conduct more robust analysis and public review processes than previously required. Jurisdictions that are found to be out of compliance with these laws (both new and old) will be subject to steep penalties and repercussions.

**AB 72: HCD Review and Oversight:** Provides HCD with greater review and enforcement authority over laws that require jurisdictions to follow goals and programs identified in adopted housing elements. Though this law, HCD has the authority to review any actions-inactions that HCD believes are in conflict with a jurisdiction’s housing element and revoke certification of a non-compliant housing element.

**SB 166: No Net Loss:** Mandates that every jurisdiction maintain a current supply of sites in the housing element inventory to meet RHNA by income categories. If existing sites can’t accommodate unmet RHNA needs, a jurisdiction is required to rezone. This law does not apply to charter cities; however annual progress reports (APR), required by all cities, and must include related data. Note that APRs are used mid-cycle by HCD in their review of housing element compliance (see AB 72).

**AB 879: Annual Reporting Requirements:** Expands upon existing law that requires annual progress reports on a jurisdiction’s housing element. Analysis and reporting required by this new law is more robust and applies to general law and charter cities.

**AB 1397: Residential Development Inventory:** Makes numerous changes to how a jurisdiction establishes its housing element site inventory.

Berkeley Context: Planning staff and IT staff will need to collaborate in order to efficiently and accurately analyze permitting activities. As a first step, planning staff will need to develop a list of requirements to share with IT. Requirements will need to include a mechanism that tabulates various data fields in order to track compliance with RHNA and identify sites identified in the Housing Element inventory.

### **DENSITY BONUS**

Although State Density Bonus law was not part of the 2017 Housing Package, it warrants discussion in this report because it incentivizes development of affordable housing. Density Bonus is also mentioned in the purpose of JSISHL and in multiple City Council referrals. Density Bonus has been discussed by the Planning Commission and the Planning Commission's subcommittee on Affordable Housing and Density Bonus a number of times in the context of City Council referrals. Resulting from these efforts, an updated Density Bonus Ordinance will be considered by City Council this summer (agenda date yet to be determined). See Attachment 4 (*February 21, 2018 Planning Commission Density Bonus Staff Report*) for background information on Density Bonus and status of ongoing work and future work.

*Relation to Council Referrals*: The following referrals overlap in intent and action with State Density Bonus law:

- Allow increased development potential in the C-T district and develop community benefit requirements, with a focus on labor practices and affordable housing. (Worthington: July 12, 2016)
- Create a pilot Density Bonus program in the C- T district that allows for payment in lieu of providing qualifying onsite affordable units. (Worthington: May 30, 2017 and Housing Action Plan Item 3)
- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Increase density in the C-T, R-SMU, R-S and R-3 districts by adding 20 feet to maximum building heights and adjusting FAR. (Worthington: October 31, 2017).
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

### **DISCUSSION**

JSISHL was created by City Council to look at issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with State law and take advantage of new opportunities for the development

of affordable housing. Preliminary analysis in the Background section of this report shows them path to achieving these goals through State law. For example, State law mandates that jurisdictions dial back discretion on eligible housing projects, accelerate the approval process for certain types of housing projects and face financial consequences for being out of compliance with State law.

As identified in the analysis above, City Council's priorities reflect and overlap with the goals of State. The next steps are twofold:

1. Identify where city of Berkeley needs to modify the Zoning Ordinance and/or current practices to be in compliance with State law.
2. Evaluate referrals in the context of State law and determine next steps of action to accomplish this work.

It is in this context, that JSISHL is asked to discuss the following questions:

***Does State law go far enough to accomplish the goals set forth in City Council referrals with respect to Density Bonus, HAA, Streamlining, and Inclusionary Housing? If no, what is missing?***

In some areas, State law is either too broad or too restrictive to accomplish Council's priorities. Staff recommends that the City explore the area in between by developing local, parallel programs (e.g. Local Density Bonus, Local Streamlining, Local Inclusionary), that offer alternate paths to achieve stated goals. Alternate paths could have different eligibility criteria, additional incentives and benefits, and a set of unique regulations and/or requirements. As an example, see Attachment 5 (*April 4, 2018 Palo Alto City Council Staff Report on Affordable Housing Combining District Ordinance*) which creates an overlay that provides flexible development standards for 100% affordable housing projects located on commercially-zoned sites near transit.

***Should City of Berkeley begin working on a parallel program that address items identified in the question above? If yes, what would be the focus of program and what may it include in order to archive the results outlined in City Council referrals?***

Staff believes there are tasks JSISHL can address in the context of State law and local referrals. Staff will return at the next meeting with analysis and options for JSISHL to consider.

## **ATTACHMENTS**

1. City Council Referral Matrix
2. City Council Referral Table
3. SB 35 Eligibility Checklist

4. Planning Commission Staff Report on Density Bonus Ordinance Amendments (February 21, 2018)
5. Palo Alto City Council Staff Report on Affordable Housing Combining District Ordinance (April 4, 2018)

## Procedures for Implementing State Density Bonus Law In Zoning Districts Without Numeric Density Standards

### Introduction

This is a description of the procedures followed by the City of Berkeley for the analysis of a project that qualifies as an affordable housing project pursuant to Government Code Section 65915, the State Density Bonus Law. Specifically, this document describes how to determine the base project in zoning districts that do not have numeric density standards (R-3, R-4, R-5, Commercial Districts, and Mixed-Use Districts).

The State Density Bonus Law was enacted in 1979 to encourage the creation of more housing and to address the severe shortage of affordable housing in California by allowing an applicant to exceed the otherwise maximum residential density for a parcel by including a specific percentage of deed-restricted affordable housing. This document outlines how the City of Berkeley evaluates proposed density bonus projects.

While this document establishes a general set of procedures, every density bonus project is unique and should be treated as such. Thus staff's analysis of each proposed project will require careful review and continued discussion with applicants, colleagues, and the City Attorney.

### Affordability Requirements

Pursuant to § 65915, Below Market Rate definitions:

|                        |                                                    |
|------------------------|----------------------------------------------------|
| <b>Very Low Income</b> | ≥ 30% to 50% Area Median Income (AMI) <sup>1</sup> |
| <b>Low Income</b>      | ≥ 50% to 80% AMI                                   |
| <b>Moderate Income</b> | ≥ 80% to 100% AMI                                  |

### Overview

| Requirement                       | Duration                     | Reference   | Applies to:                                      |
|-----------------------------------|------------------------------|-------------|--------------------------------------------------|
| Qualifying Units                  | 55 years                     | 65915(c)(1) | All projects                                     |
| Replacement Units                 | 55 years                     | 65915(c)(3) | Projects with existing units onsite <sup>2</sup> |
| Demolition Ordinance              | For the life of the building | 23C.08.020  | Projects with existing units onsite              |
| Affordable Housing Mitigation Fee |                              | 22.20.065   | Projects with units that are for rent            |
| Inclusionary Housing Ordinance    |                              | 23C.12      | Projects with units that are for sale            |

<sup>1</sup> AMI is median index of household earning as it is calculated for Alameda County. For a more detailed discussion of AMI please refer to the Housing Element of the General Plan.

<sup>2</sup> Per § 65915(c)(3), replacement units are required when the project is proposed on a "parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households."



**Affordable Housing Projects that Qualify for a Density Bonus**

If a project proposes to include dwelling units with affordability consistent with any one of the following levels (§ 65915(b)), it is considered a density bonus project:

- At least 10% of the total dwelling units are affordable to Lower Income households;
- At least 5% of the total dwelling units are affordable to Very Low Income households;
- A senior citizen housing development (requires at least 35 units) (see Civil Code Section 51.3 and 51.12 for definitions of qualified residents);
- At least 10% of the total dwelling units are affordable to Moderate Income households, when they are for sale (a “common interest development”); or
- At least 10% of the total dwelling units are for transitional foster youth or disabled veterans (Education Code Section 18541) that are affordable to Very Low Income households.

**Overview (Described in more detail below)**

Step 1: Calculate the “Base Project,” i.e. the project that meets the “maximum allowable density” for the project site, without any discretionary permits.

Step 2: Analyze the Fidelity between the Base Project and the Proposed Project.

Step 3: Calculate the Density Bonus, i.e. the allowed density increase.

Step 4: Accommodate the Density Bonus units (Waivers/Reductions and Concessions/Incentives)

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## Step 1. Calculate the Base Project

State Density Bonus Law requires a City to grant a density increase over “the otherwise maximum allowable gross residential density” for the specific zoning range and land use element of the general plan. Berkeley, however, does not have parcel-based density standards for higher density residential (R-3 and above) or commercial/mixed-use zoning districts. While the General Plan provides policy guidance for residential density, it cannot be applied on a per-parcel basis to set the maximum allowable residential density.

Because Berkeley does not have density standards in most zoning districts, we instead rely on zoning development standards and basic Building Code considerations to define a building envelope for a particular project site. The defining standards include setbacks, parking, height, lot coverage, open space, and floor area ratio. Allowable maximum residential density is therefore the residential floor area that these standards can accommodate on a given parcel. This envelope becomes the “base project” for the purpose of calculating density. In other words, per BMC Section 23C.14.040, the otherwise allowable maximum residential density is the floor area that can be achieved under the single use permit, which requires solely a finding of non-detriment under Chapter 23B.32.

### Overview of Procedures to Identify the Base Project:

- a. Using the floor area and unit count of the proposed final project, calculate average unit size of the project based on the units within the proposed project.<sup>3</sup>
- b. Determine the maximum floor area of a hypothetical base project that would fit on the site without needing a development code waiver or reduction, while fully complying with the building code.
- c. Divide this area by the average unit size of the proposed units. Any fractional unit must be rounded up.<sup>4</sup>

### Concepts for the Base Project:

- Must comply with all applicable development standards, without any discretionary permits to waive or modify a standard (such as additional height, reduced parking, setbacks or usable open space).<sup>5</sup>
- Must comply with applicable building and fire codes.
- Must be substantially consistent with the proposed project (not including waivers/reductions to allow the density bonus and any concessions).<sup>6</sup> See below, “Fidelity between Base and Proposed Project,” for further discussion.
- Must exclude any commercial space.
- Must include any non-residential uses, including non-dwelling residential amenities (such as common laundry rooms, lounges, etc.) in proposed project, unless these uses are requested as a concession.<sup>7</sup>

<sup>3</sup> This size will be larger than that typically placed on project plans, since it includes circulation space and other residential amenities that are above the ground floor.

<sup>4</sup> Per § 65915(q), “Each component of any density calculation, including base density and bonus density, resulting in any fractional units shall be separately rounded up to the next whole number.”

<sup>5</sup> All mechanical equipment and elevator penthouses must fit within the Base Project without the necessity of additional permits. Floor area that encroaches into the public right-of-way must be excluded, because it would require a permit from the Public Works Department.

<sup>6</sup> The base project must include all required parking, even if the proposed project reduces the parking and the applicant proposes to pay an in-lieu fee.

<sup>7</sup> This requirement is intended to prevent an applicant from counting non-residential space in the base project that is not actually intended for residential use, which would lead to a calculation of a larger bonus. Residential amenities (laundry rooms, bike parking, meeting rooms etc.) will not count towards the base project when located in areas of the project where residential uses are not allowed according to the Zoning Ordinance (i.e. residential uses on the ground floor in the C-1 District).

## Step 2. Fidelity between Base Project and Proposed Project

The base project must be substantially consistent with the footprint, configuration of parking and usable open space, and ceiling heights of the proposed project. In other words, the base project and proposed project must have fidelity. This requirement reflects the City's desire to ensure that the project that the applicant wishes to build is reflected in the base project, and is also intended to prevent applicants from creating a base project that would be far denser and/or poorer in design quality than the applicant actually desires to build, for the purpose of obtaining a larger density bonus.

In general, the following design choices should be consistent in order for the base project and proposed project to have fidelity:

- Average unit size must be substantially the same in the base and proposed project;
- If parking is proposed in the basement of a base project, it must also be in the basement of the proposed project; if lifts are proposed in the base, they must also be in the proposed project;
- If useable open space is proposed on the roof of the base project, it must also be on the roof of the proposed project.

However, determining whether there is fidelity between the base and proposed projects is not always straightforward. Applicants should review each case with the Planning Manager as well as the City Attorney to ensure that this principle is applied consistently.

## Step 3. Apply the Density Bonus

Once a base project has been established for a parcel given the characteristics of the proposed project, this base density is multiplied by the required density increase per § 65915(f). The result is the density bonus a qualifying affordable housing project is entitled to develop pursuant to State law. Below is a summary of the required procedures:

1. Determine percentage and income level of below market rate units based on § 65915(b), the 'qualifying units'
2. Calculate the allowable bonus (%) based on § 65915(f)<sup>8</sup>
3. Apply the number of bonus units to the base project. Round any fraction up to the next whole number.

## Step 4. Accommodate the Density Bonus Units

- A. Waivers/Reductions: In order to accommodate the proposed density bonus, the City must relax development standards that would otherwise have the effect of physically precluding the bonus floor area or units. § 65915(e) provides further direction on granting waivers/reductions.

An applicant is entitled to the prescribed density increase based on the number / affordability of qualifying units the project provides; the City does not have discretion over the density increase. However, staff can work with the applicant to determine which

<sup>8</sup> Per § 65915(n), a City may grant a density bonus that is greater than what is described in subdivision (f) only if permitted by local ordinance. Berkeley's ordinance only permits a greater bonus in the C-T District

waivers/reductions and concessions/incentives would result in the least detriment to the neighborhood and adjoining properties. A number of factors are considered in determining which standards to modify. These include neighborhood context, existing public policy or plan recommendations including the General Plan, Area Plans, Zoning Ordinance requirements, and environmental issues. In other words, staff will work to determine the options that would result in the least detriment to the neighborhood and adjoining properties. These determinations are subject to further review by the Zoning Adjustments Board and Design Review Committee.

In general, any combination of zoning development standards may be modified to accommodate the placement of bonus units. These include but are not limited to:

- Increased lot coverage
- Reduced setbacks
- Increased floor area ratio
- Increased building height or number of stories

- B. Concessions/Incentives: After requested waivers/reductions have been granted to accommodate the density bonus units, the applicant may request concessions/incentives, or modified development standards consistent with § 65915(k).

Per § 65915(d)(1), the City shall grant a concession or incentive unless it is able to make the finding that “the concession or incentive does not result in identifiable and actual cost reductions” or “would have a specific, adverse impact... upon public health and safety or the physical environment.” Projects are entitled to 1, 2, or 3 concessions/incentives, according to the criteria outlined in § 65915(d)(2).

Typical concessions include reduced parking or open space requirements.

## RESOLUTION NO. 68,304-N.S.

## MORE STUDENT HOUSING NOW RESOLUTION

WHEREAS, the student housing shortage is the foremost city issue mentioned by Berkeley students; and

WHEREAS, increased density close to campus reduces air pollution and traffic congestion, and encourages pedestrian, transit and bicycle travel; and

WHEREAS, on March 10, 2016, the Berkeley City Council voted unanimously to send a thank you letter to President Napolitano, which committed the city to addressing zoning barriers and obstacles preventing creating student housing; and

WHEREAS, the scarcity of available, accessible, and affordable student housing impacts individuals and families across demographics throughout the City and the lack of production near the UC campus pushes students deeper into the City's scarce and competitive housing market, forcing them to compete with and increasing pressure on the City's lower and middle-income family and aging populations; and

WHEREAS, most market rate units that are built close to campus are lived in by students. Even though market rate units are not defined as student housing, they provide much needed units primarily for middle class students. These units also contribute to creating affordable units because the inclusionary Ordinance is a major source of affordable housing in Berkeley. It requires 20% of a market rate project to be affordable, or the owner can pay an in-lieu fee of \$37,000 per unit; and

WHEREAS, Public Private Partnerships (PPP's) are a primary alternative to get funding for student housing on university property. The City of Berkeley continue to encourage PPP's provided they include student costs comparable to residence hall rate, labor standards and retaining or expanding UC sustainability standards to ensure greener buildings. Using University land in PPP has been done with success, including the 775-unit Bancroft project currently under construction.

NOW THEREFORE, BE IT RESOLVED that the City reaffirm our support for the thank you letter on March 10, 2016 to President Napolitano.

BE IT FURTHER RESOLVED that the City Council and the Planning Commission prioritize previous referrals from the City Council including the following:

- Facilitate primarily Student Housing by a Twenty Feet Height Increase and Adjust floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft & from College to Fulton (Date: 10/31/2017)
- Create a Pilot Density Bonus Program for the Telegraph Avenue Commercial District (Date: 05/30/2017)
- Create a use permit process to allow non-commercial use on the Ground Floor in C-T Telegraph Commercial District excluding Telegraph Ave

(Date: 07/11/2017. This item is based on an original item submitted by Susan Wengraf on 01/20/2015)

- Develop an Ordinance Requiring New Residential Buildings to include essential wheelchair-accessible modifications, such as Auto-door Openers & Roll-in Shower (Date: 09/15/2015 & 07/11/2017)

BE IT FURTHER RESOLVED that the City and the Planning Commission will consider:

- Allowing conversion of vacant Telegraph area commercial space to housing only from Dwight to Bancroft & from College to Fulton (excluding Telegraph Avenue itself)
- Expanding the Car-Free Housing Overlay area between College and Fulton (including R-S & R-3 parcels between Fulton and Shattuck), Bancroft and Dwight.
- Allowing at least two high-rises for student housing in Southside campus area
- Investigate sites to build micro-units, which may create housing cheaper and faster
- Permitting and encouraging the construction of modular units

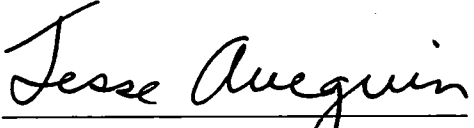
BE IT FURTHER RESOLVED that the City strongly support UC President Napolitano and Chancellor Carol Christ in their pursuit of implementation of a comprehensive plan addressing the housing needs of students across all income levels with a specific focus on extremely low income, immigrant, and disabled students. Furthermore, the City encourages a University Short Term Implementation Plan for the approximately 1,500 remaining units already approved in the current LRDP. The City of Berkeley encourages the University to seriously consider potential short term consensus sites including Fulton & Bancroft; University & Oxford, formerly designated for a hotel; Channing Ellsworth tennis courts, and Unit 3 densification if done as modular units built elsewhere during the school year and placed on site during summer. The City supports University high rise development up to 12 stories at three out of four of these sites.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

  
 Jesse Arreguin, Mayor

Attest:

  
 Mark Numainville, City Clerk

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### ZONING ORDINANCE AMENDMENTS THAT CREATE A DENSITY BONUS ORDINANCE THAT COMPLIES WITH STATE LAW

The proposed amendments to the City's Zoning Ordinance will remove outdated references to State Density Bonus from Berkeley Municipal Code Chapter 23C.12 (Inclusionary Housing Requirements) and create a new standalone Chapter 23C.14 (Density Bonus Ordinance) that is in compliance with State law and codifies current practices.

Changes recommended by the Planning Commission include:

- Repeal Section 23C.12.050 (State of California Density Bonus Requirements)  
Berkeley's Density Bonus language, currently found in Section 23C.12.050, lists outdated percentages and affordable housing requirements from State Density Bonus regulations and other provisions that do not reflect current practice, and so this section is recommended to be deleted.
- Adopt Chapter 23C.14 (Density Bonus)  
Proposed Chapter 23C.14 will create a new Density Bonus Ordinance that is organized logically and will reference – not restate – State regulations. The new Ordinance will refer to Administrative Regulations documenting Berkeley's method for base project calculation, among other things, necessary to implement the law.

Citywide, in all zoning districts except Manufacturing (M) and Mixed Manufacturing (MM). The zoning map is available online:

[http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level\\_3\\_-\\_General/Zoning%20Map%2036x36%2020050120.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf)

The hearing will be held on Tuesday, January 29, 2019 at 6:00 p.m. in the BUSD Board Room, 1231 Addison Street, Berkeley.

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 January 17, 2019.

For further information, please contact Alene Pearson at 510-981-7489.

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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** Friday, January 18, 2019

**Noticing per California Government Code Sections 65856(a) and 65090**

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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 Old Berkeley City Hall, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 17, 2019.

Mark Numainville, City Clerk



Office of the City Manager

ACTION CALENDAR

January 29, 2019

(Continued from September 25, 2018)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Director, Planning and Development
Subject: Density Bonus Ordinance Revisions - Repeal Existing BMC Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New BMC Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Adopt first reading of an Ordinance amending the Zoning Ordinance to repeal obsolete Density Bonus regulations (Berkeley Municipal Code Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus Chapter (Berkeley Municipal Code Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That Density Bonus section (State of California Density Bonus Requirements (Section 23C.12.050)) needs to be updated because it references obsolete State regulations and includes requirements that are no longer in effect. It was most recently amended in 2005. State law has continued to undergo amendments since then to mandate a clear local ordinance.

The proposed ordinance (*see Attachment 1*) also responds to City Council referrals to the City Manager that requested several modifications to Berkeley's Density Bonus. Some of these referrals specifically mention modifications to the Density Bonus program, whereas other suggest a parallel path to modifying development standards in order to allow for increased residential densities (*see Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the referrals and developed an approach to create a more robust Density Bonus program. This multi-stage approach is underway; this proposed ordinance amendment is necessary to set a new framework within which other programs and policies can be implemented.

BACKGROUND

State Density Bonus law (SDBL)¹ provides incentives for developers to include affordable housing within their projects by granting increased density and relief from local regulations. Relief is delivered through concessions related to financial feasibility of the proposed project and waivers that apply to development standards.

Density Bonuses of up to 35% are mandated by the State and are based on the percentage of affordable units provided at various income levels. All cities and counties are required to adopt an ordinance specifying how they will comply with SDBL.

On December 6, 2017 and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing provided input and direction on an approach to referrals and modifications to City of Berkeley's Density Bonus regulations. The subcommittee suggested a three-phased approach to modifying the City's Density Bonus regulations that consisted of:

1. Create a Density Bonus Ordinance that codifies existing practice.
2. Respond to Density Bonus referrals that go beyond State Density Bonus laws to provide additional incentives for developing more affordable housing.
3. Develop numeric density standards and objective standards for all zoning districts.

Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. The Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of the Density Bonus program. The Planning Commission has begun to consider modifications related to Phase 2 and aims to make recommendations to City Council by the end of the year. Staff is currently working on an RFP to bring in additional resources to help with Phase 3. This work is anticipated to start in the fall of 2018 and will be shared with Planning Commission and the Joint Subcommittee on Implementation of State Housing Law as appropriate. Phase 3 should be completed by the end of 2019.

ENVIRONMENTAL SUSTAINABILITY

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley's Climate Action Plan goal to increase compact development patterns throughout the City.

RATIONALE FOR RECOMMENDATION

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

¹ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7400
Steven Buckley, Land Use Planning Manager, Land Use Planning Division, 510-981-7411

Alene Pearson, Associate Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: Council Referrals

ORDINANCE NO. #,###-N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE REGARDING DENSITY BONUS

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

Section 1. That Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

Chapter 23C.14 Density Bonus

23C.14.010	Purpose
23C.14.020	Definitions
23C.14.030	Application Requirements
23C.14.040	Density Bonus Calculations and Procedures
23C.14.050	Incentives and Concessions
23C.14.060	Waivers and Reductions
23C.14.070	Qualifying Units
23C.14.080	Special Provisions
23C.14.090	Regulatory Agreements

23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.
- F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

23C.14.030 Application Requirements

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915.
- B. For those districts without density standards, a density bonus schematic as set forth in the administrative regulations;
- C. The proposed size of the Density Bonus pursuant to Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
- F. Any requested additional bonus units under Section 65915(n).
- G. Any requested parking reductions under Section 65915(p).
- H. An applicant may elect in writing to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In

such cases, the applicant will retain their entitlement to Incentives and Concessions.

- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

23C.14.040 Density Bonus Calculations and Procedures

- A. Density Bonuses must be calculated as set forth in Section 65915 and pursuant to the Administrative Regulations.
- B. Density Bonus requests must accompany Housing Development applications and will be decided upon by the highest governing body.

23C.14.050 Incentives and Concessions

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, FAR, and/or number of stories but would count as one Incentive and Concession for height).
 3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer.
- B. In determining whether it can make the finding set forth in Section 65915(d)(1), the City will base its determination and any finding on a comparison of the project including the Density Bonus and requested Incentives and Concessions to the Base Project.
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1).
- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than design review.
- E. Incentives and Concessions must be justified based on the financial needs of the project, including reduced costs and increased revenue, to provide for the affordable housing costs of the qualifying units and for the project overall.

23C.14.060 Waivers and Reductions

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a development project meeting the criteria of Section 65915(b).
- B. The applicant may request, and the City shall hold, a meeting to discuss Waivers and Reductions.
- C. The City may deny Waivers and Reductions if a Waiver or Reduction would have adverse impacts and/or no mitigation for such impacts, as described in Section 65915(e)(1).

23C.14.070 Qualifying Units

Qualifying Units must be reasonably dispersed throughout the Housing Development, be of the same size and contain, on average, the same number of bedrooms as the non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units in terms of design, use, appearance, materials and finish quality. In determining whether dispersal of Qualifying Units is reasonable, the decision-making body may consider special benefits provided by, as well as special constraints on, the project.

23C.14.080 Special Provisions

In addition to requirements set forth in Section 65915 and this Chapter, the following Special Provisions apply to Density Bonuses in the City of Berkeley.

- A. [RESERVED]
- B. In addition to other required findings, Special Provisions may be awarded only when the City finds that the Density Bonus project complies with the purposes of the district in which the project is located.

23C.14.090 Regulatory Agreements

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Section 65915 and this Chapter.

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.



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177, EMAIL
kworthington@ci.berkeley.ca.us

ACTION CALENDAR

July 12, 2016

(Continued from May 24, 2016)

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

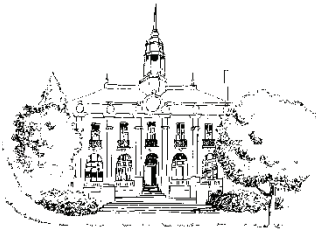
Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Kriss Worthington
 Councilmember, City of Berkeley, District 7
 2180 Milvia Street, 5th Floor, Berkeley, CA 94704
 PHONE 510-981-7170, FAX 510-981-7177, EMAIL
 kworthington@ci.berkeley.ca.us

CONSENT CALENDAR
 May 30, 2017

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin
 Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING**

Tuesday, July 11, 2017

6:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 6:03 p.m.

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

Absent: Harrison

Councilmember Harrison present 6:14 p.m.

Ceremonial Matters:

1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

City Auditor Comments:

1. Recognition of Public Works for completing the Equipment Fund Audit

City Manager Comments:

1. Launch of Berkeley Bike Share Program on July 11, 2017

Public Comment on Non-Agenda Matters: 3 speakers.

Public Comment on Consent Calendar and Information Items Only: 1 speakers.

Consent Calendar

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

Vote: All Ayes.

Action Calendar – Old Business

29. **Housing Accountability Act** *(Continued from June 13, 2017. Item includes supplemental materials.)*

From: City Manager

Contact: Zach Cowan, City Attorney, 981-6950

Action: 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zoning standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

Vote (Paragraphs 1-3): Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.

Vote (Paragraph 4): Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** *(Continued from June 13, 2017)*

From: Human Welfare and Community Action Commission

Recommendation: Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

Financial Implications: See report

Contact: Wing Wong, Commission Secretary, 981-5400

Action: Moved to Consent Calendar. No action taken by the City Council on this item.

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



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@ci.berkeley.ca.us

CONSENT CALENDAR
10/31/2017

To: Honorable Mayor and Members of the City Council
From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin
Subject: City Manager and Planning Commission Referral: Facilitate primarily Student Housing by a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton

RECOMMENDATION: Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust the Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

BACKGROUND:

In the last few years, students have become increasingly active in proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing for students and can decrease academic performance or leave students without affordable and safe places to live.

Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers, which supports the local economy. Previous efforts to increase south-side campus housing improved project viability specifically for the very small area of the C-T zoned blocks. Unfortunately, even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS: Minimal.

ENVIRONMENTAL SUSTAINABILITY: Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING**

Tuesday, November 28, 2017

6:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 6:04 p.m.

Present: Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin

Absent: Maio, Wengraf

Ceremonial Matters:

1. Recognition of Tom Kelly
2. Recognition of Berkeley Humane
3. Recognition of Berkeley Fire Department/Berkeley Police Department Responders to North Bay Fires

City Auditor Comments:

1. The Auditor highlighted the importance of funding the reserves in light of pension liabilities and possible economic slowdowns. The Auditor also provided an update on the Measure GG audit report.

City Manager Comments:

1. Planning Department Open House – 12/6 from 3:00 - 6:00 p.m. at 1947 Center Street
2. Grove Park Reopening – 12/2 at 11:00 a.m. – 1:00 p.m.
3. Live Oak Holiday Tots Carnival – 12/2 at 10:00 a.m. – 2:30 p.m. at Live Oak Recreation Center
4. Winter on the Waterfront – 12/9 at 1:00 p.m. – 6:30 p.m. at the Berkeley Yacht Club

Public Comment on Non-Agenda Matters: 8 speakers.

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

Action Calendar – Old Business

22. Implementation Plan for Affordable Housing Action Plan Referrals *(Continued from November 14, 2017. Item contains revised materials.)*

From: City Manager

Recommendation: Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

Financial Implications: None

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400, and Timothy Burroughs, Planning and Development, 981-7400

Action: On the severed portion to include density standards.

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

Action: On the severed portion regarding the California Construction Cost Index.

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

Action: 3 speakers. M/S/C (Arreguin/Davila) to Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

High Priority

1. Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. **A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.**
4. Examine and eliminate barriers to developing student housing and senior housing.
5. **Create specific per acre density standards, including standards for projects that include density bonus units.**
6. Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance for multi-unit properties with multiple units used as STRs that are out of compliance with the host ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).
7. Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) eviction, and other forms of displacement as defined by Council.

Action Calendar – Old Business

8. Increase commercial linkage fee by California Construction Cost Index CCCI.
9. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
10. Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
11. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
12. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste); c) waive or reduce permit fees for affordable housing projects (Hahn), including previously adopted streamlining measures from 2017.
13. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
14. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
15. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

Medium Priority

16. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
17. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
18. Amend Zoning code to allow housing and other non-commercial uses on the ground floor.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: creating a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

Action Calendar – Old Business

23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

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

Action Calendar – New Business

23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update

From: City Manager

Recommendation: 1. Adopt a Resolution allocating the General Fund excess equity as follows: \$1,930,415 to the General Fund Stability Reserve, \$1,579,430 to the General Fund Catastrophic Reserve and incorporate additional allocations as amended by subsequent Council action. 2. Discuss and determine funding allocations based on the Mayor's June 27, 2017, revised amendments to the FY 2018 & FY 2019 Biennial Budget and as amended by subsequent Council action.

Financial Implications: See report

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

Action: 3 speakers. M/S/C (Worthington/Arreguin) to continue the item to December 5, 2017 and include the allocations from Mayor Arreguin in Supplemental Reports Packet #2 including a new resolution for the allocation to Dorothy Day House.

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

24a. Recommendation for Audit and Legal Review of Measure GG Expenditures with Attention to Allocation of Measure GG Funds for Fire Department Overtime

From: Disaster and Fire Safety Commission

Recommendation: We recommend that City Council request from the City Auditor an audit of Measure GG expenditures specifically regarding the allocation of Measure GG funds for Fire Department overtime pay. We additionally suggest a legal review by the City Attorney to determine if the decreasing budget for Fire Department overtime in the General Fund and the coordinated increase of Measure GG funds allocated to overtime pay is in compliance with Measure GG and State and Federal laws, and to provide corrective guidance if it is not.

Financial Implications: See report

Contact: Keith May, Commission Secretary, 981-3473



ACTION CALENDAR
January 29, 2019

To: Honorable Mayor and Members of the City Council
From: Commission on Labor
Submitted by: Libby Sayre, Chairperson, Commission on Labor
Subject: Council Referral-Proposed Amendments to Berkeley's Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27

RECOMMENDATION

Adopt first reading of an Ordinance proposing revisions to Berkeley's Living Wage Ordinance, BMC Chapter 13.27, revising Sections .020, .050, .070, .080 and .090 and adding Sections .045, .110, .120, .130, and .140 to make the application and administration of the LWO consistent with the MWO where appropriate, and modifying Sections .040 and .050 to 1) limit waivers of the LWO for a maximum of one year, and 2) clarifying when employees covered by the LWO are entitled to receive the cash value of the health care benefit.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its September 16, 2014 City Council meeting, the Council referred to the Commission on Labor policy changes to the city's Living Wage Ordinance. The referral specifically directed the Commission to consider:

1. Amending Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan; and
2. Amending the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

Throughout 2015 and 2016, the Commission's focus prioritized policy changes to the city's Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance (PSLO) and the Commission did not have any significant discussion or action on the Living Wage Ordinance referral.

After much discussion and consideration in 2017, the Commission approved two separate motions on two separate dates. On January 17, 2018 the Commission approved the following:

M/S/C (Wilkinson/Fillingim) to adopt revisions to the Living Wage Ordinance with all changes as discussed [and enumerated below] except for section 13.27.050A regarding compensation required to be paid on specified employees, which includes the employee health care opt-out provision. This will be discussed and decided at March meeting. (Ayes: J. Fillingim, S. Frankel, L. Sayre, W. Bloom, M. Wilkinson, N. McClintick, Noes: None. Absent: P. Castelli (departed @ 8:15pm). Recused: K. Schriener.

Summary of the Commission's Recommended LWO Revisions from January 2018:

- 1) Add a definition of "Service Charges" Section 13.27.020
- 2) Amend the language related to "Waivers" Section 13.27.040
- 3) Add a Section related to Notice, Posting and Payroll Records, adapted from the MWO, Section 13.27.045
- 4) Clean up the language in Section 13.27.050 to make the Ordinance consistent with the Minimum Wage Ordinance by:
 - a. deleting references in Section A to specific dollar amounts and replacing them with compliance with rates that are updated annually; and
 - b. adding language regarding rules for collection and distribution of Service Charges in Section E.
- 5) Remove an exemption for "on-call" workers, Section 13.27.070
- 6) Revise "Retaliation" language to be consistent with MWO, Section 13.27.080
- 7) Revise "Complaints to the City" language to be consistent with MWO, Section 13.27.090
- 8) Add "Relationship to other requirements" language, Section 13.27.110
- 9) Add "Application to Welfare-to-work programs", Section 13.27.120
- 10) Add "Fees" language, Section 13.27.130
- 11) Add "Severability" Language, Section 13.27.140

This action intended to make the provisions and application of the LWO more comprehensive and consistent with other labor standards programs, such as the MWO and the PSLO. This motion did not include any action on the Council referral to consider a policy recommendation related to an employee having the option to select the cash value of the medical benefit requirement. The motion did, however, include one significant policy proposal related to waivers of the LWO. The Commission recommended that the LWO be revised to allow only allow temporary waivers of the LWO requirement for up to one year.

At the March 21, 2018 and July 18, 2018 Commission meetings, the Commission discussed allowing employees to have the option to take the cash value of the medical benefit offered by an employer. At the July 18, 2018 meeting, the Commission opted not to recommend changes related to medical benefits due to concerns regarding potentially increasing the number of Employees that would seek the cash benefit and not maintain medical coverage and also due to the complexity of verification and enforcement of this provision. At their July 18, 2018 meeting, the Commission approved the following:

M/S/C (Fillingim/Castelli) to keep language related to the medical benefit as is and not change the Ordinance to allow Employees the option to take the cash value of the medical benefit. Ayes: Castelli, Frankel, Bloom, Fillingim, Schriener, Sayre. Noes: None Absent: McClintick. Leave of Absence: Jones, Wilkinson. Recused: K. Schriener.

As mentioned above, all of the proposed changes to the LWO, with exception of limiting the duration of an LWO waiver to one year, aim to make the language of the LWO more consistent with the provisions of the MWO so that staff can bring more efficiency and consistency to the guidelines and administration of the LWO as part of the labor standards and enforcement program.

BACKGROUND

The City of Berkeley's LWO was enacted June 21, 2000. The purpose of the ordinance is to ensure businesses in a contractual relationship with the City pay their employees a wage that can support a family at or above the poverty level. The Living Wage Ordinance requires that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. HHCS staff manage the LWO as part of the city's labor standards and enforcement programs.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed changes will streamline investigations and enforcement and make administration more efficient and effective by bringing consistency with other city labor standards and ordinances.

ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the LWO or adopt only some of the Commission's recommendations.

CITY MANAGER

See City Manager companion report.

CONTACT PERSON

Delfina Geiken, Commission Secretary, HHCS, 510-981-7551

Nathan Dahl, Community Development Project Coordinator, HHCS 510-981-5405

Attachments:

1: Ordinance – Track changes

2: Ordinance – Without track changes

3: September 16, 2014 City Council Referral to Commission on Labor

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27; PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.045 Notice, posting, and payroll records.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Relationship to other requirements.
- 13.27.120 Application of Living Wage to Welfare-to-Work programs.
- 13.27.130 Fees.
- 13.27.140 Severability.

Section 13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

G.D. "Service Charge" means all separately-designated amounts collected by an Employer from customers that are described in such a way that customers might reasonably believe that the amounts are for Employees or services rendered by Employees, including but not limited to those charges designated on receipts under the term "service charge," "automatic gratuity charge," "delivery charge," or "portage charge."

Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients

described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

Section 13.27.040 Waivers.

The City Council may temporarily waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days, and may not be renewed or reissued to the same party in order to cover additional time. All waivers previously issued by the City shall expire 365 days after this Chapter becomes effective.

13.27.045 Notice, posting, and payroll records.

A. By May 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Living Wage rate, which shall take effect on July 1. In conjunction with this bulletin, the Department shall by May 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Living Wage rate and of their rights under this Chapter.

B. Every Employer subject to the Living Wage Ordinance shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the Department informing Employees of the current Living Wage rate and of their rights under this Chapter, including healthcare and Paid Sick Leave. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Such records shall include the amount of hours worked, wages paid, and shall state, in unambiguous terms, the manner in which the Employer made their required healthcare expenditures for each Employee.

D. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by an Employee, make available their records of sales and associated Service Charges in a given pay period.

Section 13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

~~A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.~~

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan equal to or higher than the benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and health care expenditure rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on June 30 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

~~E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)~~

E. Distribution of Service Charges. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee. No Employer or agent

thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

Section 13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

Section 13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

~~F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.~~

~~G.F.~~ An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

~~H.G.~~ An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 13.27.080 Retaliation and discrimination prohibited.

~~A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee.~~

~~protected by the requirements of this chapter.~~

~~B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000) It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.~~

Section 13.27.090 Employee complaints to City.

~~A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.~~

~~A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.~~

~~B. Reporting Violations. An Employee or any other person may report to the Department any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. In order to further encourage reporting by~~

Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

Section 13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.

2. Reinstatement, compensatory damages and punitive damages.

3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.27.110 Relationship to other requirements.

This Chapter provides for payment of a local Living Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

13.27.120 Application of Living Wage to Welfare-to-Work programs.

The Living Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of Berkeley shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Living Wage.

13.27.130 Fees.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

13.27.140 Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27; PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:
PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.045 Notice, posting, and payroll records.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Relationship to other requirements.
- 13.27.120 Application of Living Wage to Welfare-to-Work programs.
- 13.27.130 Fees.
- 13.27.140 Severability.

Section 13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley,

Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

D. "Service Charge" means all separately-designated amounts collected by an Employer from customers that are described in such a way that customers might reasonably believe that the amounts are for Employees or services rendered by Employees, including but not limited to those charges designated on receipts under the term "service charge," "automatic gratuity charge," "delivery charge," or "portage charge."

Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee,

concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

Section 13.27.040 Waivers.

The City Council may temporarily waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days, and may not be renewed or reissued to the same party in order to cover additional time. All waivers previously issued by the City shall expire 365 days after this Chapter becomes effective.

13.27.045 Notice, posting, and payroll records.

A. By May 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Living Wage rate, which shall take effect on July 1. In conjunction with this bulletin, the Department shall by May 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Living Wage rate and of their rights under this Chapter.

B. Every Employer subject to the Living Wage Ordinance shall post in a conspicuous place at any workplace or job site in the City where any Employee works, the notice published each year by the Department informing Employees of the current Living Wage rate and of their rights under this Chapter, including healthcare and Paid Sick Leave. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Such records shall include the amount of hours worked, wages paid, and shall state, in unambiguous terms, the manner in which the Employer made their required healthcare expenditures for each Employee.

D. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by an Employee, make available their records of sales and associated Service Charges in a given pay period.

Section 13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section 13.27.060, an employer subject to this chapter

pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan equal to or higher than the benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and health care expenditure rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on June 30 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Distribution of Service Charges. Service Charges shall be used by the Employer to directly benefit the Employees. No part of these charges may be paid to the Employer. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee. No Employer or agent thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due to the Employee from the Employer or reduce required benefits of an Employee. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

Section 13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements

of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

Section 13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

G. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 13.27.080 Retaliation and discrimination prohibited.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

Section 13.27.090 Employee complaints to City.

A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective implementation and enforcement of this Chapter. Any guidelines or rules promulgated

by the Department shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

B. Reporting Violations. An Employee or any other person may report to the Department any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

Section 13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause

of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.27.110 Relationship to other requirements.

This Chapter provides for payment of a local Living Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

13.27.120 Application of Living Wage to Welfare-to-Work programs.

The Living Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of Berkeley shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Living Wage.

13.27.130 Fees.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

13.27.140 Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

CONSENT CALENDAR
September 16, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to Commission on Labor: Amendments to Living Wage Ordinance (Berkeley Municipal Code Chapter 13.27)

RECOMMENDATION:

Refer to the Commission on Labor the following suggested amendments to the Living Wage Ordinance, Berkeley Municipal Code Chapter 13.27:

1. Amend Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan.
2. Amend the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

BACKGROUND:

The Berkeley City Council adopted a Living Wage Law in 2000 to require for-profit and non-profit businesses (at a certain threshold), that are under a City contract, to pay their employees a living wage and provide health insurance and paid time off. The current Living Wage rate is **\$13.71 per hour plus a medical benefit equivalent to at least \$2.28 per hour**. If the employer does not provide the employee at least \$2.28 per hour toward an employee medical benefits plan, the employer shall pay an hourly wage of not less than **\$15.99**. If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate.

Two recent complaints filed by former and current employees of LAZ Parking, a city contractor who manages the City's public parking garages, have alleged that the employer failed to pay the full rate of compensation and denied breaks and paid days off.

The complaint made by Mr. Julio Castro alleging that LAZ Parking was required to provide Mr. Castro with the higher compensation amount because it did not provide actual medical coverage has raised issues regarding the loopholes in the current Living Wage Ordinance. Mr. Castro opted to not take the employer provided medical insurance plan, because he paid for another plan that was less costly. Nevertheless, despite the fact that the employer never directly provided health insurance coverage, they were able to pay Mr. Castro the lower wage, rather than include the differential for lack of

health coverage. Apparently, under city law all an employer has to do is offer health coverage but not directly provide it in order to pay the lower wage amount.

Nowhere in the current Living Wage Ordinance does it state that the employer would pay the whole amount of the medical insurance plan. The employee would still pay a premium which depending on the cost of the insurance may be significant, and as result decrease the amount of take home pay an employee would be entitled to. The current language of the law provides incentives for employers to offer more expensive insurance plans with higher employee premiums in order to avoid paying a higher wage.

The law was clearly written with the goal of extending benefits to employees, not taking them away. Similar to city employees, including City Councilmembers, contract employees subject to the Living Wage Ordinance, should be allowed to pay for alternative insurance and receive cash in lieu equivalent to the higher wage amount if they provide proof of insurance coverage. In addition, the City should explore changing the law to say that only if an employee is covered under an insurance plan can the employer pay the lower wage amount. These changes would close the existing loophole and ensure that contract employees are afforded the same rights as our city employees.

In addition, the recently adopted Minimum Wage Ordinance included stronger language on posting of notices, notification of rights, making complaints, retaliation and enforcement. Since the Living Wage Ordinance was adopted in 2000 before the Minimum Wage Law, and since it affectively accomplishes the same goals - fair wages for employees - the City should amend the Living Wage law to conform to the notice, complaint, retaliation and enforcement requirements of the new Minimum Wage Ordinance.

One of the issues alleged is the lack of proper notification of employees covered under the Living Wage Ordinance. The Minimum Wage Ordinance standards are stronger and require better notification and enforcement. Given that the City will be creating an enforcement position to implement both the Minimum Wage and Living Wage Ordinance, there should be consistency of the requirements for ease of enforcement.

Also the notification requirements must be strengthened. There is no requirement for annual notification, so employees may not necessarily know what the wage amount has increased due to inflation. There is also no requirement that the notice provided to workers and required to be posted, has to include information on how to file a complaint and contact information on where to make a complaint. Providing better information on the wages, benefits, complaint process, and protection against retaliation will ensure that workers know their rights and can help prevent potential violations in the future.

FINANCIAL IMPLICATIONS:

Staff time involved in presenting the City Council's referral to the Commission on Labor, analyzing the proposed changes, and proposing recommendations to the Commission and City Council.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Current Living Wage Ordinance (B.M.C. Chapter 13.27) with sections highlighted to be changed
2. July 9, 2014 East Bay Express Article "Berkeley Sides with Living Wage Law Violators"

Chapter 13.27
PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- [13.27.010](#) Title and purpose.
- [13.27.020](#) Definitions.
- [13.27.030](#) Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- [13.27.040](#) Waivers.
- [13.27.050](#) Compensation required to be paid to specified employees.
- [13.27.060](#) Required contract provision.
- [13.27.070](#) Exemptions.
- [13.27.080](#) Retaliation and discrimination prohibited.
- [13.27.090](#) Employee complaints to City.
- [13.27.100](#) Private rights of action.

13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. (Ord. 6548-NS § 2, 2000)

13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina

Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code. (Ord. 6583-NS § 2, 2000: Ord. 6548-NS § 2, 2000)

13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of

their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid. (Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.040 Waivers.

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. (Ord. 6548-NS § 2, 2000)

13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section [13.27.060](#), an employer subject to this chapter pursuant to Section [13.27.030](#) shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. **Wages.** If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.

B. **Time-off.** Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section [13.27.030](#), shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section [13.27.030](#) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance. (Ord. 6548-NS § 2, 2000)

13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

- B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.
- C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.
- D. Volunteers.
- E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.
- F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.
- G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.
- H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement. (Ord. 6548-NS § 2, 2000)

13.27.080 Retaliation and discrimination prohibited.

- A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.
- B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

13.27.090 Employee complaints to City.

- A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. (Ord. 6548-NS § 2, 2000)

13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City. (Ord. 6548-NS § 2, 2000)

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Berkeley Sides With Living Wage Violators

The city has brushed aside numerous labor complaints against a city contractor — and has now revised its policy in a way that benefits employers and shortchanges low-wage workers.

By Sam Levin @SamTLevin



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Since 2000, businesses that have contracts with the City of Berkeley have been subject to a living wage ordinance that establishes minimum standards of pay and employee health benefits for employees. The intent is simple: to ensure that city contractors pay their workers wages that can support a family at or above the poverty level. In 2012, for the first time since the living wage law was enacted, an employee of a city contractor filed a complaint with the city, alleging violations of the ordinance. The alleged offender was LAZ Parking, a private company that manages three city-owned garages, and the complaint, from former employee Julio Castro, only came to light earlier this year when the city council began discussions about expanding LAZ's contract.

According to Castro, the company had underpaid him and other employees in violation of the law, and despite his persistent complaints to the city, officials did little to help him. His struggle exposed Berkeley's lack of an effective living wage enforcement mechanism. When I first reported on Castro's story (see "The Failure of Berkeley's Living Wage Law," 4/23) city spokesperson Matthai Chakko declined to comment, saying a report would be sent to the city council, detailing an investigation into LAZ Parking. The city finally produced the report last month, and the document, according to a number of labor advocates, reveals just how deeply flawed the city's living wage policy and enforcement system really are. For starters, the city's report sides with LAZ Parking in Castro's dispute, despite significant evidence that the company underpaid him, and notwithstanding a state ruling last year in Castro's favor. What's more, the city has used its report as an opportunity to reinterpret a critical part of the living wage law in a manner that benefits contractors and hurts low-wage workers.

"The living wage ordinance was made to help employees," said Castro, a sixty-year-old Concord resident and former LAZ Parking cashier. "It's the city's job to make sure things are done right."

Castro's case — and the city's new interpretation of the living wage law —

center on the health care contribution requirements laid out in the ordinance. At current rates, employers must pay an hourly wage of \$13.71 plus a medical benefit equivalent to at least \$2.28 per hour. If an employer does not provide an employee with the medical benefit, then it must pay the additional \$2.28, meaning an hourly wage of \$15.99, according to the law.

LAZ Parking, as Castro outlined in formal allegations in 2012, paid him the lower rate, which was \$12.76 per hour when he started working for the company in July 2011. But LAZ did not pay for his health benefits. That's because the package LAZ offered, Castro said, would have been significantly more expensive for him than his insurance plan with Contra Costa County (the Contra Costa Health Plan). That meant that LAZ, according to his complaints, was obligated to pay him the higher rate — at that time, \$14.88 per hour. After discussions with his managers and multiple city officials got him nowhere, Castro filed a complaint with the state labor commissioner's office in 2012. And in 2013, the state issued a ruling in his favor, declaring that LAZ had violated Berkeley's living wage law and should have paid the higher rate, amounting to a total of \$2,245 in back wages. LAZ has since paid Castro this amount.

But in the city's recent report on LAZ, Berkeley City Manager Christine Daniel wrote that the state's decision in support of Castro was "incorrect" and contrary to the living wage ordinance. Because LAZ had *offered* Castro health care benefits, the company was allowed to pay him the lower \$12.76 rate, Daniel wrote. And to ensure that employees understand this in the future, the report continued, the city has revised its living wage website to include this statement: "If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate."

Because this is a new statement on the website — and one that is nowhere to be found in the actual ordinance — the revision has alarmed labor advocates who argue that the city is not only endorsing LAZ's decision to underpay employees, but is going a step further and establishing this practice as acceptable policy. "It essentially eviscerates the law," said Carole Vigne, director of the wage protection program of the Legal Aid Society-Employment Law Center. "This new interpretation ... feels like a tremendous loophole."

Vigne is one of several Employment Law Center attorneys who have represented Castro in the course of his multi-year fight against LAZ. The labor commissioner's office also ruled last year that the company also owed Castro \$939.24 for denying him rest breaks, a violation separate from the living wage concerns. Castro has further alleged retaliation, because LAZ terminated him in 2012 after he complained about the living wage violations; a decision in this separate retaliation case is pending, after labor hearings concluded last month.

In its 2013 ruling on Castro's living wage complaint, the California labor commissioner's office noted that when employers don't provide medical benefits, there is a "clear directive" in the Berkeley living wage ordinance that employers "shall" pay the higher rate: "There is nothing in the Ordinance that allows an employee entitled to its benefits to waive his right to those benefits," the state hearing officer wrote.

Vigne, too, argued that, regardless of the city's elaborations on its website, the enforceable language of the ordinance says employers must "provide" medical benefits or the higher wage: "Provide means to give, it doesn't just mean to offer," she said. Vigne also shared with me printouts of older versions of Berkeley's living wage web pages, pointing out that, even in the city's detailed FAQ section on the law, "there was no suggestion anywhere on their website that this is how the living wage ordinance was intended to be interpreted."

It's unclear why exactly the city is taking a position that shortchanges low-wage workers. In her report, Daniel cited a September 2000 city memo on the living wage ordinance that said employers could pay the lower hourly

rate when employees decline an offer of health coverage. But Vigne sent me a June 2000 memo from the Berkeley commission on labor that emphasized that one of the objectives of the living wage law was to help employees access "reasonable health insurance." And regardless of the debates around interpretation, living wage laws should not prevent low-wage workers from buying a health-care plan that is cheaper than the one offered by the employer, said Gina Gemello, an Employment Law Center project attorney who has also represented Castro. "If an employee can get insurance coverage for half of what the employer offers, then why would the city stand against them?" said Castro.

Berkeley City Councilmember Jesse Arreguín — who has been in contact with Castro for years and has repeatedly asked the city to address complaints against LAZ — said he also disagrees with the city's new interpretation of the law and plans to introduce legislation later this year that would revise the ordinance to make clear that contractors must provide health care or pay the higher wage. "If an employee is able to get health care at a much cheaper rate, the employer should help contribute to that," he said, adding, "I was very surprised when the city took a position trying to disprove the state. ... The law was intended to favor the worker, not management."

In response to Daniel's report, Arreguín issued a memo last week questioning why the city has been so slow to respond to complaints about LAZ and why its report ignores Castro's allegations of retaliation entirely. The living wage law explicitly prohibits retaliation and discrimination against a person who reports a violation, meaning the city's enforcement of the law and investigation into LAZ should have addressed concerns of retaliation. Arreguín's memo also questioned whether the city has followed up on a complaint from another former LAZ employee, Chauncy Taylor, who, like Castro, said she was paid the lower rate and did not receive health benefits.

Though Taylor outlined her situation in great detail to Arreguín's office — which forwarded the claims to the city manager more than a year ago — Taylor has not received any back wages and it's unclear if the city has done any investigation into her case. Taylor said in an interview that no city official other than Arreguín's office has ever contacted her about her claims. Further, Taylor said LAZ never even offered her health benefits in the first place because she was technically a part-time employee. That means that, even with the city's new interpretation of the law, she could have a strong case. And her situation is a clear illustration of the impacts of a flawed living wage law: When she worked for LAZ, she was uninsured.

"It would really help if they could come through," said Taylor, noting that her landlord just raised her rent and that she continues to struggle to make ends meet. "I am praying and hoping that they come around. At this point, I'd be okay if they just gave me half. Times are so hard."

Chakko declined to answer any questions about LAZ Parking or the living wage law, saying the city plans to issue a response to Arreguín's memo. LAZ representatives did not respond to multiple requests for comment.

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« A Battle for Profits

The Fight to Develop West Oakl... »



Office of the City Manager

ACTION CALENDAR

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services

Subject: Council Referral-Proposed Amendments to Berkeley's Living Wage Ordinance: Berkeley Municipal Code Chapter 13.27

RECOMMENDATION

Adopt first reading of an Ordinance amending BMC Chapter 13.27, which proposes: 1) adding a definition of "Department" in Section 13.27.020, 2) limiting new waivers of the LWO to one year in Section 13.27.040, 3) clarifying language related to wages and benefits in the Section 13.27.050 and adding Section 13.27.110 related to severability.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its September 16, 2014 City Council meeting, the Council referred to the Commission on Labor policy changes to the city's Living Wage Ordinance. The Commission proposes changes to the LWO that are outlined in the Commission Report and attached Ordinance. Staff has concerns that the changes recommended by the Commission will apply new standards to existing contract partners subject to the LWO and may require these contracts to be renegotiated. For instance, since the LWO applies only to entities via contract with the City, adoption of remedies and procedures governing the City's minimum wage ordinance conflict with negotiated contract terms and may be unenforceable. Unlike enforcement of the minimum wage where the City is a market regulator, the City enforces the LWO as a market participant.

BACKGROUND

The City of Berkeley's LWO was enacted June 21, 2000. The purpose of the ordinance is to ensure businesses in a contractual relationship with the City pay their employees a wage that can support a family at or above the poverty level. The Living Wage Ordinance requires that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. HHCS staff administer the LWO compliance component as part of the city's labor standards and enforcement programs.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The changes proposed by the City Manager will add important clarifying information in the Ordinance and allow existing contracts to continue uninterrupted. Labor standards such as definitions and rules related to "Service Charges" for example, are already applicable to all businesses operating in Berkeley as a standard within the MWO. Because the LWO applies to businesses that are contract partners with the City of Berkeley, compliance with the LWO is ensured by city staff as a requirement for continued operation under agreements outlined in the contracts. Other changes to the Ordinance proposed by the Commission are intended to align language in the MWO, however, staff can continue to effectively administer the LWO without the changes and without jeopardizing the existing agreements by applying new rules and standards to operators subject to the LWO. Since the LWO applies only to entities via contract with the City, adoption of remedies and procedures governing the City's minimum wage ordinance conflict with negotiated contract terms and may be unenforceable. Unlike regulation of the minimum wage where the City is a market regulator, the City enforces the LWO as a market participant.

ALTERNATIVE ACTIONS CONSIDERED

Make no changes to the LWO or adopt part or all of the of the Commission's recommendations.

CONTACT PERSON

Nathan Dahl, Community Development Project Coordinator, HHCS 510-981-5405
Delfina Geiken, Employment Programs Administrator, HHCS, 510-981-7551

Attachments:

- 1: Ordinance – Track changes
- 2: Ordinance – Without track changes
- 3: September 16, 2014 City Council Referral to Commission on Labor

ORDINANCE NO. -N.S.

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS;
AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27

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

Section 1. That Berkeley Municipal Code Chapter 13.27 is amended to read as follows:

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- 13.27.010 Title and purpose.
- 13.27.020 Definitions.
- 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- 13.27.040 Waivers.
- 13.27.050 Compensation required to be paid to specified employees.
- 13.27.060 Required contract provision.
- 13.27.070 Exemptions.
- 13.27.080 Retaliation and discrimination prohibited.
- 13.27.090 Employee complaints to City.
- 13.27.100 Private rights of action.
- 13.27.110 Severability.

Section 13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

A.B. "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

B.C. "Marina zone" shall mean all land held in trust by the City of Berkeley

pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

~~C.D.~~ "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

Section 13.27.040 Waivers.

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. Such waivers may not cover a period longer than 365 days. Such waivers may be granted only once and may not cover a period longer than 365 days.

Section 13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

~~A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.~~

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan, which allows employees to receive employer compensated care from a licensed physician equal to or higher than the medical benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and medical benefit rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on July 1 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

Section 13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

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B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 13.27.080 Retaliation and discrimination prohibited.

A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

Section 13.27.090 Employee complaints to City.

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B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

Section 13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.27.110 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS;
AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.27

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B. "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.

C. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to

the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

D. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

Section 13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid.

Section 13.27.040 Waivers.

Such waivers may not cover a period longer than 365 days. Such waivers may be

granted only once and may not cover a period longer than 365 days.

Section 13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section 13.27.060, an employer subject to this chapter pursuant to Section shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. All employers subject to this chapter shall pay the required Living Wage rate. In addition, all subject Employers shall offer a medical benefit plan, which allows employees to receive employer compensated care from a licensed physician equal to or higher than the medical benefit rate requirement. If the employer does not offer the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than the Living Wage rate plus the value of the medical benefit rate. The hourly wage rate and medical benefit rate required by this section will be adjusted automatically or modified annually pursuant to subsection D. The new rates shall be announced by May 1 of each year and shall become effective on July 1 of that year.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section 13.27.030, shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

Section 13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 13.27.030 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance.

Section 13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.

C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.

D. Volunteers.

E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.

F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 13.27.080 Retaliation and discrimination prohibited.

A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

Section 13.27.090 Employee complaints to City.

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

Section 13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.

2. Reinstatement, compensatory damages and punitive damages.

3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.27.110 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

CONSENT CALENDAR
September 16, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referral to Commission on Labor: Amendments to Living Wage Ordinance (Berkeley Municipal Code Chapter 13.27)

RECOMMENDATION:

Refer to the Commission on Labor the following suggested amendments to the Living Wage Ordinance, Berkeley Municipal Code Chapter 13.27:

1. Amend Section 13.27.050.A to allow an employee the right to opt out of an employer provided medical benefit plan and still receive the higher compensation amount (currently \$15.99 per hour) as cash in lieu if they provide proof of alternative coverage under a medical benefit plan.
2. Amend the posting requirements, retaliation, complaint process, and enforcement sections to conform to the language in the recently adopted Minimum Wage Ordinance.

BACKGROUND:

The Berkeley City Council adopted a Living Wage Law in 2000 to require for-profit and non-profit businesses (at a certain threshold), that are under a City contract, to pay their employees a living wage and provide health insurance and paid time off. The current Living Wage rate is **\$13.71 per hour plus a medical benefit equivalent to at least \$2.28 per hour**. If the employer does not provide the employee at least \$2.28 per hour toward an employee medical benefits plan, the employer shall pay an hourly wage of not less than **\$15.99**. If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate.

Two recent complaints filed by former and current employees of LAZ Parking, a city contractor who manages the City's public parking garages, have alleged that the employer failed to pay the full rate of compensation and denied breaks and paid days off.

The complaint made by Mr. Julio Castro alleging that LAZ Parking was required to provide Mr. Castro with the higher compensation amount because it did not provide actual medical coverage has raised issues regarding the loopholes in the current Living Wage Ordinance. Mr. Castro opted to not take the employer provided medical insurance plan, because he paid for another plan that was less costly. Nevertheless, despite the fact that the employer never directly provided health insurance coverage, they were able to pay Mr. Castro the lower wage, rather than include the differential for lack of

health coverage. Apparently, under city law all an employer has to do is offer health coverage but not directly provide it in order to pay the lower wage amount.

Nowhere in the current Living Wage Ordinance does it state that the employer would pay the whole amount of the medical insurance plan. The employee would still pay a premium which depending on the cost of the insurance may be significant, and as result decrease the amount of take home pay an employee would be entitled to. The current language of the law provides incentives for employers to offer more expensive insurance plans with higher employee premiums in order to avoid paying a higher wage.

The law was clearly written with the goal of extending benefits to employees, not taking them away. Similar to city employees, including City Councilmembers, contract employees subject to the Living Wage Ordinance, should be allowed to pay for alternative insurance and receive cash in lieu equivalent to the higher wage amount if they provide proof of insurance coverage. In addition, the City should explore changing the law to say that only if an employee is covered under an insurance plan can the employer pay the lower wage amount. These changes would close the existing loophole and ensure that contract employees are afforded the same rights as our city employees.

In addition, the recently adopted Minimum Wage Ordinance included stronger language on posting of notices, notification of rights, making complaints, retaliation and enforcement. Since the Living Wage Ordinance was adopted in 2000 before the Minimum Wage Law, and since it affectively accomplishes the same goals - fair wages for employees - the City should amend the Living Wage law to conform to the notice, complaint, retaliation and enforcement requirements of the new Minimum Wage Ordinance.

One of the issues alleged is the lack of proper notification of employees covered under the Living Wage Ordinance. The Minimum Wage Ordinance standards are stronger and require better notification and enforcement. Given that the City will be creating an enforcement position to implement both the Minimum Wage and Living Wage Ordinance, there should be consistency of the requirements for ease of enforcement.

Also the notification requirements must be strengthened. There is no requirement for annual notification, so employees may not necessarily know what the wage amount has increased due to inflation. There is also no requirement that the notice provided to workers and required to be posted, has to include information on how to file a complaint and contact information on where to make a complaint. Providing better information on the wages, benefits, complaint process, and protection against retaliation will ensure that workers know their rights and can help prevent potential violations in the future.

FINANCIAL IMPLICATIONS:

Staff time involved in presenting the City Council's referral to the Commission on Labor, analyzing the proposed changes, and proposing recommendations to the Commission and City Council.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Current Living Wage Ordinance (B.M.C. Chapter 13.27) with sections highlighted to be changed
2. July 9, 2014 East Bay Express Article "Berkeley Sides with Living Wage Law Violators"

Chapter 13.27
PAYMENT OF LIVING WAGE TO EMPLOYEES OF CITY CONTRACTORS

Sections:

- [13.27.010](#) Title and purpose.
- [13.27.020](#) Definitions.
- [13.27.030](#) Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.
- [13.27.040](#) Waivers.
- [13.27.050](#) Compensation required to be paid to specified employees.
- [13.27.060](#) Required contract provision.
- [13.27.070](#) Exemptions.
- [13.27.080](#) Retaliation and discrimination prohibited.
- [13.27.090](#) Employee complaints to City.
- [13.27.100](#) Private rights of action.

13.27.010 Title and purpose.

This ordinance shall be known as the "Berkeley Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors. (Ord. 6548-NS § 2, 2000)

13.27.020 Definitions.

The following definitions shall apply throughout this ordinance:

A. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in an amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

B. "Marina zone" shall mean all land held in trust by the City of Berkeley pursuant to the Public Trust Tidelands grant from the State of California to the City of Berkeley, Stats. 1962, Ch. 55; specifically, Aquatic Park and all land, including submerged land, which is west of Marina

Boulevard as it is presently constructed and as if it were extended, in both northerly and southerly directions, to the Berkeley city limits and all land north of Spinnaker Way as it is presently constructed and as if it were extended to the shoreline, to the east, and to the Berkeley city limits, to the west.

C. "Non-profit" shall mean a non-profit organization described in Section 501c(3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c)(3) of that code, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code. (Ord. 6583-NS § 2, 2000: Ord. 6548-NS § 2, 2000)

13.27.030 Contractors, users of public property, City financial aid recipients and subcontractors subject to the requirements of this chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter to the employees specified herein:

A. For-profit vendors of services, which employ six or more employees and receive contract(s) for \$25,000 or more in a 12-month period. Compliance shall be required during the term of said contract(s) as to any employees who spend 25% or more of their compensated time engaged in work directly related to the said contract(s).

B. Non-profit vendors of services, which employ six or more employees and receive contracts of \$100,000 or more in a 12-month period. Compliance shall be required during the term of said contract as to any employees who spend 50% or more of their compensated time engaged in work directly related to a City contract.

C. Lessees of public property, licensees, concessionaires, and franchisees, which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term with regard to any employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

D. City financial aid recipients, which receive more than \$100,000 in loans, or other cash and/or non-cash assistance in any 12-month period. Compliance shall be required for a period of five years following receipt of the aid with regard to employees who spend 25% or more of

their compensated time engaged in work directly related to the purpose for which the City provided the aid.

E. Entities within the boundaries of the Marina Zone which employ six or more employees and generate \$350,000 or more in annual gross receipts. Compliance shall be required with regard to any employees who spend 25% or more of their compensated time in the Marina Zone.

F. Subcontractors and sublessees of any of the entities, persons, or recipients described in subparagraphs A through D. Compliance shall be required during the term of the contract between the City and the prime contractor, lessee, licensee, concessionaire, franchisee or City financial aid recipient as to any employees who spend 25% or more of their compensated time engaged in work directly related to the City contract, lease, license, concession, franchise or agreement providing financial aid. (Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.040 Waivers.

The City Council may waive the requirements of this chapter upon a finding and determination that such a waiver is in the best interests of the City. (Ord. 6548-NS § 2, 2000)

13.27.050 Compensation required to be paid to specified employees.

Except as provided in Section [13.27.060](#), an employer subject to this chapter pursuant to Section [13.27.030](#) shall provide to its covered employees the following minimum compensation terms for the duration of the covered period:

A. Wages. If the employer pays at least \$1.62 per hour per employee towards an employee medical benefits plan, which allows the employees to receive employer-compensated care from a licensed physician, the employer shall pay employees an hourly wage of not less than \$9.75. If the employer does not provide the employees with such a medical benefit plan, the employer shall pay employees an hourly wage of not less than \$11.37. The hourly wage rate required by this section will be adjusted automatically or modified annually pursuant to subsection D.

B. Time-off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees.

Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. Additional compensation permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

D. The wage rates required in subsection A shall be adjusted annually, effective June 30, to reflect increases during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics.

E. Notification of rights under chapter. Employers subject to this chapter pursuant to Section [13.27.030](#), shall give written notification to each current and new employee of his or her potential rights under this chapter in a form provided by the City. Such notice shall also be posted prominently in areas where it will be seen by all employees. (Ord. 6765-NS § 1, 2003; Ord. 6583-NS § 2, 2000; Ord. 6548-NS § 2, 2000)

13.27.060 Required contract provision.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section [13.27.030](#) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for non-compliance. (Ord. 6548-NS § 2, 2000)

13.27.070 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

A. An employee participating in a temporary job-training program in which a significant component of the employee's training consists of acquiring specialized job readiness knowledge, abilities or skills (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

- B. An employee who is under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period not longer than 120 days.
- C. An employee working for the employer for a period not exceeding six months in aggregate during any 12-month period.
- D. Volunteers.
- E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this chapter.
- F. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.
- G. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.
- H. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement. (Ord. 6548-NS § 2, 2000)

13.27.080 Retaliation and discrimination prohibited.

A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter. (Ord. 6548-NS § 2, 2000)

13.27.090 Employee complaints to City.

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255. (Ord. 6548-NS § 2, 2000)

13.27.100 Private rights of action.

A. An employee claiming violation of this chapter may bring an action in the municipal court or superior court of the State of California, as appropriate, against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement, compensatory damages and punitive damages.
3. Reasonable attorney's fees and costs.

B. Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

D. Nothing in this chapter shall be interpreted to authorize a right of action against the City. (Ord. 6548-NS § 2, 2000)

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Berkeley Sides With Living Wage Violators

The city has brushed aside numerous labor complaints against a city contractor — and has now revised its policy in a way that benefits employers and shortchanges low-wage workers.

By Sam Levin @SamTLevin



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Since 2000, businesses that have contracts with the City of Berkeley have been subject to a living wage ordinance that establishes minimum standards of pay and employee health benefits for employees. The intent is simple: to ensure that city contractors pay their workers wages that can support a family at or above the poverty level. In 2012, for the first time since the living wage law was enacted, an employee of a city contractor filed a complaint with the city, alleging violations of the ordinance. The alleged offender was LAZ Parking, a private company that manages three city-owned garages, and the complaint, from former employee Julio Castro, only came to light earlier this year when the city council began discussions about expanding LAZ's contract.

According to Castro, the company had underpaid him and other employees in violation of the law, and despite his persistent complaints to the city, officials did little to help him. His struggle exposed Berkeley's lack of an effective living wage enforcement mechanism. When I first reported on Castro's story (see "The Failure of Berkeley's Living Wage Law," 4/23) city spokesperson Matthai Chakko declined to comment, saying a report would be sent to the city council, detailing an investigation into LAZ Parking. The city finally produced the report last month, and the document, according to a number of labor advocates, reveals just how deeply flawed the city's living wage policy and enforcement system really are. For starters, the city's report sides with LAZ Parking in Castro's dispute, despite significant evidence that the company underpaid him, and notwithstanding a state ruling last year in Castro's favor. What's more, the city has used its report as an opportunity to reinterpret a critical part of the living wage law in a manner that benefits contractors and hurts low-wage workers.

"The living wage ordinance was made to help employees," said Castro, a sixty-year-old Concord resident and former LAZ Parking cashier. "It's the city's job to make sure things are done right."

Castro's case — and the city's new interpretation of the living wage law —

center on the health care contribution requirements laid out in the ordinance. At current rates, employers must pay an hourly wage of \$13.71 plus a medical benefit equivalent to at least \$2.28 per hour. If an employer does not provide an employee with the medical benefit, then it must pay the additional \$2.28, meaning an hourly wage of \$15.99, according to the law.

LAZ Parking, as Castro outlined in formal allegations in 2012, paid him the lower rate, which was \$12.76 per hour when he started working for the company in July 2011. But LAZ did not pay for his health benefits. That's because the package LAZ offered, Castro said, would have been significantly more expensive for him than his insurance plan with Contra Costa County (the Contra Costa Health Plan). That meant that LAZ, according to his complaints, was obligated to pay him the higher rate — at that time, \$14.88 per hour. After discussions with his managers and multiple city officials got him nowhere, Castro filed a complaint with the state labor commissioner's office in 2012. And in 2013, the state issued a ruling in his favor, declaring that LAZ had violated Berkeley's living wage law and should have paid the higher rate, amounting to a total of \$2,245 in back wages. LAZ has since paid Castro this amount.

But in the city's recent report on LAZ, Berkeley City Manager Christine Daniel wrote that the state's decision in support of Castro was "incorrect" and contrary to the living wage ordinance. Because LAZ had *offered* Castro health care benefits, the company was allowed to pay him the lower \$12.76 rate, Daniel wrote. And to ensure that employees understand this in the future, the report continued, the city has revised its living wage website to include this statement: "If an employer pays for health coverage and an employee elects not to receive coverage, the employer is permitted to pay the lower hourly rate."

Because this is a new statement on the website — and one that is nowhere to be found in the actual ordinance — the revision has alarmed labor advocates who argue that the city is not only endorsing LAZ's decision to underpay employees, but is going a step further and establishing this practice as acceptable policy. "It essentially eviscerates the law," said Carole Vigne, director of the wage protection program of the Legal Aid Society-Employment Law Center. "This new interpretation ... feels like a tremendous loophole."

Vigne is one of several Employment Law Center attorneys who have represented Castro in the course of his multi-year fight against LAZ. The labor commissioner's office also ruled last year that the company also owed Castro \$939.24 for denying him rest breaks, a violation separate from the living wage concerns. Castro has further alleged retaliation, because LAZ terminated him in 2012 after he complained about the living wage violations; a decision in this separate retaliation case is pending, after labor hearings concluded last month.

In its 2013 ruling on Castro's living wage complaint, the California labor commissioner's office noted that when employers don't provide medical benefits, there is a "clear directive" in the Berkeley living wage ordinance that employers "shall" pay the higher rate: "There is nothing in the Ordinance that allows an employee entitled to its benefits to waive his right to those benefits," the state hearing officer wrote.

Vigne, too, argued that, regardless of the city's elaborations on its website, the enforceable language of the ordinance says employers must "provide" medical benefits or the higher wage: "Provide means to give, it doesn't just mean to offer," she said. Vigne also shared with me printouts of older versions of Berkeley's living wage web pages, pointing out that, even in the city's detailed FAQ section on the law, "there was no suggestion anywhere on their website that this is how the living wage ordinance was intended to be interpreted."

It's unclear why exactly the city is taking a position that shortchanges low-wage workers. In her report, Daniel cited a September 2000 city memo on the living wage ordinance that said employers could pay the lower hourly

rate when employees decline an offer of health coverage. But Vigne sent me a June 2000 memo from the Berkeley commission on labor that emphasized that one of the objectives of the living wage law was to help employees access "reasonable health insurance." And regardless of the debates around interpretation, living wage laws should not prevent low-wage workers from buying a health-care plan that is cheaper than the one offered by the employer, said Gina Gemello, an Employment Law Center project attorney who has also represented Castro. "If an employee can get insurance coverage for half of what the employer offers, then why would the city stand against them?" said Castro.

Berkeley City Councilmember Jesse Arreguín — who has been in contact with Castro for years and has repeatedly asked the city to address complaints against LAZ — said he also disagrees with the city's new interpretation of the law and plans to introduce legislation later this year that would revise the ordinance to make clear that contractors must provide health care or pay the higher wage. "If an employee is able to get health care at a much cheaper rate, the employer should help contribute to that," he said, adding, "I was very surprised when the city took a position trying to disprove the state. ... The law was intended to favor the worker, not management."

In response to Daniel's report, Arreguín issued a memo last week questioning why the city has been so slow to respond to complaints about LAZ and why its report ignores Castro's allegations of retaliation entirely. The living wage law explicitly prohibits retaliation and discrimination against a person who reports a violation, meaning the city's enforcement of the law and investigation into LAZ should have addressed concerns of retaliation. Arreguín's memo also questioned whether the city has followed up on a complaint from another former LAZ employee, Chauncy Taylor, who, like Castro, said she was paid the lower rate and did not receive health benefits.

Though Taylor outlined her situation in great detail to Arreguín's office — which forwarded the claims to the city manager more than a year ago — Taylor has not received any back wages and it's unclear if the city has done any investigation into her case. Taylor said in an interview that no city official other than Arreguín's office has ever contacted her about her claims. Further, Taylor said LAZ never even offered her health benefits in the first place because she was technically a part-time employee. That means that, even with the city's new interpretation of the law, she could have a strong case. And her situation is a clear illustration of the impacts of a flawed living wage law: When she worked for LAZ, she was uninsured.

"It would really help if they could come through," said Taylor, noting that her landlord just raised her rent and that she continues to struggle to make ends meet. "I am praying and hoping that they come around. At this point, I'd be okay if they just gave me half. Times are so hard."

Chakko declined to answer any questions about LAZ Parking or the living wage law, saying the city plans to issue a response to Arreguín's memo. LAZ representatives did not respond to multiple requests for comment.

Contact the author of this piece, send a letter to the editor, like us on Facebook, or follow us on Twitter.

« A Battle for Profits

The Fight to Develop West Oakl... »



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR
January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Cheryl Davila and Ben Bartlett

Subject: Adopt a resolution to denounce and oppose white nationalist and neo-Nazi groups including their actions.

RECOMMENDATION

Adopt a resolution denouncing and opposing, in words and actions, white nationalist and neo-Nazi groups including their actions in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

No general fund impact.

ENVIRONMENTAL SUSTAINABILITY

No ecological impact. Supports an environment in which all people's dignity, rights and civil liberties are protected and defended regardless of race, ethnicity, national origin, religious affiliation, kinship, belief, or practice, gender, sexuality or ability and where people most targeted by prejudice can be free from hate speech that questions their humanity and status as equal human beings.

BACKGROUND

According to the Southern Poverty Law Center, "white nationalist groups espouse white supremacist or white separatist ideologies, often focusing on the alleged inferiority of nonwhites. Groups listed in a variety of other categories - Ku Klux Klan, neo-Confederate, neo-Nazi, racist skinhead, and Christian Identity - could also be fairly described as white nationalist."¹

As documented in the November 3, 2018 cover article of the New York Times Magazine, since 9/11, U.S. counter-terrorism policy has focused almost entirely on

¹ Southern Poverty Law Center: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>.

combating American and foreign-born “jihadists,” failing to recognize the growing threat of far-right extremism. This has contributed to widespread vigilante attacks on, government surveillance and repression of, and sweeping policies that discriminate against Muslim, Arab and South Asian communities. Meanwhile, it has failed to address the growing threat and presence of white nationalists and neo-Nazis across the U.S.²

As Janet Reitman’s article documents, according to the data, far-right extremists have killed more people since 9/11 than any other category of domestic terrorism. According to the Anti-Defamation League, “71% of extremist-related deaths between 2008 and 2017 were committed by members of a far-right movement, while Islamic extremists were responsible for 26%.” Meanwhile, “between 2002 and 2017, the U.S. spent \$2.8 trillion on counterterrorism. In that time frame, terrorist attacks by Muslim extremists killed 100 people in the U.S. Between 2008 and 2017, meanwhile, domestic extremists killed 387 people.”³

Researchers at the University of Maryland published a report in 2017 showing an increase in attacks by right-wing extremists, from 6% in the 2000s to 35% in the 2010s. Quartz further confirmed that the trend persisted in 2017, when most attacks in the U.S. were committed by right-wing extremists. Out of 65 incidents last year, 37 were explicitly motivated by racist, anti-Muslim, homo/transphobic, anti-Semitic, fascist, anti-government, or xenophobic ideology.⁴

Reitman concludes, “These statistics belie the strident rhetoric around ‘foreign-born’ terrorists that the Trump administration has used to drive its anti-immigration agenda.” Similar conclusions were reached by The Brennan Center for Justice at NYU School of Law. Their report, *Wrong Priorities on Fighting Terrorism*, warns, “Some in the Justice Department are calling for new laws to fight domestic terrorism. But existing laws provide plenty of authority to prevent, investigate, and prosecute attacks. And passing new ones could worsen existing racial and religious disparities in who the government targets. Instead, we need a smarter approach that ensures resources are directed toward the deadliest terrorist threats. And we need to evaluate those threats based on objective evaluations of potential harm, not political considerations that prioritize some communities over others.”⁵

² Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don’t Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

³ Ibid

⁴ Romero, Luiz. US terror attacks are increasingly motivated by right-wing views. *Quartz*. October 24, 2018. <https://qz.com/1435885/data-shows-more-us-terror-attacks-by-right-wing-and-religious-extremists/>.

⁵ German, Michael and Sara Robinson. Wrong Priorities on Fighting Terrorism. *The Brennan Center for Justice*. October 31, 2018. <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

The report documents the ways in which while right-wing acts of mass violence are on the rise, the government is focused on an ideological war against Muslims and failing to address the rise of white nationalism and neo-Nazi threats despite the documented acts of violence they inspire and hateful goals of their activities. In addition, the report documents the decision of the Trump administration to not add white nationalist and neo-Nazi groups, both domestic and international, to the list of foreign or domestic terrorist organizations.⁶ Furthermore, it demonstrates that instead the federal government has consistently targeted social and environmental justice organizations over right-wing groups threatening and enacting mass violence.

As their report shows, in 2010, even the Justice Department criticized the FBI Joint Terrorism Task Force for a number of investigations of animal rights, peace, and social justice advocates for treating trespassing, nonviolent civil disobedience, and vandalism as “acts of terrorism.” Similarly, the report goes on to say, “in the weeks before the deadly Charlottesville, Virginia, “Unite the Right” rally, the FBI’s Domestic Terrorism Analysis Unit warned law enforcement that “Black Identity Extremists” posed a deadly threat, despite the fact that no such movement exists.”

Meanwhile, the Justice Department failed to bring federal charges after a series of violent far right riots around the country, in Sacramento, Anaheim, and Seattle – all before Charlottesville, left anti-racist counter-protesters stabbed, beaten, and shot.⁷ In contrast, under Trump, “federal prosecutors aggressively pursued more than 200 felony conspiracy cases against activists and journalists who attended a January 20, 2017, anti-Trump protest, where some in the crowd broke store windows and set a limousine on fire. After two trials of the first dozen activists ended with acquittals and the judge ruled prosecutors illegally withheld evidence from defense attorneys, the Justice Department dropped the remaining cases.”⁸

The report concludes that “there is reason to fear that new laws expanding the Justice Department’s counter-terrorism powers will not make Americans safer from terrorist violence. Instead, they may further entrench existing disparities in communities the government targets with its most aggressive tactics, with serious implications for Americans’ free speech, association, and equal protection rights. Treating civil disobedience and property crimes as “terrorism” diverts resources from more serious and deadly crimes and chills political activism.”⁹

⁶ Ibid, page 4.

⁷ Ibid, page 2.

⁸ Ibid, page 3.

⁹ Ibid, page 3.

We have seen this very dynamic play out in Berkeley. White nationalists and neo-Nazis in collaboration with a broader spectrum of extreme right-wing groups and individuals have been allowed to use public university spaces and gather with police protection while anti-racist activists faced arrests and public exposure. In keeping with our resolution of non-participation with the so-called “Muslim-ban” and threatened registry and support for Berkeley communities, residents, families, students and workers being targeted by both, as well as our commitment to ending the use of exposing those arrested at protests on social media and thereby exposing them to targeting by white nationalists, we need to denounce white nationalist and neo-Nazi groups and actions.

Increasingly, civil liberty organizations, law schools and anti-hate groups are recognizing that while free speech protects the rights of white nationalists and neo-Nazis to say some things, it does not protect their right to say anything nor to gather with the intent of inciting violence or hurling hate speech at individuals.¹⁰ Furthermore, organizations from the ACLU to the Center for Constitutional Rights to the National Lawyers Guild are engaging in questions about the valuing of “free speech” at the expense of other basic constitutional rights, particularly those most targeted by racist, xenophobic, sexist, homo/transphobic violence.¹¹

CONTACT PERSON

Cheryl Davila, Councilmember District 2 510.981.7120

ATTACHMENTS:

- 1: [U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It.](#) New York Times Magazine, November 3, 2018.
- 2: [US terror attacks are increasingly motivated by right-wing views.](#) Quartz, October 24, 2018.
- 3: [Wrong Priorities on Fighting Terrorism.](#) The Brennan Center for Justice. October 31, 2018.
- 4: [The White Nationalists Are Winning: Fox News anchors and high-profile politicians are now openly pushing the racism of the alt-right. The fringe movement's messages have permeated the mainstream Republican Party.](#) The Atlantic. August 10, 2018.
- 5: [Democrats ask Trump administration for answers on rise of white nationalism in US.](#) CNN Politics. November 27, 2018.
- 6: Southern Poverty Law Center page on white nationalist hate groups:
<https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>

¹⁰ Campbell, Alexia Fernandex. [The limits of free speech for white supremacists marching at Unite the Right 2, explained: The First Amendment doesn't protect targeted racial slurs that could spark violence.](#) Vox. Aug 12, 2018.

¹¹ Blasdel, Alex. [How the resurgence of white supremacy in the US sparked a war over free speech.](#) The Guardian. May 31, 2018.

7: [The limits of free speech for white supremacists marching at Unite the Right 2, explained: The First Amendment doesn't protect targeted racial slurs that could spark violence.](#) Vox. Aug 12, 2018.

8: [How the resurgence of white supremacy in the US sparked a war over free speech.](#) The Guardian. May 31, 2018.

9: [Powerful photo essay on the rise of white nationalism - Documenting the Rise of White Nationalism.](#) The New York Times. October 17, 2018.

10: Georgetown Institute for Constitutional Advocacy & Protection: Prohibiting Private Armies at Public Rallies: <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>.

RESOLUTION

CITY OF BERKELEY DENOUNCES AND OPPOSES WHITE NATIONALIST AND
NEO-NAZI GROUPS AND ACTIONS.

WHEREAS, throughout the course of U.S. history, white nationalism has promoted intimidation and violent repression of individuals solely on the basis of their race, ethnicity, religion and immigration status; and

WHEREAS, today, white nationalism has attempted to reinvent itself, self-identifying as the “Alt-Right,” yet their present day rhetoric and terrorism conjure painful memories of our nation’s past; and

WHEREAS, white nationalism and neo-Nazism seek to intensify racial animosities and inequities, further divide people in their shared interests in freedom, justice and humanity and foment hatred, classism, racism, xenophobia, anti-Muslim prejudice, antisemitism and ethnic eradication; and

WHEREAS, across the country there has been a rise in public expressions and violence by self-proclaimed white nationalists and neo-Nazis;¹² and

WHEREAS, 71% of extremist-related deaths between 2008 and 2017 were committed by members of a far-right movement and there has been an increase in attacks by right-wing extremists, from 6% in the 2000s to 35% in the 2010s;¹³ and

WHEREAS, out of 65 incidents in 2017, 37 were explicitly motivated by racist, anti-Muslim, homo/transphobic, anti-Semitic, fascist, or xenophobic ideology; ¹⁴ and

WHEREAS, while free speech and assembly are bedrock civil liberties, while nationalists and neo-Nazi groups promote agendas that are in irreconcilable conflict with other fundamental rights including liberty and justice for all; and

WHEREAS, the white nationalist and neo-Nazi messages of racial and social intolerance have led to senseless acts of violence that continue to terrorize members of ethnic, racial and religious communities; and

¹² Southern Poverty Law Center: <https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist>.

¹³ Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

¹⁴ Romero, Luiz. US terror attacks are increasingly motivated by right-wing views. *Quartz*. October 24, 2018. <https://qz.com/1435885/data-shows-more-us-terror-attacks-by-right-wing-and-religious-extremists/>.

WHEREAS, the federal government has failed to address the rising violence of white nationalists and instead focused its effort on a broad, sweeping attack against what is perceived as a foreign terrorist threat abroad and at home, despite the numbers showing double the attacks by the former over attacks by the later;^{15,16, 17} and

WHEREAS, recent tragic and terrorizing events in Berkeley, Charlottesville, Sacramento, Anaheim, Portland and Seattle have proven that white nationalists and neo-Nazis remain a very real threat to safety, humanity and racial justice.

NOW, THEREFORE BE IT RESOLVED that the City of Berkeley strongly denounces and opposes the fascistⁱ impulses, violent actions, xenophobic biases, and bigoted ideologies that are promoted by white nationalists and neo-Nazis; and

BE IT FURTHER RESOLVED that the City of Berkeley will not tolerate discrimination or hate in any form or manifestation and that we stand united with resolve to promote and continue to secure equality for all people.

ⁱ “The common elements of fascism — extreme nationalism, social Darwinism, the leadership principle, elitism, anti-liberalism, anti-egalitarianism, anti-democracy, intolerance, glorification of [war](#), the supremacy of the state and anti-intellectualism — together form a rather loose doctrine.” Ian Adams, [Political Ideology Today](#).

¹⁵ Reitman, Janet. U.S. Law Enforcement Failed to See the Threat of White Nationalism. Now They Don't Know How to Stop It. *New York Times Magazine*. November 3, 2018. <https://www.nytimes.com/2018/11/03/magazine/FBI-charlottesville-white-nationalism-far-right.html>.

¹⁶ German, Michael and Sara Robinson. Wrong Priorities on Fighting Terrorism. *The Brennan Center for Justice*. October 31, 2018. <https://www.brennancenter.org/publication/wrong-priorities-fighting-terrorism>.

¹⁷ [Democrats ask Trump administration for answers on rise of white nationalism in US](#). CNN Politics. November 27, 2018.

**REVISED
AGENDA MATERIAL
for Supplemental Packet 2**

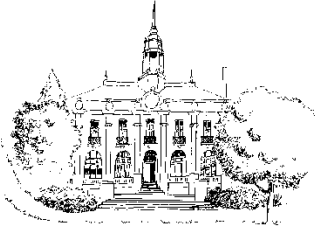
Meeting Date: October 16th, 2018

Item Number: 21

Item Description: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

Submitted by: Councilmember Worthington

Add Councilmember Harrison as co-sponsor.



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@cityofberkeley.info

CONSENT CALENDAR

October 16, 2018

To: Honorable Mayor and Members of the City Council
From: Councilmember [Cheryl Davila, Kate Harrison, and](#) Kriss Worthington
Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission

RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the City to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:
<https://drive.google.com/file/d/1V9nY1BeWSbFOlgb7YF5opB4rkBKvBqd/view?usp=sharing>

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

ORDINANCE NO. -N.S.

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

Section 1. Title

This ordinance shall be known as the Sanctuary City Contracting Ordinance.

Section 2. Definitions

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
 - a) 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 businesses and government agencies;
 - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

Section 3. Prohibition on Use of City Resources

- 1) No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
 - a) The intent and purpose of this ordinance;
 - b) The availability of alternative services, goods and equipment; and
 - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
 - a) Information published by reliable sources
 - b) Information released by public agencies
 - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
 - d) Information submitted to the City Manager by any member of the public, and thereafter duly verified
- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the

determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

Section 4. Investigation And Reporting

- (a) The City Manager, or his or her designee, shall review compliance with Section 3. The City Manager may initiate and shall receive complaints regarding violations of Section 3. After investigating such complaints, the City Manager shall issue findings regarding any alleged violation. If the City Manager finds that a violation occurred, the City Manager shall, within 30 days of such finding, send a report of such finding to the City Council, the Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Sections 3.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Manager.
- (c) By May 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section 3 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 3, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance.

Section 5. Enforcement

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

Section 6. Severability

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 7. Construction

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

Section 8. Effective Date

This Ordinance shall take effect on [DATE].



Kriss Worthington

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PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@cityofberkeley.info

ACTION CALENDAR

January 29, 2019

(Continued from November 13, 2018)

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington, Councilmember Cheryl Davila, and
Councilmember Ben Bartlett

Subject: Adopt the Sanctuary Contracting Ordinance proposed by the Peace and Justice
Commission

RECOMMENDATION:

That the City Council adopt the attached Sanctuary Contracting Ordinance proposed by the Peace and Justice Commission. This ordinance prohibits the award of city contracts to vendors acting as ICE data brokers, or those providing extreme vetting services.

BACKGROUND:

The City Council has previously referred a draft ordinance to the Peace and Justice Commission, and the Commission has reviewed, amended, and recommended the adoption of this ordinance, by a vote of 5-0 with two absent members. This updated and refined version of the Sanctuary Contracting Ordinance by the Peace and Justice Commission would prohibit the award of city contracts to ICE vendors acting as "Data Brokers" or those who provide "Extreme Vetting" services. By adopting this ordinance, the City of Berkeley will protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities. It is the duty of the city to uphold and promote values of inclusion and shared prosperity.

Here is a link to the Peace and Justice Commission Recommendation with track changes:
<https://drive.google.com/file/d/1V9nY1BeWSbFOlgb7YF5opB4rlkBKvBqd/view?usp=sharing>

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

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 - b) The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.
- 5) "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition.

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 - a) The intent and purpose of this ordinance;
 - b) The availability of alternative services, goods and equipment; and
 - c) Quantifiable additional costs resulting from use of available alternatives.The following process shall be followed in considering a waiver: the City Manager or designee shall file a waiver request with the Peace and Justice Commission. The Commission shall weigh the above considerations and make a recommendation to the City Council. The Council shall make the final decision on granting the waiver.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.
- 3) For the purpose of determining which Person or Entity provides ICE with Data Broker or Extreme Vetting services, the City Manager shall rely on:
 - a) Information published by reliable sources
 - b) Information released by public agencies
 - c) A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
 - d) Information submitted to the City Manager by any member of the public, and

thereafter duly verified

- 4) Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) days of the determination.

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Section 5. Enforcement

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, and any other prior violations of this ordinance by the City department that committed the violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- (e) Any Person or Entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

Section 6. Severability

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 7. Construction

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

Section 8. Effective Date

This Ordinance shall take effect on [DATE].



Office of the City Manager

19INFORMATION CALENDAR

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: City Council Short Term Referral Process – Monthly Update

INTRODUCTION

This report is a monthly update on the status of short term (90-day) and other date-certain Council referrals.

CURRENT SITUATION AND ITS EFFECTS

In this context, tracking refers to a manually updated chart (Attachment 1). The May 15, 2018 Council referral establishing the monthly update includes both “short term” and “date-certain” referrals. Short term referrals are referrals that staff determines they will be able to complete in approximately three months. Date-certain referrals are those which contain a specified date of completion at the time they are approved by the City Council. Currently, the City only tracks short term referrals in an Excel spreadsheet.

Providing a monthly update on all short term and date-certain referrals will allow Council and the public to see the status of these referrals and any circumstances which lead to delays.

BACKGROUND

In 2016, the City Council adopted a system of Re-Weighted Range Voting (RRV) to prioritize the outstanding City Council referrals to staff. The RRV system enables City Council to provide direction to staff on which referrals are highest priority to the City Council. However, that process does not provide information on the status of short term or date-certain referrals. While many short term or date-certain referrals were “updated” through being completed and presented to Council as consent or information items, there was no comprehensive overview of this subset of referrals.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Council may wish to direct staff to evaluate this process after it has been in place six months.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No direct fiscal impact. Greater efficiencies in staff resources due to prioritization of work and alignment with budget and strategic plan goals.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1: Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.	Councilmember(s)	Worthington (Dist. 7)	Planning	7/28/2014	Completed			9/7/2016
Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley.	Councilmember(s)	Moore (Dist. 2)	Planning	3/16/2015	Completed			1/24/2017
Refer to the Community Environmental Advisory Commission to explore requiring a maximum of 1.8 GPM low flow showerheads in new housing projects and all housing renovations exceeding \$50,000 throughout Berkeley.	Councilmember(s)	Worthington (Dist. 7)	Planning	12/14/2015	Completed			7/19/2016
Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.	Councilmember(s)	Arreguin (Dist. 4)	HHCS	12/14/2015	Completed			
Review and consider information regarding the activities and costs associated with implementing and enforcing the Commission on Labor's proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, non-profit organizations and community-based organizations, on-call workers and youth training program workers, and either: 1. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99, which includes staff-recommended revisions to the Commission's proposed Ordinance; -OR- 2. Refer the MWO back to the City Manager for further analysis and revisions.	Councilmember(s)		CMO	2/8/2016	Completed			9/1/2016
No recommendation noted. Action: Moved to Consent Calendar and held over to January 19, 2016. Fire to report back in May 2016 for permanent program.	Councilmember(s)		Fire	2/15/2016	Completed			7/1/2018
Refer to the City Manager to adopt a Pilot Program to implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley.	Councilmember(s)	Worthington (Dist. 7), Maio (Dist. 1), Wengraf (Dist. 6), Droste (Dist. 8)	Public Works	2/29/2016	Completed		6/2018 RFPs received; 2 solar compactors to be issued contracts.	7/24/2018

Key: Highlighting indicates an update from the previous month/report.

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Refer to the City Manager and Planning Commission an immediate implementation strategy to bring the City Zoning Ordinance in compliance with the policy adopted by City Council to increase Floor Area Ratio (FAR) in the Telegraph Commercial District between Dwight and Bancroft	Councilmember(s)	Worthington (Dist. 7)	CMO	2/29/2016	Completed			
Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.	Councilmember(s)	Arreguin (Dist. 4)	HHCS	3/14/2016	Completed		2 is completed. 1 was later prioritized long term as top priority of Council's housing action plan. Plan outline complete and will bring before HAC in July 2018.	12/13/2016
Refer to the City Manager to determine the cost to make the appropriate repairs so that it will be safe for public use.	Councilmember(s)	Moore (Dist. 2)	CMO	3/14/2016	Completed			3/14/2017
Refer to the City Manager and City Attorney to draft an ordinance amending Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) to allow the submission of revised or supplemental agenda material for the Supplemental Communications Packet 2. The revised or supplemental material must be submitted no later than 12 noon the day of the City Council meeting at which the item is to be considered. The online version of the City Council agenda shall also contain a link to such items. If revised agenda material is submitted by this deadline, it would not require a two-thirds vote of the Council to accept the material.	Councilmember(s)	Arreguin (Dist. 4), Capitelli (Dist. 5), Wengraf (Dist. 6), Droste (Dist. 8)	CMO/City Attorney	3/14/2016	Completed			
Refer to the City Manager and the Rent Stabilization Board to draft an ordinance regulating situations where a tenant agrees to vacate a rent-controlled unit in exchange for a sum of money, known as a buyout.	Councilmember(s)	Arreguin (Dist. 4.)	CMO	4/18/2016	Completed			3/31/2016
Refer to the City Manager to develop a provision for the Landmarks Preservation Ordinance (LPO) that would allow a landmark designation to be de-designated for a building that has been previously landmarked but subsequently has been legally demolished.	Councilmember(s)	Moore (Dist. 2)	CMO	5/9/2016	Completed			5/10/2016
Refer to the 2016 Mid-year budget process the purchasing of BigBelly Solar Compactor Bins in order to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Councilmember(s)	Worthington (Dist. 7), Droste (Dist. 8)	Public Works	5/9/2016	Completed		6/2018 RFPs received; 2 solar compactors to be issued contracts.	7/24/2018
Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.	Councilmember(s)	Mayor, Arreguin (Dist. 4)	Public Works	6/13/2016	Completed			5/10/2016

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause.	Councilmember(s)	Worthington (Dist. 7)	HHCS	7/4/2016	Completed			7/19/2016
Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.	Councilmember(s)	Arreguin (D4)	IT	7/25/2016	Completed			11/15/2016
ABAG has a new report and the City Council has voted twice in favor; thus, the City of Berkeley should approve and sign an agreement for collaborative services for Property Assessed Clean Energy Financing (PACE) marketplace. Also, that the City of Berkeley approve and sign acknowledgement addendum of RCSA, as executed between ABAG and RPPs.	Councilmember(s)	Worthington (D7)	City Attorney	8/8/2016	Completed			9/20/2016
Refer to the City Manager to consider adding Energy Efficient Equity as an additional property assessed clean energy program.	Councilmember(s)	Worthington (D7)	Planning	8/29/2016	Completed			9/20/2016
Request the City Manager direct staff to prepare a report outlining the details of City funded homeless services. The purpose of this report is to help Council and the community understand the various factors related to the allocation of resources to address homelessness within the City. Once the report is complete, it is requested that city staff schedule a worksession to go over the findings.	Councilmember(s)	Capitelli (D5)	HHCS	8/29/2016	Completed			11/1/2016
Refer to the City Manager to consider investing in a high-capacity scanner to digitize City records for the Council and multiple City departments.	Councilmember(s)	Worthington (D7)	Information Technology	9/26/2016	Completed			12/12/2017
That the City Manager consider applying for the \$100,000 grant that PG&E's Better Together Resilient Communities grant program will offer in the beginning of 2017.	Councilmember(s)	Worthington (D7)	Planning	10/10/2016	Completed			2016
Refer to staff to write an ordinance based on the Community Health Commission (CHC) recommendation with the changes suggested by staff.	Councilmember(s)	Staff	HHCS	10/17/2016	Completed			11/29/2016
Refer to the City Manager to consider the four recommendations in response to the Alameda County Grand Jury Report recommendations.	Councilmember(s)	Worthington (D7)	IT	12/19/2016	Completed			10/20/2016

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Direct staff to return with a policy recommendation consistent with the recommendations in this report, i.e., noting that as a matter of courtesy and respect, Councilmembers are expected to set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner not less than two weeks from the official date of replacement.	Councilmember(s)	Commission	City Clerk	12/19/2016	Completed	6/12/2018	Incorporating changes from City Council.	6/12/2018
Refer to the City Manager to examine the feasibility of procuring BigBelly Solar Compactor Bins to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Councilmember(s)	Worthington (Dist. 7)	Public Works	12/19/2016	Completed		6/2018 RFPs received; 2 solar compactors to be issued contracts.	7/24/2018
Request the City Manager draft a resolution to revise the Public Art in Private Development Program Guide to provide the Civic Arts Commission guidance and more flexibility in the use of the Cultural Trust Fund with the language suggested in the report.	Councilmember(s)	Mayor	OED	1/16/2017	Completed			12/13/2016
Request the City Manager draft an ordinance for Council adoption to revise BMC 23C.23.050, the One-Percent for Public Art on Private Projects Ordinance, to do the following: 2. Allow developers the third option of satisfying the Percent for Art requirements with a combination of on-site art and in-lieu payment by modifying BMC 23C.23.050 with suggested language from the report.	Councilmember(s)	Mayor	Planning	1/16/2017	Completed			12/13/2016
Request the City Manager draft an ordinance for Council adoption to revise BMC 23C.23.050, the One-Percent for Public Art on Private Projects Ordinance, to do the following: 1. Have 5% of the 1% requirement go directly to administration of the Public Art in Private Development program regardless of how the developer decides to satisfy the requirement;	Councilmember(s)	Mayor	OED	1/16/2017	Completed			1/24/2017

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Refer the following actions to the City Manager to consider in developing a plan for emergency shelter/services during the upcoming winter season. These actions will help implement Resolution No. 67,357-N.S. "Declaring a Homeless Shelter Crisis in Berkeley": 1. Allow full use of the Multi-Agency Service Center (MASC) at 1931 Center Street as a Warming Center. Direct the City Manager to study the feasibility of using the West Berkeley Senior Center as a day-time Warming Center or evening shelter. Engage in discussions with Dorothy Day House about a day-time respite center. 2. Direct staff to develop a winter shelter services program for Fall 2016-Spring 2017 with funding to increase warming centers and emergency shelter. 3. Direct staff to work with service providers and faith-based organizations who have capacity, to add shelter beds during the year. 4. Direct that all bathrooms in City-owned buildings be available to homeless people for use at the City Manager's discretion. 5. Prioritize people on the street for Housing First funds who are in frail health, disabled, or with special needs and have a source of income. Direct the City Manager to create a list of city-owned properties that could be used for a Tiny House development for the homeless, a successful and growing model for dense urban regions.	Councilmember(s)	Arreguin	HHCS	1/16/2017	Completed			6/27/2017
Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.	Councilmember(s)	Worthington (D7)	City Attorney	1/30/2017	Completed			12/13/2016
Request that the City Manager draft ordinance language to amend Section 16.10.100 of the Berkeley Municipal Code to include Standards for Testing and Certification of DAS Antennas and return to the City Council within 60 days.	Councilmember(s)	Wengraf (D6)	City Attorney	3/13/2017	Completed			3/28/2017
Request that the City Manager ensure that all City buildings provide and maintain at least one private place reasonably close to an employee's workspace for breastfeeding mothers to pump.	Councilmember(s)	Droste	City Manager	4/24/2017	Completed			7/1/2017
Request that the City Manager create a provision and enforcement mechanism to ensure that all publically-accessible City buildings install and maintain at least one baby diaper-changing accommodation that is accessible in both men and women's restrooms or a single diaper-changing accommodation that is accessible to all genders. In addition, request that the City Manager provide recommendations to mandate all businesses to provide changing stations in either women's and men's restrooms or gender-neutral restrooms.	Councilmember(s)	Droste	City Manager	4/24/2017	Completed			7/1/2017
Request that the City Manager provide an information report to Council with analysis of the questions presented by Councilmember Hahn.	Councilmember(s)	All	Planning	5/1/2017	Completed			6/13/17, Item #60
Request that the Planning Commission consider the six location limit on an expedited basis and the use a first-come/first served application process.	Councilmember(s)	All	Planning Commission	5/1/2017	Completed			7/11/17, Item #35

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Request that the City Manager return to the City Council in April with an Information Report on Measure M implementation, expenditures, projected expenses and plans.	Councilmember(s)	Wengraf (D6)	Public Works	5/15/2017	Completed			5/2/2017
REFER to the City Manager to enact a pilot program in downtown Berkeley with the goal of greatly reducing cigarette butt litter that accumulates on sidewalks and curbsides, in a central location. This pilot program would: a) Place a total of four receptacles for cigarette butt disposal in front of three adult schools and a bus stop where smoking behavior continues despite its prohibition. The receptacles are to be placed in front of: i. Berkeley City College, 2050 Center Street; ii. Language Studies International on 2015 Center Street; iii. Kaplan International, Berkeley, 150 Berkeley Square; and iv. a selected major bus stop in the vicinity of an entrance to the Downtown Berkeley BART station; and b) Exhibit graphics on the receptacles to remind and inform the public that tobacco litter is hazardous to the health of the Bay; and c) Enter into a partnering agreement with the Downtown Berkeley Association (DBA) for upkeep of the receptacles for the duration of the one-year pilot program, including sending collected butts to the company for recycling; and d) TerraCycle® will track the weight of butts received, and share the data with the City of Berkeley and CEAC commissioners to help track and assess the success of the pilot program; and e) Identify funding sources to expand the pilot program if successful at the end of the one year trial.	Councilmember(s)	CEAC	OED	6/26/2017	Completed			5/30/2017
Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley. With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators - amended to include direction that guidelines protect privacy and prevent misuse of camera footage.	Councilmember(s)	Wengraf (D6)	Police	6/26/2017	Completed	9/30/2018	Item is near completion, though there have been delays associated with preparations for August 5th demonstrations.	8/15/2018
Adopt a Resolution approving the Berkeley Bicycle Plan 2017, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.	Councilmember(s)		Public Works	No date specified	Completed			
Eliminate the requirement for Commissioners to submit Affidavits of Residency when they are appointed, and annually thereafter, in pursuit of saving time and money for the City of Berkeley. Revised Materials - http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx	Councilmember(s)	Wothington (D7)	City Clerk	8/28/2017	Completed			9/12/2017

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Request the City Manager to create and fill the position of Housing Inspection and Community Services Manager.	Councilmember(s)	Arreguin	Planning	9/25/2017	Completed	11/27/2018	New position approved by Personnel Board. Will bring to Council for adoption by November which will complete referral.	9/13/2018, Item #11
Direct the City Manager to expedite the compilation and delivery of a list of federal funds that the City of Berkeley receives and the programs and facilities supported by such funds.	Councilmember(s)	Hahn, Arreguin, Davila, Harrison	HHCS	10/23/2017	Completed	12/11/2018	HHCS is updating with the latest single audit findings.	12/11/2018
Refer to the City Manager and Cannabis Commission the proposed local ordinances to establish a licensing process for Commercial Cannabis operations, as permitted under Proposition 64, Adult Use of Marijuana Act. The Council requests that the City Manager and Cannabis Commission report to the City Council on its recommendations on regulations and licensing for commercial cannabis businesses before the end of 2017.	Councilmember(s)	Arreguin	Planning	10/23/2017	Completed	12/11/2018	Lengthy process involving 3 Commissions and many City departments. Some Ordinance changes will be at Council 9/13/18. But more will be needed. Council Worksession scheduled for 10/9/18, then adoption of more Ordinance changes expected by end of year, which will close this referral.	9/13/18, Item #24
Adopt first reading of an Ordinance, by two-thirds vote of the Council, amending Chapter 7.18 of the Berkeley Municipal Code to authorize the City Manager to enter into and amend contracts of up to \$200,000 with applicants recommended for funding by staff and the Housing Advisory Commission under the City's Community Development Block Grant (CDBG) program for community facility improvements.	Councilmember(s)		HHCS	7/24/2018	Completed			4/24/2018

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Direct the City Manager to provide voter registration forms on the main floor of all designated city buildings that are open to the public and in all Community based organizations within the city limits. Community based organizations that are funded by the City of Berkeley will be required to pick up the voter registration forms from the City Clerk's Office and that should be clearly stated in their respective contracts.	Councilmember(s)	Davila, Harrison, Hahn	City Clerk	12/11/2017	Completed			11/8/2017
Request that the City Manager in coordination with the Director of Planning and the Chief Building Official work to establish a voluntary parallel permitting process for applications to construct housing in the City of Berkeley.	Councilmember(s)	Wengraf, Maio, Droste, Arreguin	Planning	1/1/2018	Completed		This voluntary parallel permitting option already exists. Following October 2017 referral we advised Building	11/1/2017
Request that the City Manager work with the City's lobbyist to create and maintain a master list of the legislation on which the City Council has taken a formal position of support or opposition through passage of an item.	Councilmember(s)	Harrison, Hahn, Davila	City Clerk	1/1/2018	Completed			1/23/2018
Refer to the City Manager to approve a process for the relocation of Apothecarium, a cannabis dispensary with valid permits.	Councilmember(s)	Worthington	Planning	1/29/2018	Completed			1/23/2018
Prioritize new business before old business at City Council Meetings by: 1. Altering the Council rules of procedure as adopted May 24, 2016 so that new	Councilmember(s)	Worthington	City Clerk	3/5/2018	Completed			1/30/2018
Refer to the City Manager consideration of applying for CPUC interconnection applications.	Councilmember(s)	Worthington	Public Works	3/5/2018	Completed			4/4/2018
to refer the item as written in Supplemental Reports Packet #2 to the City Manager to conduct an analysis of the item, including a review of current indigency procedures and coordination with similar efforts in the City of Oakland, and report back to the Council in 90 days.	Councilmember(s)	Bartlett	Finance, Transportation, Cedric Cobb	7/1/2018	Completed			7/2/2018

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2018 to FY 2022. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.	Councilmember(s)		Public Works	6/26/2018	Completed			7/24/2018
Short Term Referral to City Manager to assess the feasibility to keep the West Campus Pool open all year round and to start COB Shower Program at the West Campus Pool. Keeping the West Campus Pool open all year round will provide equitable swimming options in both North Berkeley and in	Councilmember(s)	Davila, Bartlett, Harrison, Hahn	Parks	4/23/2018	Completed	9/15/2018	a) On June 12, 2018, Council received an Off Agenda Memo that identifies the cost to establish a shower program at	10/16/2018
4. Request that the City Manager expeditiously create a process for finding appropriate for-profit and non-profit interim uses; Continue conversations with the Berkeley Food Network for possible use of a portion of the site	Councilmember(s)	Hahn, Arreguin, Maio, Harrison	City Manager; Public Works	4/30/2018	Completed			7/24/2018
2. b. Provide an estimated timeline for development of the site.	Councilmember(s)	Hahn, Arreguin, Maio, Harrison	HHCS	4/30/2018	Completed			
2. Refer to the City Manager to take the following actions to initiate the process of developing Affordable Housing at Premier Cru, and report back to Council at or before the June 12, 2018 Council Meeting: a. Create a preliminary term sheet outlining the full development potential of the parcel,	Councilmember(s)	Hahn, Arreguin, Maio, Harrison	Planning	6/12/2018	Completed			5/29/18, Item #36
Refer to the City Manager to add a nonbinary gender option on the General Application for appointment to Berkeley boards and commissions.	Councilmember(s)	Droste, Maio, Wengraf, Worthington	City Clerk	5/14/2018	Completed			3/1/2018

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
A referral to the City Manager to submit a filing with the California Public Utilities Commission (CPUC) concerning the CPUC's current review of Electric Rule 20. The CPUC is considering, among other things, how the existing program is administered by the various utility companies operating in California and the definition of what projects are to be included in the public interest.	Councilmember(s)	Wengraf, Hahn, Arreguin, Droste	Public Works	5/14/2018	Completed			
To address the urgent firestorm risk demonstrated by the recent, devastating fires in Northern and Southern California: Direct the City Manager to report back to Council identifying the most important, financially feasible measures that can be deployed immediately or with relative speed and will have the greatest impact on prevention and/or on the safety of both people and property in the event of a catastrophic fire, earthquake or other disaster.	Councilmember(s)	Council	Fire	5/28/2018	Completed			
Refer to the City Manager a request to develop a cost estimate and an installation plan for installing sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer the cost estimate and plan to the Arts Commission.	Councilmember(s)	Bartlett, Harrison, Davila, Hahn	Public Works	6/11/2018	Completed			
1. Direct the City Manager to expedite implementation of two publicly available, secure storage facilities to accommodate as many individuals as possible, based on the parameters set in staff's March 2, 2018 RFI: Downtown Homeless Storage Pilot - Staffing and Operations and on additional parameters outlined in Program Details, below. 2. Direct the City Manager to	Councilmember(s)	Arreguin, Hahn, Harrison, N	HHCS	8/27/2018	Completed			7/24/2018
Make a referral to the City Manager to consolidate all City Commission Workplans in one place for easy (electronic) access for staff, the public, and elected officials.	Councilmember(s)	Hahn, Wengraf, Droste	City Clerk	10/8/2018	Completed			9/13/2018

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.	Councilmember(s)	Harrison	Planning	12/12/2018	Completed			10/1/2018
Refer to the City Manager to review draft Safe Storage of Firearms ordinance, identify and resolve issues, and return to Council within 90 days.	Councilmember(s)	Wengraf, Hahn	City Attorney	12/24/2018	Completed			
Request an analysis from the City Manager before the November budget discussion on the administrative impacts and cost to implement the lobbyist ordinance.	Councilmember(s)	Council	City Attorney/City Clerk	12/31/2018	Completed			
Refer to the City Manager and Planning Commission an immediate implementation strategy to bring the City Zoning Ordinance in compliance with the policy adopted by City Council to increase Floor Area Ratio (FAR) in the Telegraph Commercial District between Dwight and Bancroft	Councilmember(s)	Worthington (Dist. 7)	Planning	2/29/2016	Completed 6/28/2016 Item 39			6/28/2016
Refer to the City Manager and Transportation Department a review of the concerns, emerging regarding some features of the recently implemented GIG Car Share pilot program, request adjustments before the two-year pilot program from staff.	Councilmember(s)	Maio, Wengraf	Public Works	10/23/2017	Past Due	5/28/2019	The program evaluation will be conducted in early 2019 and an action report prepared for Council to continue, modify, or discontinue the pilot.	
Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall not fund or contribute to the financing of the public toilets or their maintenance.	Councilmember(s)	Bartlett	City Manager	10/23/2017	Past Due	January 2018	Staff transition led to a delay in developing this policy; the policy is currently under development.	

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
<p>1. Refer to the Transportation Commission consideration of additional or supplemental stop sign criteria which addresses the needs of vulnerable populations, the presence of bicycle boulevards, and the difficulty of crossing particular intersections. 2. Direct that staff consult with the Bicycle Subcommittee of the Transportation Commission when making decisions impacting bicycle boulevards, whenever possible. 3. Request that the City Manager provide an informational report on the particular state and federal warrants and local policies that prevent stop signs being used as traffic calming measures.</p>	Councilmember(s)	Harrison, Bartlett, Droste	Public Works	1/29/2018	Past Due		Transportation Commission formed a subcommittee and held first meeting 6/11/18, additional meetings to be planned by subcommittee	With Transportation Commission
<p>The Housing Advisory Commission respectfully requests that the Council direct the City Manager to assist the HAC in its review of the Smoke-Free Residential Housing Ordinance, a regulation of tobacco use, as follows: 1. By responding to the HAC's questions enumerated in the report with any readily available responsive information. 2. By facilitating the conduct of a "Berkeley Considers" questionnaire about the Smoke-Free Residential Housing Ordinance, questions for which are proposed in the report.</p>	Councilmember(s)	HAC	HHCS	7/23/2018	Past Due		Public Health has provided answers to the HAC's questions in the July 2018 packet. Questions for the Berkeley Considers poll have been developed and are awaiting distribution.	
<p>Adopt a Resolution providing \$2,400 from the General Fund to support a half-day Transgender Health Access Training for City of Berkeley Public Health staff in June 2018.</p>	Councilmember(s)	COSOW	HHCS	8/13/2018	Past Due	2/28/2019	Facilitator was not available. Tentatively scheduled training for February 2019. Contract documents in progress.	

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinances: 1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places. 2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks. 3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees. Additional Services: Refer to Council report.	Councilmember(s)	Maio (Dist. 1), Capitelli (Dist. 5), Droste (Dist. 8), Mayor Bates	CMO	2/15/2016	Pending Not On Schedule	7/24/2018	Amendments to Section 14.48 were adopted on 10/30. Staff is currently working on an implementation plan.	
Refer to the City Manager to issue a request for information to explore grant writing services from specialized municipal grant-writing firms, and report back to Council.	Councilmember(s)	Hahn, Harrison, Davila, Bartlett	Finance	1/1/2018	Pending Not On Schedule	9/30/2018	Issued #18-11201 Feb. 5, 2018 as an RFI (Request for information); closed March 1,	
Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days.	Councilmember(s)	Bartlett, Hahn, Davila	Finance	3/19/2018	Pending Not On Schedule	7/22/2018		
Direct the City Manager to amend the eligibility requirements of the Community Service In Lieu of Parking Penalties Program in order to allow all indigent individuals to be eligible to participate in the program (regardless of the registration status of a potential participant's vehicle).	Councilmember(s)	Bartlett, Davila, Harrison, Hahn	Public Works	10/29/2018	Pending Not On Schedule		Because this is a multidepartmental task assigned to Public Works, involving Finance and City Attorney, and administered by the City of Oakland, the completion date is unclear.	

CITY OF BERKELEY Short Term and Date-Certain Referrals

Recommendation	Referred by	Councilmember (District #)	Responsible Department/Division	Due Date	Status	Revised Due Date	Explanation for Delay	Date Completed
Referral to the City Manager to consider the following suggestions for requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations. Possible requirements may include: -Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment. -City government experience. -Council District residency. -Require standby officers to meet the same qualifications, including restrictions on conflict of interest, as required in the City Charter for City Councilmembers. -In addition, consider requiring Councilmembers to nominate three people in a single action.	Councilmember(s)	Wengraf, Arreguin, Hahn	City Clerk	12/12/2018	Pending Not On Schedule	1/22/2019	Ongoing discussion with City Attorney regarding potential criteria	
Refer to the City Manager and Transportation Commission to consider a pilot program for caregiver parking permits in RPP zones in the goBerkeley Residential Shared Parking Pilot.	Councilmember(s)	Wengraf (D6)	Public Works	6/12/2017	Pending On Schedule		Ongoing, part of 3-year pilot project (Spring 2018); staff will work with consultants to collect data to determine the various needs and constraints of all residential parking users, including those with childcare needs; subsequent policy proposals will balance these needs. Contract for outreach consultant is before Council on	



Office of the City Manager

20

INFORMATION CALENDAR
JANUARY 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Bill Burke, Code Enforcement Supervisor

Subject: Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight from June 26, 2018 – December 31, 2018

INTRODUCTION

On June 26th, 2018, the City Auditor submitted a Code Enforcement Unit audit report¹, with recommendations to improve operations efficiencies and implement a resource analysis process. The purpose of this report is to update City Council on the status of implementing the audit report's recommendations. This is the first status report regarding this audit.

CURRENT SITUATION AND ITS EFFECTS

The audit report contains twelve recommendations. As of the writing of this report, four of the recommendations have been implemented, and six of the recommendations have been partially implemented.

Please see Attachment 1 for a detailed table of audit report recommendations, corrective action plans, and implementation progress. The next status report is anticipated to be delivered to City Council July 9, 2019.

BACKGROUND

The City of Berkeley's Code Enforcement Unit's goal is to provide a clean and safe environment for all Berkeley residents, workers, and visitors. The CEU is responsible for the enforcement of administrative violations of the Berkeley Municipal Code and some provisions of California State codes related to building, zoning, and housing. The City Manager's Office oversees the CEU, which consists of four full-time employees: one

¹ Audit: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight:

https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/A.2_RPT_Code%20Enforcement_Fiscal%20Year%202018.pdf

Code Enforcement Supervisor, two Code Enforcement Officer IIs, and one Assistant Planner.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Manager's Office will continue to work with the Code Enforcement Unit to complete implementation of the recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None

CONTACT PERSON

Bill Burke, Code Enforcement Supervisor (510) 981-2492

Attachments:

1: Audit Findings, Recommendations, and Management Response Summary Table

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
Finding 1: Code Enforcement Unit resources are insufficient to meet demand					
1.1	<p>Implement a resource analysis process by which proposed legislation is discussed with City management to evaluate the impact on current City resources and determine the feasibility of making the intended impact. The analysis should take place before the policy is presented to Council for adoption and include considerations of:</p> <ul style="list-style-type: none"> • Staff time and other City resource needs, including the fiscal impact of those resource needs • Opportunity cost, i.e., consideration of other activities that will be deprioritized in order to meet new demands 	City Council	Agree	December 11, 2018	<p><u>Status: Partially Implemented.</u></p> <p>On June 26, 2018, City Council approved a recommendation to implement a resource analysis process as part of the Code Enforcement Unit (CEU) Audit. On December 11, 2018, City Council adopted Resolution No. 68726-N.S., which included the framework and procedures for standing Policy Committees of the City Council as part of the City’s legislative process. During the Policy Committee review of resolutions, ordinances and referrals, staff will undertake a high-level, preliminary analysis of potential costs, timelines and staffing demands associated with the item. Reports leaving a Policy Committee must adequately identify budget implications, administrative feasibility, basic legal concerns, and staff</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
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<ul style="list-style-type: none"> Feasibility impact to determine how best to rollout out new legislation 				resource demands in order to allow for informed consideration by the full Council.
1.2 Require that the Agenda Committee ensure ordinances have undergone a resource analysis as described in Recommendation 1.1 when necessary and, if not, are returned to the appropriate City Council member for further assessment before being passed into local law.	City Council	Agree	December 11, 2018	<u>Status: Implemented</u> Resolution No. 68726-N.S. states that any new policy or program, including ordinances, submitted by Councilmembers with moderate or significant resource impacts will first go to the Agenda Committee, which will refer it to the appropriate Policy Committee.
1.3 Conduct a staffing analysis to determine the appropriate staffing level needed for the Code Enforcement Unit (CEU) to effectively enforce City codes. In conducting the analysis, include an assessment of the workload impact created by the codes for which the CEU is solely responsible as well as those	City Manager (CEU)	Agree	November, 2019	<u>Status: Not Implemented</u> Due to the seasonal nature of the unit's work, staff anticipates that a full year of analysis will be most effective in capturing the unit's workload. Staff plan to conduct the staffing analysis in 2019.

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
	created by the codes for which CEU shares responsibility with other enforcement units.				
1.4	<p>Use the staffing analysis performed in response to Recommendation 1.3 to:</p> <ul style="list-style-type: none"> Quantify the full-burden cost of additional staff Determine if sufficient budgetary funding is available for additional staff Request additional staffing from Council during the annual appropriations process 	City Manager (CEU)	Agree	June 2020	<p><u>Status: Not Implemented</u></p> <p>Following the completion of Recommendation 1.3, the next annual appropriations process is tentatively scheduled to take place in May 2020.</p>
1.5	If budgetary constraints prevent additional staffing or if Council does not approve the budget needed to fund additional staffing, report to Council the restrictions placed on the Code	City Manager (CEU)	Agree	July 2020	<p><u>Initial Status June 2018: Not Implemented</u></p> <p>At this time, it has not been determined how best to provide this information. CEU is currently recording various monthly statistics meant to capture performance metrics,</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
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<p>Enforcement Unit’s ability to effectively enforce City codes. Include information explaining the hindrance this will cause for any new ordinances the City Council may want to pass in the future. Provide this information regularly, for example, annually as part of the budget process, to keep Council informed of the CEU’s capacity restrictions. See also Recommendation 1.7.</p>				<p>trends, and other measures which can be made available to Council on a regular basis to be determined by management.</p> <p><u>Status Update January 2019 : Partially Implemented</u></p> <p>To date, CEU staff have had both formal and informal conversations and input during several new code considerations and existing amendments. CEU has been involved in determining enforcement limitations for the TNC Object, Cannabis and GLA ordinance modifications, and during vetting considerations for the BPA Free ordinance suggested by the Health Commission</p> <p>At this time, it has not been determined how best to provide this information. CEU is currently recording various monthly statistics meant to capture performance metrics, trends, and other measures which can be</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
					made available to Council on a regular basis, to be determined by management.
1.6	<p>Assess Berkeley municipal codes to identify the codes for which the CEU is solely responsible and those for which the CEU has a shared role with other work units. Use the results of the assessment to:</p> <ul style="list-style-type: none"> • Create process workflows showing shared work unit responsibilities • Create written guidance describing work unit responsibilities 	City Manager (CEU)	Agree	January 1, 2018	<p><u>Status: Implemented</u></p> <p>In January 2018, CEU Supervisor drafted and implemented a complaint matrix that identifies the most common complaint types, the subject matter department or division experts, the process workflow, and enforcement authority.</p> <p>The matrix is updated quarterly or as needed, and disseminated to all departments via the senior executive team.</p>
1.7	Implement code enforcement software that:	City Manager (CEU)	Agree	January 1, 2018: Temporary	<p><u>Status: Partially Implemented</u></p> <p>Effective January 1, 2018, all cases or customer complaints received by CEU have been entered into Lagan, which is serving as</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
<ul style="list-style-type: none"> Identifies case assignment to CEU officers and other work units Prioritizes cases, in particular high-risk cases posing health and safety risks Captures pertinent case dates, e.g., opened, notice of violation, citation issuance, and closed Tracks enforcement actions taken within the CEU and other work units Quantifies citations issued and collected Allows for readily identifying repeat offenders Includes performance measurement tools, e.g., 			alternative implemented Full implementation: To be determined based on funding availability and assessment of code enforcement software options	single point of entry into the code enforcement queue. Lagan provides the ability to allocate cases to individual CEU staff, and re-allocate cases already in the code enforcement queue. It allows cases to be assigned one of the three priorities (high, medium=moderate, low=standard) based on the complaint type. Lagan captures the date a case is created, and when it is closed. Additional inspection dates and results, as well as photos, notices, citations, and other documentation, are captured in the software as “case notes”. Because Lagan assigns a specific case number, cross referenced with a property address, CEU staff can readily determine repeat offenders by searching for an address.

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<p>turnaround times within defined specifications (see Recommendation 2.2)</p> <ul style="list-style-type: none"> • Allows for uploading information from mobile technologies (see Recommendation 1.8) • Includes reporting tool to showcase workload trends and capacity restrictions (i.e., backlogs) 				<p>Although Lagan is not a traditional code enforcement software, it does provides the ability to extrapolate data which is used for performance metrics and workload trends. It does not provide reporting templates or quantified citations (issued or collected), nor does it allow for staff use on mobile devices in the field.</p> <p>CEU has explored two separate options for enforcement software. Envision Connect, the program currently used by Environmental Health and Toxics, was purchased as a company by Accela, which no longer offers the software to new users. Accela, the software used by Building & Safety, Planning, Public Works, and others, has a code module which has yet to be built out. That option is currently on hold according to I.T.</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
					CEU will continue to explore enforcement software options which include the aforementioned additional capabilities.

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Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
1.8 Implement mobile computers and printers to allow Code Enforcement Officers to complete more work in the field, thus improving their time spent in the community and reducing time in the office. Mobile computers should have the capacity to interface with the code enforcement case management software implemented in response to Recommendation 1.7.	City Manager (CEU)	Agree	September 1, 2017: Partially implemented Full implementation: To be determined based on funding availability and assessment of code enforcement software option selected in response to Recommendation 1.7	<u>Status: Partially Implemented</u> CEU staff are issued Apple smartphones, which provide the ability to take photos, capture notes, and mark GPS locations which can be uploaded to City e-mail. Most code enforcement software available on the market provide IOS function and support which would make mobile application integration fairly seamless. At this time, CEU’s software does not support printing documentation in the field. Manual notices will continue to serve this function until such time as the enforcement software described in Recommendation 1.7 is implemented, and can support printing documents in the field.

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
Finding 2: Process modifications and increased oversight needed to ensure equity, efficiency, and effectiveness					
2.1	<p>Develop and issue written procedures for code enforcement operations that:</p> <ul style="list-style-type: none"> • Reflect current practices and management expectations. • Describe the tiered prioritization system giving attention to cases based on risk levels of high, moderate, and standard. • Require adherence to a uniform technology policy, which includes: <ul style="list-style-type: none"> ○ Assigning unique numbers to cases. ○ Recording all pertinent case data timely, e.g., within two business days of receipt. 	City Manager (CEU)	Agree	April 1, 2018 / Ongoing	<p><u>Status: Partially Implemented</u></p> <p>The CEU supervisor issued new procedures which included the recommended. Meetings were held with CEU staff to review the new procedures, solicit input, and to ensure their understanding of the new guidance.</p> <p>Effective January 1, 2018, all cases are filed numerically by Lagan generated unique case numbers. Open cases remain with the assigned CEU officer pending follow-up and closure. Each file is labeled with the case number and complaint address and contains the Lagan complaint print-out, property ownership information, notices and other documentation.</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
<ul style="list-style-type: none"> ○ Using a single, centralized system to record, manage, and monitor case information. ○ Using case file management standards so that pertinent data are captured uniformly. ● Inform staff that preferential treatment should not be given to complaints made or referred by City Council members, Council staff, and City management. Those complaints should be prioritized based on established objectives and channeled through the appropriate supervisor. 				

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
	<ul style="list-style-type: none"> Describe processes for issuing citations in a consistent and equitable manner. Include beat assignments once feasible to do so, i.e., after the CEU addresses the backlog and receives adequate software tools. 				
2.2	<p>Implement performance metrics and goals to:</p> <ul style="list-style-type: none"> Assess the effectiveness of code enforcement operations and goal achievement Identify constraints preventing goal attainability. Submit regular reports, e.g., biannually, to City management on performance. 	City Manager (CEU)	Agree	February 1, 2018 / Ongoing	<p><u>Status: Partially Implemented</u></p> <p>Data extrapolated from Lagan provides metrics on code enforcement operations, including the number of cases opened and closed by month, the average amount of time to close cases, the number of citations issued and the total amount of fines assessed, and additional information regarding non-enforcement related time such as taxi inspections, sidewalk vendor permitting, homeless encampment contacts</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
<p>Include a metric to provide at least some proactive code enforcement activities. Develop this metric after implementing the process and system improvement recommendations made in this report.</p>				<p>and resolution, and public record request activities.</p> <p>Effective February 2018, CEU provides a monthly report to City management on the unit’s performance, which notes constraints to goal attainability, when necessary, and includes a breakdown of proactive code enforcement activities conducted in the preceding month.</p> <p>Future metrics to be determined based the reporting capabilities of the code enforcement software from Recommendation 1.7.</p>
<p>2.3 Assess the feasibility of using complaint thresholds and self-certifying techniques for standard-priority violations. For example, wait to receive at least two complaints about a</p>	<p>City Manager (CEU)</p>	<p>Agree</p>	<p>January 1, 2018</p>	<p><u>Status: Implemented</u></p> <p>We assessed the feasibility of using complaint thresholds and opted not to use them at this time due, in part, to the following considerations.</p>

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<p>standard-level violation before performing an investigation, and allow a code violator to self-report on a standard-level violation to remove the need for reinspection. If feasible, implement the techniques to give code enforcement officers more time on field inspections of high-risk cases.</p>				<p>Pursuant to BMC Chapter 1.22.010, the City of Berkeley shall “promote higher standards of living, full employment, and conditions of economic and social progress and development.” Complaint thresholds, which include requiring multiple complaints, not accepting anonymous complaints, and others, restrict CEUs ability to meet those requirements.</p> <p>Furthermore, The American Association of Code Enforcement states in their Importance of Code Enforcement hand-out, “The professionalism and approach of the Code Enforcement Officer has the potential to shape community notion of local government and municipal experience. Building relationships and knowledge of the community is so integral to a proactive and professional code enforcement approach,”</p>

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				<p>which could also be adversely effected by implementing complaint thresholds.</p> <p>Berkeley’s CEU regularly receives anonymous complaints from reporting parties who fear retribution. By conducting site inspections on all reports, CEU staff promote a higher standard of living, a better customer service experience, and provide more equitable, effective enforcement of City codes, while spending more time in the field on all levels of enforcement. Occasionally, low-level inspections become higher level priorities based on what the officer has documented during the initial site inspection.</p> <p>Self-certifying techniques, although common in proactive rental housing inspection programs, are not known to be used in other aspects of code enforcement since officer compliance verification is typically required</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Findings and Recommendations		Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
					for case closures or escalation of enforcement. An exception considered could be when a complainant or reporting party certifies a violation has been abated, the closure of which would be at the discretion of the enforcing officer.
2.4	<p>Develop procedures for monitoring staffs' work and addressing weaknesses that may prevent goal achievement, such as conflicts of interest. For example:</p> <ul style="list-style-type: none"> • Review Form 700s to identify property owned by CEU personnel before assigning cases to officers. • Randomly select case records to look for: <ul style="list-style-type: none"> ○ Indicators that case action did not progress as required 	City Manager (CEU)	Agree	May 1, 2018	<p><u>Status: Implemented</u></p> <p>The CEU procedures manual includes procedures for identifying and addressing conflicts of interest. The CEU supervisor randomly spot checks complex code enforcement cases, to determine how investigations are proceeding with consistency and equity, and that investigators are handling cases fairly and ethically. Additionally, the Code Enforcement Supervisor regularly reviews open Lagan cases to ensure any applicable case history on an identified property address is applied</p>

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<p>or expected suggesting favoritism or kickbacks.</p> <ul style="list-style-type: none"> o Properties with closed cases that continue to receive complaints for the same issue. This could indicate a repeat offender as well as a failure to take appropriate actions against a code violator. <p>The Assistant to the City Manager for Neighborhood Services should perform this oversight of the Code Enforcement Unit Supervisor, and the Code Enforcement Supervisor should perform this oversight of Code Enforcement Officers and the Assistant Planner.</p>				<p>to the current enforcement action. This is done to assess the need to escalate enforcement as appropriate without duplicating efforts.</p> <p>Effective October 2017, the Assistant to the City Manager for Neighborhood Services and the CEU supervisor meet twice monthly to review unit performance and to discuss outstanding issues related to ongoing investigations, which include potential or perceived conflicts of interest.</p> <p>At the May 2018 City Council Aide / City Staff Roundtable Discussion, the Assistant to the City Manager reiterated Code Enforcement’s commitment to equitably investigate complaints received, regardless of their source.</p>

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight				
Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementation Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
				Effective May 2018, the Assistant to the City Manager and the Code Enforcement Supervisor annually review the Form 700s submitted by their respective direct reporting parties, and discuss potential conflicted of interest.



Office of the City Manager

21

INFORMATION CALENDAR
January 29, 2019

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Economic Development Manager
 Subject: Referral Response: Support for Berkeley Nonprofit Service Providers

SUMMARY

This report responds to referral #2017-29 adopted by City Council on December 13, 2016, and sponsored by Councilmember Worthington, to support Berkeley nonprofit service providers and organizations by examining methods to assist organizations in planning for capital renovation, rehabilitation and/or relocation.¹ Of Berkeley's nearly five hundred nonprofit organizations,² many lack affordable real estate in which to operate. This report reviews the City's current activities to assist nonprofit organizations to stabilize their real estate costs, and suggests additional strategies Council could consider, including technical and financial assistance, shared-space agreements, land use controls, and neighborhood land trusts.

CURRENT SITUATION AND ITS EFFECTS

The rise in real estate costs in the region has presented challenges for nonprofit community-based organizations. In some cases, nonprofit organizations face displacement because of upward pressure on commercial rents. For most nonprofits and service providers, the costs of simply maintaining space or saving for a modest capital improvement remains a persistent concern.³

The Office of Economic Development (OED) currently has two programs in place to support nonprofit organizations and service providers struggling with real estate issues, although neither of them are solely focused on assisting nonprofits with real estate retention or acquisition. Recipients of loans from the Revolving Loan Fund (RLF) may use the funds to underwrite tenant improvements, purchase real estate or otherwise support nonprofit organizations with respect to their real estate needs.⁴ Beginning in January 2019, OED is engaging Uptima Business Boot Camp to provide technical

¹ [City Manager Referral: Support Berkeley Non-Profit Service Providers to assist planning for capital renovation, rehabilitation and/or relocation](#), Action Calendar, Item 41, December 13, 2016.

² City of Berkeley, Department of Finance, Business License database, 2018.

³ Rauber, San Francisco Business Times, [Seven in 10 Bay Area nonprofits say skyrocketing real estate costs threaten their future here](#), March 2016.

⁴ For background on the RLF see: City of Berkeley, Office of Economic Development, [Revolving Loan Fund Report](#) and [Presentation](#) to the Berkeley City Council, July 18, 2017.

assistance services (including, as needed, real estate planning and assistance) directly to businesses and nonprofit organizations. The program aims to assist up to twenty Berkeley-based businesses and organizations over a period of two years.

In addition, the Department of Health, Housing, and Community Services (HHCS) oversees two programs to support nonprofit service providers with their real estate needs. HHCS manages seven on-going long-term leases directly to nonprofit service providers across five city-owned properties. This includes four license agreements with organizations located in the Veteran's Building (1931 Center Street), two service providers located at 701-11 Harrison Street (Harrison House), and the Women's Drop In Shelter located at 2213 Byron and 2218 Acton Street. The City's community agency funding program includes a small public facilities rehabilitation fund that is eligible to nonprofit service providers. In recent funding cycles, these monies have all gone towards property improvements at senior and assisted living facilities.

Council could consider the following programs and policies to better assist nonprofit organizations and service providers to meet their real estate needs, each of which would require the commitment of new resources for implementation:

- Provide increased **technical assistance** (education and/or case management) to nonprofit organizations to analyze an organization's financial position, negotiate a lease, develop a budget and scope for tenant improvements and/or assemble financing.
- Deploy **financial assistance** (grants or loans) directly to nonprofit organizations so they may secure real estate through purchase or long term lease.
- Encourage **shared space agreements** which allow multiple organizations to share the same roof, and potentially save on shared operations or staff.
- Enact **land use controls** to incentivize private developers to provide affordable spaces to nonprofit organizations in mixed-use developments.
- Support the use of **neighborhood land trusts**, wherein tenants (generally nonprofit organizations themselves) rent from a nonprofit entity bound by an affordability covenant.

BACKGROUND

There are approximately five hundred nonprofit organizations in Berkeley, working across a wide range of fields including health care, education, environmental protection, arts and culture, and beyond. Many of those organizations are direct service providers, providing human services such as mental health treatment, case management and referral, employment training, and legal representation. Other nonprofit organizations provide artistic, educational, and cultural programming that enrich the community.

Currently, many nonprofit organizations have one problem in common: a lack of affordable real estate in which to operate. This problem manifests in a variety of ways. Some organizations are ‘making do’ by operating in spaces that are too small or poorly maintained; in some cases, this impairs an organization’s ability to fully meet the needs of its clientele. Also, potential operational efficiencies that could strengthen an organization’s sustainability—such as property renovation, relocation to a more appropriate space, or co-location with like agencies—are rarely planned for due to lack of time, resources or expertise.

City Efforts, Past and Current

The City of Berkeley has historically helped to mitigate the displacement of nonprofit organizations by providing financial assistance, direct technical assistance, and leveraging public land and assets.

The City has on several past occasions assisted nonprofit organizations directly with financing assistance. The Citywide Loan Fund (CLF), now inactive, issued low interest, long-term loans directly from the General Fund for arts and nonprofit organizations. Past CLF recipients include the Aurora Theater, Freight and Salvage, and the Jazz School. All three organizations used CLF funds to purchase properties or invest in capital improvements to their buildings for improved operations. Although these loans produced positive outcomes for the organizations, they were challenging for the nonprofit organizations to collateralize and have been difficult for City staff to service. Two remaining CLF recipient organizations will continue to make payments to the City through the 2020s.

The Ed Roberts Campus, a universally designed, transit-oriented campus located at 3075 Adeline Street above Ashby BART Station in South Berkeley, opened in 2011. The City and BART, working with a broad partnership of nonprofits and development advisors, leveraged publically owned land and federal tax credit programs to create this nonprofit office center. The 86,000-square-foot building is now home to several nonprofit service providers, and offers fully accessible meeting rooms, a media resource center, a fitness center, a cafe, and a child development center.

As part the 1990 Downtown Plan, the City of Berkeley created a cultural density bonus, allowing developers in the Downtown area to build beyond what was allowed by existing zoning in exchange for the inclusion of cultural space within their developments. The definition of what constituted a “cultural facility” was not explicit and did not specify what percentage of the space had to host cultural uses, nor whether the developer was responsible for building out the cultural facility or if the burden lay with the tenant to finance improvements. The 2001 General Plan update provided greater clarity⁵ on these

⁵ City of Berkeley General Plan, Land Use Element Introduction, Policy LU-19, Downtown Arts Density Bonus: https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Land_Use_Element_Introduction.aspx .

points, and ultimately two buildings employed the Downtown arts/cultural density bonus in development and construction. The Gaia Building (2116 Allston Way) houses the Marsh Arts Center and Theater, and the Arpeggio Building (2055 Center Street) hosts the Bay Area Children's Theater in the Osher Studio on the ground floor. The cultural density bones was discontinued and superseded by the 2012 update to the Downtown Plan.

The City also offers ongoing low-cost or rent-free leases of City-owned facilities to eight different nonprofit organizations across five sites. The agreements are managed by the Real Property division of Public Works, in partnership with the Health Housing and Community Services Department.

OED administers the Revolving Loan Fund (RLF) Program; these loans are available to all Berkeley based businesses and nonprofits. RLF funds may be used for an organization's real estate acquisitions or tenant improvements as long as the site is located in Berkeley. As of December 2018, the RLF had 8 active loans, and a total of \$156,939 available for lending.

OED also manages the commercial listing service *Locate in Berkeley*, and refers nonprofit organizations to available spaces,⁶ relevant property owners, brokers, and developers. OED also helps nonprofit organizations navigate the permitting process once they have a site identified in Berkeley. Staff also periodically connects mission-driven organizations that may be interested in pursuing shared space agreements, and connects those groups with appropriate technical assistance providers.

In early 2019, OED is launching a new technical assistance program designed to assist small, locally-owned businesses and nonprofits that are at risk of displacement or closure, with a particular focus on independent retailers and organizations. Uptima Business Bootcamp will provide targeted assistance to up to 20 Berkeley businesses and nonprofits over two years, with the goal of increasing profitability and sustainability. Their services may include technical assistance related to real estate, depending on their client's stated need(s).

Northern California Community Loan Fund (NCCLF) is a leading provider of real estate consulting services for nonprofits in the Bay Area. NCCLF currently has grant funding from the Hewlett Foundation to provide limited consulting services to qualified nonprofit organizations in Berkeley and Oakland at no cost. Consulting services might involve analyzing an organization's financial position, negotiating a lease, developing a budget and scope for tenant improvements, and helping to assemble financing.

⁶ City of Berkeley, Office of Economic Development, *Commercial Space Available*: https://www.cityofberkeley.info/City_Manager/Economic_Development/Commercial_Space_Available.aspx.

Additional Strategies for Council Consideration

With the dedication of additional resources, the City of Berkeley could expand its support for Berkeley nonprofit service providers by pursuing the following strategies.

Provide comprehensive technical assistance to nonprofit organizations related directly to real estate. Technical assistance providers (often nonprofit organizations themselves) provide clear and actionable debt service plans to nonprofit boards, and assist in the preparation of pro forma spreadsheets to improve general budgeting and forecasting practices for less sophisticated nonprofit organizations. In some cases, these services are provided for free to the client organizations, with the costs covered by a City or foundation. NCCLF provided staff with a sample project scope for a nonprofit 'real estate readiness program' in the Silicon Valley (Attachment 1), which demonstrates what an expansion of these services in Berkeley might include.

Provide direct financial assistance to assist with real estate acquisition. Providing seed funding to help nonprofits acquire new, permanent space and to incentivize philanthropic investment from their own stakeholders or other funders is a proven technique to provide stability to a nonprofit organization. A City-administered grant program for capital planning could help nonprofit organizations to address urgent space needs by providing grants for one-time costs to cover architectural, engineering, and legal service fees; rent stipends; moving expenses; or furnishings, fixtures, equipment, and other tenant improvements. Effective tenant improvements can often incentivize landlords to extend long-term leases to the organization which in turn provides increased stability for nonprofit organizations and service providers. For example, the City and County of San Francisco's Nonprofit Sustainability Initiative offers approximately \$2.7 million in grants annually to help nonprofits purchase affordable and permanent space. The program assists approximately thirty social and arts organizations per year in San Francisco.⁷

Shared space agreements allow multiple organizations to share the same roof, and potentially save on shared operations or staff. As nonprofits evaluate shared space opportunities, and articulate a shared space vision, they can benefit from technical assistance counseling together. For example, San Francisco's Office of Economic and Workforce Development (OEWD) annually hosts cohorts of like-minded nonprofits to identify shared goals for the pursuit of space.⁸ The City of Edmonton (Alberta, Canada) administers an ongoing co-location initiative and has produced an informative toolkit to assist nonprofits in developing successful shared space arrangements.⁹ The program has two city staffers who manage the initiative and a consulting team comprised of three analysts.

⁷ *San Francisco Nonprofit Sustainability Initiative*: <https://www.ncclf.org/san-francisco-nonprofits-secure-long-term-leases-with-one-million-in-funds/>.

⁸ See NCCLF's real estate listing service *Spaces for Good* <https://www.ncclf.org/spacesforgood/> and OEWD's *Mayor's Nonprofit Sustainability Initiative*: <https://oewd.org/nonprofits-0>.

⁹ The City of Edmonton, Community Services Department, *Shared Space Feasibility Toolkit*, pages 2-5.

The replication of a similar program in Berkeley would require a dedicated City staff position, or funds for an outside contractor, to assist in the pursuit and development of shared space agreements, and serve as a single point of entry for all nonprofit real-estate related inquiries. The staffer or contractor could help match nonprofits with one another, technical assistance providers, real estate agents, developers, architects and other prospective partners. Given constraints—such as limited availability of office space in Berkeley, and limited resources for nonprofits’ capital investments—it would likely be difficult for this program to produce outcomes, and may be better pursued at the regional level.

Land use controls can incentivize private developers to provide permanent or long-term affordable spaces in mixed-use developments for nonprofit service providers and organizations. For example, a density bonus may be granted in specific zoning districts in return for offering office space below market rate directly to nonprofits and arts organizations. Cities such as Chicago, Los Angeles, San Francisco, and Oakland have used this approach with success.¹⁰

Finally, **neighborhood land trusts** are an emerging vehicle for preserving real estate space for nonprofit organizations and artists. A neighborhood land trust organization can acquire property and dedicate it for a public benefit use and thus insulate the institution from upward real-estate market pressure. This is similar to the broader land-trust model, often used for open space conservation or affordable housing development, wherein tenants generally rent from a nonprofit entity bound by an affordability covenant and are restricted from selling the property. This has been used to some success with artist collectives and mixed use buildings along Oakland’s waterfront.¹¹

To implement the neighborhood land trust approach in Berkeley, individual nonprofits seeking offices, gallery space, performance space, rehearsal space, and studio space would have to identify potential property owners that might be interested in the land trust model and proactively market to them. The City (or a vendor retained by the City) could also conduct a campaign to educate property owners of the tax and estate planning benefits associated with donating property to a land trust and/or create the marketing materials necessary to make clear what the benefits of donating property to a neighborhood land trust are and who would benefit.

ENVIRONMENTAL SUSTAINABILITY

Many of the City’s environmental sustainability goals are linked to the overall health of the City’s economy and specifically its nonprofit organizations. Thus, new programs to

¹⁰ City of Oakland, [Strategies for Protecting and Creating Arts & Culture Space in Oakland](#), spring 2016.

¹¹ Sam Lefebvre, [With Luxury Development on All Sides, Oakland Artists Buy the Right to Stay Put](#), KQED Arts Program, August 8, 2018.

improve the health of Berkeley's nonprofits could in turn contribute to achievement of the City's sustainability goals.

POSSIBLE FUTURE ACTION

Staff will, as directed by Council through future referral items, assist in further identifying effective technical and financial assistance programs and service providers related to this topic and direct implementation of such. If funding is allocated, staff will recruit vendors and manage programs to improve real estate-related outcomes for Berkeley's nonprofit organizations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Based on best practice examples from Berkeley's neighboring communities, the establishment of an initiative to assist nonprofit service providers with capital planning, as described above, would require the dedication of between \$500,000 and \$1,000,000 annually. A more limited program, focused on expanding technical assistance and shared space agreements, could be implemented with less funding (approximately \$100,000 per year), but would be correspondingly limited in impact.

Actions that facilitate increased stability for nonprofit organizations would likely create or retain local employment in that sector, though they would likely have a neutral effect on property tax and other revenues.

CONTACT PERSON

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Eleanor Hollander, Economic Development Project Coordinator, (510) 981-7536.

Attachments:

1: Sample Project Pricing and Scope for the *Silicon Valley Nonprofit Real Estate Readiness Program* from Northern California Community Loan Fund (NCCLF), 2018-19.

Attachment 1:

Sample Project Pricing and Scope for the *Silicon Valley Non-Profit Real Estate Readiness Program* from Northern California Community Loan Fund (NCCLF), 2018-19

Total Cost: a \$100,000 grant funded two years of the Real Estate Readiness Program for Silicon Valley nonprofits.

Scope includes:

- 3 workshops for the Real Estate Readiness curriculum
- Two years of one-on-one Technical Assistance counseling for 11 organizations.

Sample Scope of Work: **NCCLF Services.** *NCCLF will provide the following services (the “Services”) related to the Project:*

Nonprofit Displacement Mitigation Program Technical Assistance services, including the following as tasks as needed by Client:

1. *Financial planning*
2. *Space planning*
3. *Identifying and evaluating potential sites*
4. *Negotiating leases or purchase agreements*
5. *Developing construction budgets and project timelines*
6. *Analyzing potential funding sources.*

Technical assistance services may be provided on a one-to-one basis and/or in workshop settings. Disclaimer: the number of hours per the program are very specialized can be difficult to estimate in general terms.

Sample Rates: NCCLF Hourly Rates

Hourly fees are billed at the following rates. Rates are for 2018 – 2019 and are subject to change. 30 days in advance of any change in rates, NCCLF will provide Client a revised rate sheet in the format of the list below.

Director of Consulting Services	\$225/hour
Deputy Dir of Consulting Services, Real Estate	\$225/hour
Supervising Real Estate Consultant	\$195/hour
Senior Real Estate Consultant	\$195/hour
Real Estate Consultant	\$175/hour
Financial Management Consultant	\$175/hour
Real Estate Consulting Analyst	\$160/hour
NCCLF Administrative Support	\$100/hour



Office of the City Manager

22INFORMATION CALENDAR

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Economic Development Manager

Subject: Referral Response: Establishment of a Festival Grants Program

INTRODUCTION

This report responds to a referral adopted by City Council on March 13, 2018 to establish a Festival Grants Program to allocate General Fund grants for special events and festivals via a regular and transparent process, for implementation beginning in the FY2020 budget year.¹ Staff worked with the Civic Arts Commission, festival producers and stakeholders, artists, arts organizations, and community members to develop program guidelines for the Festival Grants Program (Attachment 1), and to revise the Civic Arts Grants Program Guidelines for Arts Organizations (Attachment 2) and Individual Artist Projects (Attachment 3).

CURRENT SITUATION AND ITS EFFECTS

Currently there is no formal process for the awarding of festival grants. There are 17 festivals which have been receiving funding through the City's annual budgeting process. The amounts awarded are not correlated to specific criteria and therefore vary considerably from festival to festival. Although the City of Berkeley supports several high quality and beneficial festivals, the lack of a formal grant program has created an uneven playing field. Funding for new festivals has been inaccessible and currently funded festivals have continued to receive funding without an evaluation of their impact.

From October 2018 through January 2019, Civic Arts Program staff conducted outreach and consultation with a broad set of community stakeholders to inform the development of the Festival Grants Program Guidelines and make corresponding revisions to the Civic Arts Grant Guidelines for Arts Organizations and Individual Artist Projects to ensure that all grant programs managed by the Civic Arts Program are aligned and reflect a unified overarching grants strategy. The grant application period will open in February 2019.

BACKGROUND

On March 13, 2018, City Council referred to the City Manager the establishment of the City of Berkeley Festival Grants Program to allocate General Fund grants for special

¹ [Festival Grants Program](#), Item 10, Berkeley City Council Meeting, March 13, 2018.

events and festivals via an annual process, for implementation beginning in the FY2020 budget year. The objective of creating this program is to distribute funding for festivals and special events equitably and transparently through a grant process managed by the Civic Arts Program.

The Festival Grants Program Guidelines establish definitions, eligibility, evaluation criteria, application review process, and other program standards. For the FY2020 budget cycle, Cultural Equity Impact has been incorporated into the evaluation criteria for each of the grant programs.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts related to the development of a grants program.

POSSIBLE FUTURE ACTION

Council will allocate funding for the Festival Grants Program through adoption of the FY2020 & 2021 budget in June 2019.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The FY 2019 budget allocated \$162,315 for grants for street events and festivals. Staff is recommending an allocation for the FY 2020 & 2021 budget cycle of \$158,315.

The administration of the Festival Grants Program requires the annual commitment of staff time. To minimize the impact, staff has aligned the Festival Grants Program with the workflow of the annual Civic Arts Grants Program.

CONTACT PERSON

Jordan Klein, Economic Development Manager, (510) 981-7534.
Jennifer Lovvorn, Civic Arts Coordinator, (510) 981-7533.

Attachments:

- 1: Guidelines for the Festival Grants Program
- 2: Civic Arts Grants Program Guidelines for Arts Organizations
- 3: Civic Arts Grants Program Guidelines for Individual Artist Projects
- 4: Festival and Civic Arts Grants Guidelines Review Process

City of Berkeley Festival Grant Guidelines

FY20 Grant Cycle for Festivals and Special Events Taking Place: July 1, 2019 — June 30, 2020

1. DEFINITION, PURPOSE, ELIGIBILITY, GRANT AMOUNTS, USE, RESTRICTIONS, & FISCAL SPONSORS

1.1 Definition

Festivals are defined as a wide variety of public events including arts festivals, celebrations of cultural heritage relevant to Berkeley residents, and other events that celebrate a community, a neighborhood or a shared cultural interest.

1.2 Purpose

The purpose of the Festival Grant Program is to support community festivals and special events that: celebrate and preserve a rich variety of cultural opportunities for Berkeley's residents; bolster the city's vitality; and increase Berkeley's visibility and reputation as a desirable destination for visitors. The Festival Grant Program supports a range of events throughout the City from small-scale and first-time events to large scale and established festivals. Festival Grant Program-funded events must be open to the entire public and have free admission, although these events may include fee-based access to some portion of the event.

Having received City of Berkeley funding in prior years is no assurance that an organization will be awarded a grant in any given year.

1.3 Eligibility

Applications that are complete and submitted by the deadline will be accepted from organizations that meet the following conditions:

- At least one of the applicant team members (applicant organization or event producer) must have produced at least two events at a comparable scale to the proposed grant-funded event.
- Designated as a not-for-profit corporation under Section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code. Organization/fiscal sponsor 501(c) status must be current and may be verified by City staff.
- Organization (and its fiscal sponsor, if applicable) must be housed in the City of Berkeley with its corporate address in the City of Berkeley. Organization and fiscal sponsor address will be verified by City staff.
- Organization's event takes place at some point during July 1, 2019 – June 30, 2020 in the City of Berkeley and is a discrete event or special project.
- Organization a) is not a division/department within the City of Berkeley; and b) is in good standing on previous and/or current City of Berkeley grants and with other City departments.
- Demonstrate financial health, evidenced by:
 - Receiving outside sources of funding.
 - Managing a budget size and percentage of earned revenue appropriate to the activity.
 - Not carrying an accumulated debt greater than 25% of the proposed festival budget.
 - For large and mid-size festivals: Having more than one source of funding for event. Small festivals may rely on only one source of contributed income.

- Demonstrate sound administration and fiscal management, evidenced by:
 - An active advisory board or working committee that takes responsibility for event.
 - A budget and staff appropriate to the scale of the activity.
 - A reasonable plan to retire debt—if applicable.
- Declared ability to meet City requirements for funded events:
 - Be able to meet the City of Berkeley's insurance, business license and special event permit requirements. See Section 5. "Selected Grantee Contractual Requirements" for details.
 - Projects must be developed and presented in Berkeley and culminate in a local event or festival with meaningful, accessible engagement of the public within the grant period.

1.4 Grant Amounts

The Festival Grant Program operates on a one-year cycle based on the City of Berkeley Fiscal Year (July 1-June 30). Awards will be contingent on the allocation of funds from the City Council each year. The total amount allocated to each of the three grant categories (Arts Organizations, Festivals, and Individual Artists) will be recommended by the Civic Arts Commission's Grants Committee after an evaluation of the review panel results and based upon the size of the applicant pools and the corresponding scores. The Grants Committee's recommendation will be forwarded to the full Civic Arts Commission for approval.

Festival Grants will be awarded accordingly:

Small Events with a proposed budget of up to \$5,000	Grants up to \$5,000
Mid-Size Events with a proposed budget between \$5,001 - \$50,000	Grants up to \$14,000
Large Events with a proposed budget over \$50,000	Grants up to \$17,000

Budget levels will be calculated based on cash income. In-kind donations may be listed but should be kept separately from the budget numbers used for calculating category eligibility.

1.5 Funding Use Restrictions

- Grant funds may not be used for:
 - Previous year's operating deficit.
 - Administrative costs or other organizational costs unrelated to production of the event.
 - Capital improvement projects.
 - Programs in the schools during school hours.
 - Ongoing and continuous programs.
- No part of the grant shall be used to promote or inhibit religion nor for any political advocacy.
- Applicant organization cannot submit more than one application for the Festival Grant Program category. (This does not apply to fiscal sponsors who are submitting applications on behalf of different fiscally sponsored projects or event producers who may be producing other festivals.)
- Activities not available to the general public.
- Activities taking place outside the City of Berkeley.
- Events where fundraising is the primary purpose.

1.6 Fiscal Sponsors

Definition of Fiscal Sponsor: Fiscal sponsor is a 501(c) tax exempt and nonprofit organization that has been assigned the responsibility to process the funds of another organization. It is the responsibility of the fiscal sponsor organization to consult with a tax professional to determine whether their particular tax exempt designation allows them to fiscally sponsor another organization. Fiscal sponsorship may take the form of processing a single check or providing complex accounting services and project oversight and is unique to each circumstance.

Organizations applying for funding through a Fiscal Sponsor should take particular note of the following requirements that the Fiscal Sponsor must meet:

- Fiscal Sponsor shall be responsible for all fiscal obligations of the grantee's awarded funds.
- Fiscal sponsor must be based in Berkeley.
- A written contract or Letter of Agreement between the applicant and the Fiscal Sponsor specifying the conditions of the Fiscal Sponsor arrangement must accompany the grant application. **(This agreement must be between the Fiscal Sponsor and the organization; a memorandum or letter to the Civic Arts Commission is not sufficient).** See the Fiscal Sponsor Supplemental Information Sheet.
- If the Fiscal Sponsor is also an applicant to the Festival Grant Program for their own organization's festival grant applications, any funds awarded to the organizations that they fiscally sponsor will not be counted as part of the fiscal sponsor's application budget.
- Information submitted in the grant application, including all budget information, applies to the organization conducting the festival, not the Fiscal Sponsor.

2. GRANT APPLICATION MATERIALS

In order to be considered for funding applicants must submit fully completed grant applications and all required application materials. The Festival Grant Program application consists of the following components:

- General Organization and Event Information.
- Signed Declaration to meet City Special Event Requirements.
- Event Narrative.
- Sources of Funds Statement.
- Event Budget Form and Budget notes.
- Organization Budget.
- Community Impact.
- Board of Directors Roster, including occupation, city of residence and term of office.
- Event producer's Resume.
- Current 501(c) Letter.
- Supporting Materials: Maximum of three items total that reflect the applicant's event. Examples include PDF copy of the following: brochures, catalogues, programs or other collateral produced by the applicant and/or press reviews or articles from sources outside the organization.
- Staff may request that the applicant provide the following updated documents prior to the Panel Review:

- Current 501(c) determination letter from the Internal Revenue Service.
- Certified Articles of Incorporation and organization By-Laws.

3. EVALUATION CRITERIA & SCORING SYSTEM

3.1 Evaluation Criteria and Weighting

Applications will be evaluated according to the following criteria which are described so that applicants may have an idea of how the panel will score each application:

Event narrative & significance & community impact _____ 25 percent

- Clarity of the event’s vision and how well the event relates to the applicant’s mission, purpose and goals.
- How well the event demonstrates celebration of cultural richness, historical significance and/or the significance of their neighborhood’s uniqueness.
- Evaluation of estimated attendance and participatory activities.
- Demonstrated community benefit through indicators such as: contribution to the City of Berkeley as a cultural destination, attraction of people and volume of activities in a specific location that result in the vibrancy of a geographic area, number of participating artists, and local organization participation.
- Extent of positive impact on neighborhood where event occurs. How well the event aligns with the culture of the neighborhood where event occurs. How well the event reaches the targeted audience.

Communications, marketing, and outreach _____ 20 percent

- Ability to build a greater community understanding of the event.
- Effectiveness of conducting outreach through public awareness campaigns (social media, press releases, flyers, posters, newspaper ads, speakers’ bureaus, etc.)

Financial and budgetary capabilities/leveraging of City funding _____ 20 percent

- Ability to produce a profitable or break-even event measured on a cash basis.
- Extent of diversified financial support and in-kind contributions and/or volunteer resources used to leverage the City’s grant funding.
- Evaluation of event’s dependence on City funds and City in-kind donations of services and City waiver of fees – Does the event receive simultaneous funds from multiple City of Berkeley funding sources including collaborators seeking funds from the City to work on different components of the same project? How much funding is being provided by City departments and individual Council members?

Ability to produce a quality, well-planned, safe event _____ 20 percent

- Organization/event producer demonstrates strong accomplishments, and provides examples of previous achievements that are relevant to the proposed event.
- Ability to acquire necessary permits in a timely fashion.
- Experience in producing and promoting well-planned, safe events.
- Depth of managerial and organizational capacity.

Cultural equity impact _____ 15 percent

- Demonstrated ability of the applicant to support Berkeley’s diverse cultural traditions and values, including capacity to support the City’s underserved communities.
- Applicant clearly articulates how their event is rooted in and reflective of historically marginalized communities and geographically underserved areas of the city.
- Event reaches out to economically disadvantaged communities and communities that lack conventional arts venues or formal arts programs.
- The applicant organization demonstrate a commitment to cultural equity. For example, strategic board development to ensure that the board of directors includes members from historically marginalized communities.

3.2 Rating System

When evaluating each criterion, panelists will use the following 10-point scale, which is then translated to the appropriate weight for each criterion:

- Exceptional (9 - 10 points)
- Somewhat Exceeds Expectations (8 – 8.9 points)
- Meeting Accepted Standards (7 – 7.9 points)
- Needs Improvement to Warrant Funding (6 – 6.9 points)
- Does Not Merit Funding (0 – 5.9 points)

An applications must receive an overall score of at least 70 percent of total possible points in order for the panel to consider it for funding. However, achieving a score of at least 70 percent of total possible points does not guarantee that the panel will recommend an application for funding, as funds may not be sufficient to recommend a grant for all applicants that score above the minimum threshold.

4. APPLICATION REVIEW PROCESS

4.1 Eligibility Screening

Civic Arts Program staff will review for completeness and eligibility all applications that meet the deadline. Applications that pass this initial review will then be evaluated for their strengths by a separate Grant Review Panel, which will review the applications and related materials submitted by applicants.

4.2 Grant Review Panel

Applications will be reviewed in three differentiated categories (Small, Medium and Large events) based upon proposed event budget in order to make the competition among applications more equitable.

The Review Panel will be comprised of individuals experienced in special event grant funding and City staff familiar with special events in Berkeley. An open call and application for potential review panelists will be advertised. Review panelists will be approved by the Civic Arts Commission.

Review Panelists must not have any conflict of interest, which is defined as a situation in which a panelist has a competing professional, financial, or personal interest, which might make it difficult to

fulfill his or her duties impartially and could impair an individual's ability to perform his or her duties and responsibilities objectively. A conflict of interest exists even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in the selection process, the Grants Program, the Civic Arts Commission and the City. If a panelist has a conflict of interest, they must recuse themselves and they must notify the City staff in advance of the panel (so that they're not assigned a lead reader role for those cases) and they must leave the room during any panel discussions regarding the applicant with whom there is a conflict of interest so that the panelist does not influence the process.

Applicants are encouraged to attend the Grant Review Panel meeting which will be held during normal City business hours and will be publicly accessible. Staff will send the grant review schedule and meeting location to applicants before the Review Panel meeting.

Applicants are not permitted to address the Review Panel. Panel notes summarizing the Review Panel comments will be made available to applicants after the Grants Committee's review of the panel recommendations, but before the Civic Arts Commission's approval.

4.3 Civic Arts Commission Approval and City Council Review

After the Grant Review Panel has scored all applications, the Civic Arts Commission's Grants Committee meets to develop funding recommendations in alignment with the ranking of scores within each category and to align proposed grant awards with available funds and for consistency with granting policies and guidelines, before forwarding the recommendations to the full Civic Arts Commission.

The award amounts as recommended by the Grants Committee are made public at least five business days prior to the Civic Arts Commission approval. The Civic Arts Commission reviews the funding recommendations for approval and once approved sends the slate of selected grantees and grant amounts to City Council for review. Grant awards are subject to the City Council's adoption of the annual budget, which usually occurs in June.

5. SELECTED GRANTEE CONTRACTUAL REQUIREMENTS

5.1 Business License and Insurance Requirements

All team members (fiscal sponsor, applicant organization and event producer) from the successful grant applicant team must have a current Berkeley Business License. In addition, successful grant applicants must comply with the City of Berkeley's insurance requirements demonstrating adequate insurance and liability coverage for their event.

5.2 Invoices

Grantees may invoice for 90% of the grant amount once they have submitted a complete Special Event Permit application with cursory approval by Special Event Permit staff. Grantee's invoice for remaining grant funds will be paid within 30 days of approval of the Final Report by Civic Arts staff.

5.3 Final Report

Festival grantees must submit a Final Report for the event on a City-provided form (to include a post-event evaluation, estimated attendance and final budget). While grantees may submit final reports as soon as the grant funded event has taken place, they must submit the final report no later than 60 days after the grant period ends at the latest. Grantees must be current on filing required reports before they can receive grant funding. Final report must demonstrate that the projects was developed and presented in Berkeley and culminated in a local event or festival with meaningful, accessible engagement of the public within the grant period.

5.4 Financial Penalty for Late Final Reports

If Final Reports are not submitted by the deadline, the City of Berkeley may assess a financial penalty of \$25 per day for each business day a submission is late beyond the submission requirements deadline. The penalty amount will be deducted from the final invoice payment. The penalty amount is capped at 10% of the total grant amount.

5.5 Acknowledging City Support

Grant recipients must acknowledge the City's financial support in all appropriate materials and media. The acknowledgement should read, "Supported in part by a Civic Arts Grant for Festivals from the City of Berkeley" or similar language, unless the City is a part of a list of supporters. In the latter case, the acknowledgement may say simply City of Berkeley Festival Grant. Grantees must display the City's logo wherever other sponsor logos are displayed, and in accordance with City logo use guidelines.

5.6 Permits

The awarding of funds does not imply that the City of Berkeley's Civic Arts Program or any other City department will produce, exhibit, or present the event or art created for the event. It is the responsibility of the festival grantee to secure the event venue and obtain the necessary event permits from the appropriate City departments and governmental agencies. The awarding of a Festival Grant does not guarantee event permit approval from the City. Organizations planning to conduct an event on outdoor public property in the City of Berkeley must submit a Special Event Permit Application to the City of Berkeley and are responsible for all permit fees and costs.

5.7 Refund of City Funds if Event is not Permitted

If grantee is unable to obtain a Special Event Permit from the City, the grantee must refund any grant payments received from the City for the funded but not-permitted project.

**City of Berkeley Arts Organizations and Arts Programs Grants Guidelines
FY20 Grant Cycle for Berkeley-based Arts Nonprofit Organizations and Arts Programs of Service
Nonprofits: July 1, 2019 — June 30, 2020**

1. PURPOSE, ELIGIBILITY, STANDARDS, GRANT AMOUNTS, USE RESTRICTIONS & FISCAL SPONSORS

1.1 Purpose

Recognizing that arts and culture are integral to the Berkeley's identity, history and desirability as a place to live and visit, the Berkeley Civic Arts Commission utilizes its grant making to foster a healthy civic arts ecosystem and to strengthen diverse cultural expressions in order to enrich the city as a whole. Civic Arts grant funds provide general operating support that is strategically targeted to: bolster the growth and stability of Berkeley's arts community; support a wide array of nonprofit arts organizations, and arts programs of service nonprofits throughout the City of Berkeley; and empower and promote equitable representation of cultural perspectives that have been historically marginalized.

1.2 Eligibility

Applications that are complete and submitted by the deadline will be accepted from ALL applicants that meet the following conditions:

- Organization (and its fiscal sponsor, if applicable) must be housed in the City of Berkeley with its corporate address in the City of Berkeley. Organization and fiscal sponsor address will be verified in GuideStar by City staff.
- Have a majority (at least 51%) of its arts activities in Berkeley for no less than two years.
- Demonstrated financial health for no less than two years as evidenced by:
 - Receiving diverse sources of funding and not being overly dependent on any one source of contributed income.
 - Managing a budget size and percentage of earned revenue appropriate to the programming or arts activity.
 - Not carrying an operating deficit unless it is strategically planned with reserves to cover the deficit.
- Applicant's grant funded operations, programs, or activities take place during July 1, 2019 – June 30, 2020.
- Applicant is in good standing on previous and/or current City of Berkeley grants and with other City departments. Note: Any previously awarded Civic Arts Grants programming must be completed and closed out and final report submitted before new grant funds will be disbursed.
- Demonstrate current nonprofit and tax-exempt status, as identified by Section 501(c)(3) of the Internal Revenue Code. The following additional documentation must be made available upon request: organizational by-laws, roster and meeting calendar for a functioning Board of Directors or advisory group, copies of meeting minutes and resolutions.
- Applicants WITHOUT tax-exempt 501(c)(3) status must acquire a nonprofit and tax-exempt 501(c)(3) fiscal sponsor based in Berkeley and must submit a letter of agreement between the applicant organization and fiscal sponsor.
- Applicant must be one of the following:
 - A nonprofit organization with a mission statement clearly focused on the

development, production, and/or presentation of arts and culture.

- An ongoing program of a non-arts or service-based nonprofit organization that is focused on the development, production, and/or presentation of arts and culture. The applicant's organizational budget category will be based on the arts-program budget only.
- Organizations that are not primarily arts or cultural providers are eligible to apply **only** if they are committed to the development of an ongoing, substantial, and integral arts program within their organization.
- The organization must operate and offer its arts programs in a non-discriminatory manner and in compliance with all applicable laws, including, without limitation, anti-discrimination laws covering protected classes.

1.3 Standards of Practice

The following Standards of Practice provide practical benchmarks to guide and measure organizational grant applicants relative to professional practices in the field which support the overall well-being of the arts ecosystem. An organization's adherence to these standards is taken into consideration by the review panel as part of the grant application evaluation as described Section 3.1: Evaluation Criteria and Weighting.

Recommended Minimum Standards of Practice for All Applicant Organizations

- Artists who are participating in programming in a substantial way are compensated with at least an honorarium, except for:
 - Artists enrolled as students who are receiving course credit for their involvement with the organization.
 - Artists who are amateur participants in a community arts organization such as a community chorus or a community orchestra.
 - Artists who are amateur participants in a non-accredited arts and cultural training program, such as a school of theater or school of dance.

Additional Recommended Standards for Applicant Organizations with average annual budgets above \$500,000

- At least the equivalent of one full-time paid employee with duties including executive and/or artistic management.
- Current practice of Annual Reviewed Year-End Financial Reports.
- Healthy ratio of budget spent on administration and overhead to programs and artist fees.
- Artists and staff compensated at generally accepted professional standards for the field within the San Francisco Bay Area.
- Provide reasonable accommodations for people with disabilities to ensure access to offices, rehearsal spaces, training and other facilities necessary to prepare programs.

1.4 Grant Amounts

The Arts Organizations Grants operate on a one-year cycle based on the City of Berkeley's Fiscal Year (July 1 – June 30). Awards are contingent upon the allocation of funds from the City Council each year. The total amount allocated to each of the three grant categories (Arts Organizations, Festivals, and

Individual Artists) will be recommended by the Civic Arts Commission's Grants Committee after an evaluation of the review panel results and based upon the size of the applicant pools and the corresponding scores. The Grants Committee's recommendation will be forwarded to the full Civic Arts Commission for approval.

Arts Organizations Grants are awarded according to the following categories:

Small Organizations with a 2-year average budget of up to \$100,000	up to \$10,000
Mid-Size Organizations with a 2-year average budget between \$100,000 - \$1,000,000	up to \$14,000
Large Organizations with a 2-year average budget over \$1,000,000	up to \$17,000

Budget levels will be calculated based on cash income. In-kind donations and volunteer work may be listed but should be kept separately from the budget numbers used for calculating eligibility.

Important Note: Grants are awarded on a competitive basis. Past grant awards are no assurance of future awards.

1.5 Funding Use Restrictions

The following restrictions apply to **ALL applicants**:

- Applicant organization may not be an agency or department within the City of Berkeley.
- Applicant organizations may only apply for one Arts Organizations Grant.
- Any previously awarded Arts Organizations Grant programming must be completed and closed out and final report submitted before new grant funds will be disbursed.
- Public and private K-12 schools and school districts are not eligible for funding. Organizations may apply to work in after-school programs, but grant funded activities may not be part of the school day curriculum.
- The awarding of funds does not imply that the Civic Arts Program or any other City department will produce, exhibit, or present the art created. It is the responsibility of the applicant to secure a venue and any required permits for public activities.

The City of Berkeley DOES NOT fund the following:

- Organizations or activities that are part of the curriculum of colleges or universities (this does not apply to artistic presenting units of a university or college that are working on a program outside of the curriculum).
- For-profit organizations.
- Start-up costs/seed money for new organizations or businesses.
- Social service-oriented projects that are not primarily arts focused.
- Operating expenses for private commercial facilities.
- Programs taking place in school during the daily curriculum.
- Out-of-state travel.
- Programming or activities taking place outside of the grant window.
- Capital construction and/or acquisitions (except for ADA accessibility improvements).
- Equipment purchases.
- Events where fundraising is the primary purpose.

- Deficit or debt reduction.

1.6 Fiscal Sponsors

Definition of Fiscal Sponsor: Fiscal sponsor is a 501(c)(3) tax exempt and nonprofit organization that has been assigned the responsibility to process the funds of another organization. This can take the form of processing a single check or providing complex accounting services and project oversight and is unique to each circumstance.

Organizations applying for funding through a Fiscal Sponsor should take particular note of the following requirements that the Fiscal Sponsor must meet:

- Fiscal Sponsor shall be responsible for all fiscal obligations of the grantee's awarded funds.
- Fiscal sponsors must be based in Berkeley.
- A written contract or Letter of Agreement between the applicant and the Fiscal Sponsor specifying the conditions of the Fiscal Sponsor arrangement must accompany the Grant application. **(This agreement must be between the Fiscal Sponsor and the organization; a memorandum or letter to the Civic Arts Commission is not sufficient).** See the Fiscal Sponsor Supplemental Information Sheet.
- If the Fiscal Sponsor is also an applicant to the Arts Organizations Grants Program for their own organization, any funds awarded to the organizations that they fiscally sponsor will not be counted as part of the fiscal sponsor's application budget.
- Information submitted in the grant application, including all budget information, applies to the organization conducting the program, not the Fiscal Sponsor.

2. GRANT APPLICATION MATERIALS

In order to be considered for funding, applicants must submit fully completed grant applications and all required application materials. The Arts Organizations Grants Program application consists of the following components:

Small to Mid-Size Organizations with a budget of up to \$500,000:

- General Application.
- Narrative Description.
- Short Budget Form, including budget notes.
- 501(c)(3) Federal Tax Exempt Status Letter (unless fiscally sponsored).
- Staff and/or Project Personnel Bios (relevant to program focus).
- List of Board of Directors.
- Work Samples and Descriptions of Art Programs/Activities from within the last two years.
- **If fiscally sponsored:** Fiscal Sponsor Supplement including a letter of agreement between applicant and fiscal sponsor and the fiscal sponsor's Federal Tax Exempt Status Letter.

Large Organizations with a budget of \$500,000 or above:

- General Application.
- Narrative Description.
- 2-Year Budget Form, including budget notes.
- 501(c)(3) Federal Tax Exempt Status Letter.
- Staff and/or Project Personnel Bios (relevant to program focus).

- Board of Directors.
- Program Calendar (last, current, and projected year).
- Work Samples and Descriptions of Art Programs/Activities from within the last two years

3. EVALUATION CRITERIA & SCORING SYSTEM

3.1 Evaluation Criteria and Weighting

Applications will be evaluated according to the following criteria which are described so that applicants may have an idea of how the panel will score each application:

Artistic Merit & Professional Quality _____ **25 percent**

- The applicant’s art and cultural work demonstrates high quality and strong artistic merit or promise through its artistic history, accomplishments, and examples of previous work.

Quality of Identified Goals and Strategy _____ **25 percent**

- Applicant’s programmatic and operational goals align with organization’s mission and programmatic trajectory; processes to implement work are clear; and work demonstrates high quality and relevance to identified communities. Given its mission, the applicant’s ability to define and achieve appropriate artistic goals, its commitment to creativity and quality and, if appropriate to its mission, the development of new work.

Capacity _____ **25 percent**

- Applicant demonstrates qualifications and capacity of staff and board relative to programming and operational goals; overall fiscal health of applicant is good and organization demonstrates ability to obtain necessary funding.
- Given the applicant’s budget size and age, the general state of its governance and organizational development, management, and operational and financial soundness, ability to achieve appropriate audience and fundraising goals; extent of operational innovativeness and adaptability to external trends.
- Adherence to Standards of Practice outlined in Section 1.

Cultural Equity Impact _____ **15 percent**

- Demonstrated ability of the applicant to support Berkeley’s diverse cultural traditions and values, including capacity to support and empower the City’s underserved communities.
- Applicant clearly articulates how their program, project or artistic expression is rooted in and reflective of historically marginalized communities and geographically underserved areas of the city.
- Programming and other activities that reach out to economically disadvantaged communities and communities that lack conventional arts venues or formal arts programs.
- The organization demonstrates a commitment to cultural equity. For example, strategic board development to ensure that the board of directors includes members from historically marginalized communities.

Community Impact _____ **10 percent**

- Applicant clearly articulates programs and outreach appropriate to their identified audience(s); programs clearly and significantly support the communities, partners, and artists identified.
- The reach of the applicant’s core programs and the extent to which they engage audiences and provide opportunities for participatory involvement in the arts, including targeted engagement and lifelong arts learning opportunities (i.e., youth, seniors, etc.); the effectiveness of its audience-development activities and its plans for reaching a diverse, broad-based audience and the contribution it makes to sustaining a local community of artists.

3.2 Rating System

When evaluating each criterion, panelists will use the following 10-point scale, which is then translated to the appropriate weight for each criterion:

- Exceptional (9 - 10 points)
- Somewhat Exceeds Expectations (8 – 8.9 points)
- Meeting Accepted Standards (7 – 7.9 points)
- Needs Improvement to Warrant Funding (6 – 6.9 points)
- Does Not Merit Funding (0 – 5.9 points)

An application must receive an overall score of at least 70 percent of total possible points in order for the panel to consider it for funding. However, achieving a score of at least 70 percent of total possible points does not guarantee that the panel will recommend an application for funding, as funds may not be sufficient to recommend a grant for all applicants that score above the minimum threshold. Prior success in receiving an Arts Organizations Grant is no assurance that an applicant will be awarded another grant.

4. APPLICATION REVIEW PROCESS

4.1 Eligibility Screening

Civic Arts Program staff will review for completeness and eligibility all applications that meet the deadline. Applications that pass this initial review will then be evaluated for their strengths by a separate Grant Review Panel, which will rely on the application and related materials submitted by applicants.

4.2 Grant Review Panel

Applications will be reviewed in categories differentiated into three categories (Small, Mid-Size Organizations, and Large Organizations) in order to make the competition among applications more equitable.

The Review Panel is comprised of individuals with substantial background in the arts and a demonstrated commitment to cultural equity, usually drawn from the ranks of experienced and skilled managers and board members of greater Bay Area arts organizations, professional practicing artists from visual and performing arts fields, and experienced arts grant-makers from the philanthropic and public sectors. An open call and application for potential review panelists will be advertised. Review panelists will be approved by the Civic Arts Commission.

Review panelists must not have any conflict of interest, which is defined as a situation in which a panelist has a competing professional, financial, or personal interest, which might make it difficult to fulfill his or her duties impartially and could impair an individual's ability to perform his or her duties and responsibilities objectively. A conflict of interest exists even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in the selection process, the Grants Program, the Civic Arts Commission and the City. If a panelist has a conflict of interest, they must recuse themselves and they must notify the City staff in advance of the panel (so that they're not assigned a lead reader role for those cases) and they must leave the room during any panel discussions regarding the applicant with whom there is a conflict of interest so that the panelist does not influence the process.

The City may engage an experienced consultant to conduct an in-depth examination of aspects of selected applications, in which case the consultant's reports will also be provided to the Review Panel. In addition, the City may provide prior grant report information and other officially gathered information to the Review Panel.

Applicants are encouraged to attend the Grant Review Panel meeting which will be held during normal City business hours and will be publicly accessible. Staff will send the grant review schedule and meeting location to applicants before the Review Panel meeting.

Applicants are not permitted to address the Review Panel. Panel notes summarizing the Review Panel comments will be made available to applicants after the Grants Committee's review of the panel recommendations, but before the Civic Arts Commission's approval.

4.3 Civic Arts Commission Approval and City Council Review

After the Grant Review Panel has scored all applications, the Civic Arts Commission's Grants Committee meets to develop funding recommendations in alignment with the ranking of scores within each category and to align proposed grant awards with available funds and for consistency with granting policies and guidelines, before forwarding the recommendations to the full Civic Arts Commission.

The award amounts as recommended by the Grants Committee are made public at least five business days prior to the Civic Arts Commission approval. The Civic Arts Commission reviews the funding recommendations for approval and once approved sends the slate of selected grantees and grant amounts to City Council for review. Grant awards are subject to the City Council's adoption of the annual budget, which usually occurs in June.

5. SELECTED GRANTEE CONTRACTUAL REQUIREMENTS

5.1 Business License and Insurance Requirements

Successful grant applicants must have a current Berkeley Business License. This includes the organization and the fiscal sponsor if using one. In addition, successful grant applicants must submit a certificate of insurance satisfactory to City of Berkeley Risk Management in order for their grant awards to be processed.

5.2 Invoices

Grantees may invoice for up to 90% of the grant amount once they have entered into a grant agreement with the City of Berkeley. Grantees may invoice for remaining grant funds upon approval of the Final Report by Civic Arts staff.

5.3 Final Report

All Grantees must complete and submit the City's Final Report form for the grant no later than 60 days after the fiscal year end. Grantees must be current on filing required reports before they can receive grant funding. Programs and projects must have been developed and presented in Berkeley with meaningful, accessible engagement of the public during the grant period.

5.4 Financial Penalty for Late Final Reports

If Final Reports are not submitted by the deadline, the City of Berkeley may assess a financial penalty of \$25 per day for each business day a submission is late beyond the submission requirements deadline. The penalty amount will be deducted from the final invoice payment. The penalty amount is capped at 10% of the total grant amount.

5.5 Acknowledging City Support

It is important that the Berkeley community know that their local tax dollars make it possible for them to enjoy the caliber of arts produced in Berkeley. All grantees should recognize Civic Arts Grants in the same manner in which it recognizes other contributors in terms of benefits, type size on publications, and frequency of acknowledgement. Failure to comply with this request may affect future grant opportunities.

Grant recipients must acknowledge the City's financial support in all appropriate materials and media. The acknowledgement should read, "Supported in part by a Civic Arts Grant for Arts Organizations from the City of Berkeley" or similar language, unless the City is a part of a list of supporters. In the latter case, the acknowledgement may say simply City of Berkeley. Grantees must display the City's logo whenever other sponsor logos are displayed, and in accordance with City logo use guidelines.

5.6 Project Notification

Grantees must provide a 30 day advance notice to their City Council Office and Civic Arts Program to invite representatives to the public presentation of the funded program.

City of Berkeley Individual Artist Project Grant Guidelines

FY20 Grant Cycle for Berkeley-based Artists' Projects: July 1, 2019 — June 30, 2020

1. PURPOSE, ELIGIBILITY, GRANT AMOUNT, USE RESTRICTIONS & FISCAL SPONSORS

1.1 Purpose

The Individual Artist Project Grants support individual artists living and producing art in Berkeley culminating in a local public presentation of their work for the benefit of the community within the grant period. Such activities may include, but are not limited to: performances of dance, music or theater; visual art presentations, exhibitions or public art projects; social practice projects; media arts or film screenings; literary presentations; or artist talks. The public presentation can be of a work-in-progress or of the final, polished piece. Grant funds are to be used to generate new work, not to stage pre-existing work.

1.2 Eligibility

Applications that are complete and submitted by the deadline will be accepted from applicants that meet the following conditions:

- Artist is a continuous resident of the City of Berkeley since January 1, 2017. Applicants must submit paperwork demonstrating Berkeley residency with their application.
- Artists in any phase of their artistic career may apply including emerging, midcareer, and established artists.
- Artist may not be enrolled as a full-time student at the time of the application or during the grant period.
- Artist may not be an employee of the City of Berkeley, nor plan to be employed by the City of Berkeley at any time during the grant window.
- Applicants cannot receive funding for two consecutive grant cycles in the Individual Artist Project category. Individual Artist Grantees are required to sit out for one year after each funded grant cycle. In addition, grantees are required to close out a grant before applying for new funding.

1.3 Grant Amount

Grant amounts are up to \$5,000.

Note: Although a budget is not required for the grant application, applicants should be aware of the tax implications upon receiving the award and maintain the documents required for reporting on state and federal income taxes.

1.4 Funding Use Restrictions

Grant funds may not be used for the following:

- Project activities outside of the City of Berkeley.
- Projects for which the main intent is curation, archiving, or journalism.
- Deficit or debt reduction.

2. GRANT APPLICATION MATERIALS

In order to be considered for funding, applicants must submit fully completed grant applications and all required application materials. The Individual Artist Grant application consists of the following components:

- General Application.
- Resume.
- Proof of Residency.
- Work Samples and Descriptions.
- Project Description.

3. EVALUATION CRITERIA & SCORING SYSTEM

3.1 Evaluation Criteria and Weighting

Applications will be evaluated according to the following criteria which are described so that applicants may have an idea of how the panel will score each application:

Artistic & Professional Quality _____ **35 percent**

- The applicant's art and cultural work demonstrates high quality or promise through its artistic history, accomplishments, and examples of previous work.

Quality of Proposed Project _____ **40 percent**

- Project goals and processes are clearly defined, demonstrate originality, clarity and depth of concepts.
- Artist demonstrates that the proposed project will impact their development and future opportunities.

Cultural Equity Impact _____ **15 percent**

- Demonstrated ability of the applicant to support Berkeley's diverse cultural traditions and values, including capacity to support the City's underserved communities.
- Applicant clearly articulates how their project or artistic expression is rooted in and reflective of historically marginalized communities and geographically underserved areas of the city.
- Public Programming or other activities that reach out to economically disadvantaged communities and communities that lack conventional arts venues or formal arts programs.

Community Impact _____ **10 percent**

- The proposed public presentation is appropriate to the project goals and feasible in its potential to share the work with a defined Berkeley audience. Artist has identified at least one venue for public presentation.

3.2 Rating System

When evaluating each criterion, panelists will use the following 10-point scale, which is then translated to the appropriate weight for each criterion:

- Exceptional (9 - 10 points)
- Somewhat Exceeds Expectations (8 – 8.9 points)
- Meeting Accepted Standards (7 – 7.9 points)
- Needs Improvement to Warrant Funding (6 – 6.9 points)
- Does Not Merit Funding (0 – 5.9 points)

An application must receive an overall score of at least 70 percent of total possible points in order for the panel to consider it for funding. However, achieving a score of at least 70 percent of total possible points does not guarantee that the panel will recommend an application for funding, as funds may not be sufficient to recommend a grant for all applicants that score above the minimum threshold.

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4.1 Eligibility Screening

Civic Arts Program staff will review for completeness and eligibility all applications that meet the deadline. Applications that pass this initial review will then be evaluated for their strengths by a separate Grant Review Panel, which will rely on the application and related materials submitted by applicants.

4.2 Grant Review Panel

The Review Panel is comprised of individuals with substantial background in the arts, usually drawn from the ranks of experienced and skilled managers and board members of greater Bay Area arts organizations, professional practicing artists from visual and performing arts fields, and experienced arts grant-makers from the philanthropic and public sectors. An open call and application for potential review panelists will be advertised. Review panelists will be approved by the Civic Arts Commission.

Review Panelists must not have any conflict of interest, which is defined as a situation in which a panelist has a competing professional, financial, or personal interest, which might make it difficult to fulfill his or her duties impartially and could impair an individual's ability to perform his or her duties and responsibilities objectively. A conflict of interest exists even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in the selection process, the Grants Program, the Civic Arts Commission and the City. If a panelist has a conflict of interest, they must recuse themselves and they must notify the City staff in advance of the panel (so that they're not assigned a lead reader role for those cases) and they must leave the room during any panel discussions regarding the applicant with whom there is a conflict of interest so that the panelist does not influence the process.

Applicants are encouraged to attend the Grant Review Panel meeting which will be held during normal City business hours and will be publicly accessible. Staff will send the grant review schedule and meeting location to applicants before the Review Panel meeting.

Applicants are not permitted to address the Review Panel. Panel notes summarizing the Review Panel

comments will be made available to applicants after the Grants Committee’s review of the panel recommendations, but before the Civic Arts Commission’s approval.

4.3 Civic Arts Commission Approval and City Council Review

After the Grant Review Panel has scored all applications, the Civic Arts Commission’s Grants Committee meets to develop funding recommendations in alignment with the ranking of scores within each category and to align proposed grant awards with available funds and for consistency with granting policies and guidelines, before forwarding the recommendations to the full Civic Arts Commission.

The award amounts as recommended by the Grants Committee are made public at least five business days prior to the Civic Arts Commission approval. The Civic Arts Commission reviews the funding recommendations for approval and once approved sends the slate of selected grantees and grant amounts to City Council for review. Grant awards are subject to the City Council’s adoption of the annual budget, which usually occurs in June.

5. SELECTED GRANTEE CONTRACTUAL REQUIREMENTS

5.1 Invoices

Grantees may invoice for 90% of the grant amount once they have entered into a grant agreement with the City of Berkeley. Grantees may invoice for remaining grant funds upon approval of the Final Report by Civic Arts staff.

5.2 Final Report

All Grantees must complete and submit the City’s Final Report form for the grant no later than 60 days after the fiscal year end. Programs and projects must have been developed and presented in Berkeley with meaningful, accessible engagement of the public during the grant period.

5.3 Financial Penalty for Late Final Reports

If Final Reports are not submitted by the deadline, the City of Berkeley may assess a financial penalty of \$25 per day for each business day a submission is late beyond the submission requirements deadline. The penalty amount will be deducted from the final invoice payment. The penalty amount is capped at 10% of the total grant amount.

5.4 Acknowledging City Support

It is important that the Berkeley community know that their local tax dollars make it possible for them to enjoy the caliber of arts produced in Berkeley. All grantees should recognize Civic Arts Grants in the same manner in which it recognizes other contributors in terms of benefits, type size on publications, and frequency of acknowledgement. Failure to comply with this request may affect future grant opportunities.

Grant recipients must acknowledge the City’s financial support in all appropriate materials and media. The acknowledgement should read, “Supported in part by a Civic Arts Grant for Individual Artists from the City of Berkeley” or similar language, unless the City is a part of a list of supporters. In the latter case, the acknowledgement may say simply City of Berkeley. Grantees must display the City’s logo

whenever other sponsor logos are displayed, and in accordance with City logo use guidelines.

5.5 Project Notification

Grantees must provide a 30 day advance notice to their City Council Office and Civic Arts Program to invite representatives to the public presentation of the funded project.

5.6 City Permits and Permissions

The awarding of funds does not imply that the Civic Arts Program or any other City department will produce, exhibit, promote or present the art created. It is the responsibility of the applicant to secure a venue, appropriate insurance and any required permits for public presentations.

If the proposal includes components that require City permits or approval such as publicly installed art, street closures, sound amplification in public space, or murals, the applicant will be solely responsible for securing the necessary permits, permissions, and approvals. This planning should be reflected in your project timeline.

Please note that any art installed with these grant funds on property owned by the City of Berkeley must be reviewed and approved by the Civic Arts Commission starting with the Public Art Committee of the Commission. This applies to murals, public sculpture, and similar projects. It will be the responsibility of the grantee to build this process into their grant plan and timeline. Please contact Civic Art Program staff if you have questions.



Civic Arts Program

FESTIVALS & CIVIC ARTS GRANTS GUIDELINES REVIEW PROCESS

Civic Arts Program staff worked with the Civic Arts Commission and other stakeholders through a public process to develop the Festival Grant Program Guidelines and make some corresponding revisions to the Civic Arts Grant Guidelines for Arts Organizations and Individual Artist Projects to ensure that all grant programs managed by the Civic Arts Program are aligned and reflect a unified overarching grants strategy. The three month-long public process for development of the grant guidelines included numerous opportunities for input prior to final approval by Civic Arts Commission on January 23, 2019.

Opportunities for Public Input and Stakeholder Engagement:

October 10, 2018	Festivals & Arts Organizations Draft Guidelines (v 1) Discussed at Civic Arts Commission Policy Committee Meeting
October 15, 2018	Festivals & Arts Organizations Draft Guidelines (v 1) Discussed at Civic Arts Commission Grants Committee Meeting
October 24, 2018	Festivals & Arts Organizations Draft Guidelines (v 1) Discussed at Civic Arts Commission Meeting
November 5, 2018	Festivals & Arts Organizations Draft Guidelines (v 2) Discussed with Berkeley Cultural Trust Steering Committee & Berkeley Cultural Trust Equity and Inclusion Committee
November 14, 2018	Festivals & Arts Organizations Draft Guidelines (v 2) posted to website for public comment from Berkeley Cultural Trust and Civic Arts Grantees
November 14, 2018	Arts Organizations Draft Guidelines (v 2) Discussed at Berkeley Cultural Trust (Civic Arts Grantees invited)
November 27, 2018	Festivals & Arts Organizations (v 2) & Individual Artist (v 1) Draft Guidelines Discussed at joint Civic Arts Policy/Grants Committee
November 28, 2018	Festivals & Arts Organizations (v 2) & Individual Artist (v 1) Draft Guidelines Discussed at Civic Arts Commission Meeting
December 5, 2018	Festivals Draft Festivals Guidelines (v 2) discussed with festivals stakeholders
December 6, 2018	Final Draft Guidelines for all categories posted to website for public comment
January 8, 2019	Final Draft Guidelines for all categories presented to joint Civic Arts Policy/Grants Committee for approval
January 23, 2019	Final Draft Guidelines for all categories to Civic Arts Commission for approval
January 29, 2019	Referral Response: City Council

For more information, please contact Jennifer Lovvorn, Chief Cultural Affairs Officer.

JLovvorn@CityofBerkeley.info or (510) 981-7533



Planning Commission

23

INFORMATION CALENDAR

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Planning Commission

Submitted by: Chris Schildt, Chairperson, Planning Commission and Jeff Vincent,
Chairperson of the Workplan Subcommittee

Subject: Planning Commission Workplan 2018-2019

INTRODUCTION

The City of Berkeley Planning Commission (PC) hereby submits its work plan for Fiscal Year 2018, pursuant to the Berkeley City Council's request.

CURRENT SITUATION AND ITS EFFECTS

Unlike other city commissions, the PC's workload is almost exclusively dictated by referrals from the City Council. Each year, the Council goes through an extensive referral ranking process, which shapes the prioritization of work for the PC. Thus, by design, the PC has far less latitude than other city commissions in setting its agenda. As of October 2018, the PC has a workload of more than 40 referrals from the City Council.

The PC's workplan organizes the referrals around three strategic areas of PC interest/outcome, as described below. Across these strategic outcome areas, the PC aims to **demonstrate state-wide leadership in promoting social equity, affordability, and climate resilience issues**. In some cases this requires action to comply with new state laws, and in some cases this may involve going "beyond" state laws to recommend local land use policies that the PC feels will achieve more equitable results than state requirements.

Strategic Outcome Areas:

1. **Increase affordable housing.** This includes retaining and expanding the stock of affordable housing available throughout the city. The commission has identified three mechanisms by which we can advance this strategic outcome:
 1. Modify development standards to create more affordable housing;
 2. Revise administrative procedures and levels of discretion to streamline affordable housing;
 3. Develop community benefits and other value capture mechanisms in order to maximize affordability in new development.

2. **Promote healthy, livable communities.** This includes ensuring Berkeley residents live in safe, healthy, and accessible communities with parks, schools, local businesses, and cultural institutions, and promoting healthy mobility options for all residents.
3. **Support community economic development and commercial vitality.** This includes preserving and enhancing Berkeley's thriving neighborhood commercial areas and ensuring a vibrant downtown.

Resources: Significant staff time is required to conduct the research, write reports, and draft zoning language. In some cases, consultants are brought on board to assist staff.

Activities: For each referral, the PC's action requires staff time for substantive reports on each topic within each referral as well as developing draft zoning language changes. Often the draft zoning language goes through multiple revisions across multiple PC meetings.

Outputs: On nearly all referrals, the PC output consists of recommendations to the City Council.

BACKGROUND

City Council has requested that each commission provide a workplan that explains the mission and goals of each appointed body. The mission of the Planning Commission, as outlined in the City Charter, reads:

"The Commission recommends modifications to the City of Berkeley General Plan and related policy documents. All Zoning Ordinance amendments are developed through this Commission and recommended to the City Council. Other purviews include subdivision map consideration and review and comments on substantial projects from surrounding jurisdictions."

Members of the PC have discussed their goals and prioritized three strategic outcomes to guide their 2018-2019 work as described above: 1) Increase affordable housing; 2) Promote healthy, livable communities; and 3) Support community economic development and commercial vitality.

At its meeting of November 7, 2018, the Planning Commission voted to adopt this workplan with Commissioner Vincent's edits and send it to City Council. [Vote: 8-0-0-1; Ayes: Martinot, Kapla, Schildt, Vincent, Fong, Pinto, Beach, Lacey. Noes: None. Abstain: None. Absent: Wrenn. Motion/Second: Kapla/Schildt]

The attached Planning Commission Workplan Table 2018-2019 (see *Attachment 1*) shows prioritized referrals, referrals awaiting action from other commission(s), referrals ranked by City Council that are slated for PC action to begin after the current work planning period (ending June 2019) based on resources and capacity, and referrals not

ranked by City Council for 2018-2019 work plan but which will be added to PC work schedule in priority order once ranked by Council.

ENVIRONMENTAL SUSTAINABILITY

The PC's workplan aids in advancing the city's goals around sustainability and greenhouse gas reduction.

POSSIBLE FUTURE ACTION

The PC's pace in working through City Council referrals is determinant on staff support. Currently, the Long Range Policy Group has two FTE staff planners (with plans to hire a 3rd and 4th soon) that support the growing workload of the PC. The PC is understaffed relative to its workload, as created by the City Council and relative to other Commissions. The PC's ability to move more quickly through City Council referrals could be greatly improved by increasing staff support to the PC.

The PC also makes additions or changes to the workplan as expedited referrals and other timely requests which arise from the City Council.

Resources Needed: Given the urgency of the housing situation in the City of Berkeley, additional staff support for the PC seems to be a prudent priority for city leaders to address.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Increasing staff support to the PC will likely incur expense to the City of Berkeley Planning Department.

CONTACT PERSON

Alene Pearson, Commission Secretary, Land Use Planning Division, 510-981-7489

Attachments:

1: PC Workplan Table 2018-2019

REFERRALS to Planning Commission by the City Council	RANKING* - RRV & HAP	STRATEGIC OUTCOME AREAS			
A. Referrals Prioritized by PC for 2018-2019 Workplan		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	Waiting on other Commission ?
Small Business Package	started			x	
Moderate Impact Home Occupations	started			x	
Comprehensive Cannabis Ordinance	3 started referrals		x	x	
Density Bonus Package	56, 16, and 2 started referrals	x			JSISHL
Student Housing Package	16, 56, and two started referrals	x			JSISHL
Adeline Community Benefits/Land Value Capture	10	x	x		
Streamline Permitting for Affordable Housing	started	x			JSISHL
Zoning Ordinance Revision Project Phase 1 & 2	started		x		
Green Affordable Housing	started	x			
Flexible Ground Floor Uses	25 and one started referral	x			
Housing Linkage Fees	started (short-term)	x			

B. Referrals Awaiting Action by Other Commission(s)		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	Waiting on other Commission ?
Reclassify 1050 Paker from MU-LI to C-W	57			x	ZAB approval

REFERRALS to Planning Commission by the City Council	RANKING* - RRV & HAP	STRATEGIC OUTCOME AREAS			
Green Stormwater Requirements from CEAC			x		CEAC
Air Pollution Performance Standards from CEAC			x		CEAC
Denial of Permits to Violators			x		HAC

C. Referrals ranked by City Council, work to begin after end of this work planning period (June 2019) TBD, based on resources and capacity		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	Waiting on other Commission ?
Toxic Remediation Regulations	started		x		
Green Development Standards from CEAC	started (by CEAC)		x		
Lower discretion for internal remodeling	14		x		
Expand boundaries of Downtown Arts District	17			x	
Junior ADUs	20				
San Pablo Ave Specific Area Plan	23		x		
ADUs in very high fire zones	43		x		
Health Equity and Innovation District	49		x		
Research Tiny Homes, YSA Tiny Homes	63	x			
Commercial Square Footage in C-E	59			x	

REFERRALS to Planning Commission by the City Council	RANKING* - RRV & HAP	STRATEGIC OUTCOME AREAS			
D. Referrals not ranked by City Council for 2018-2019 work plan; will be added to work schedule once ranked based on ranking.		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	Waiting on other Commission ?
Demolition Ordinance		x			
ADUs for Homeless		x			
Fee Waivers for Housing Trust Fund Projects		x			
Auto Uses in C-SA				x	
ADA Improvements in ADUs			x		
Inclusionary Requirement for Live/Work		x			
Mini Dorms (student housing)		x			
ADU Mods			x		

* "started" is a referral on which substantive work began before last Council RRV, thus not subject to re-ranking. If blank, the referral has not yet been ranked by the City Council

NOTE: Many of these referrals touch on all 3 strategic outcome areas.

REFERRALS to Planning Commission by the City Council	RANKING* - RRV & HAP	STRATEGIC OUTCOME AREAS				
Referrals Prioritized by PC for 2018-2019 Workplan		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Small Business Package	started	x				
Moderate Impact Home Occupations	started			x		
Comprehensive Cannabis Ordinance	3 started referrals			x	x	
Density Bonus Package						
Develop Community Benefits with C-T development standards (see Student Housing Package)	started					
Create pilot program for in-lieu fees for City Density Bonus (see Student Housing Package)	56	x				
Revise General Plan & Zoning Ord. to add written standards including density standards for parcels	started					
Amend Zoning Ord. to increase max height by 20' and adjust FAR in area bounded by Bancroft, College, and Fulton (see Student Housing Package)	16					
Student Housing Package	16, 56, and two started referrals	x				
Adeline Community Benefits/Land Value Capture	10	x	x			
Streamline Permitting for Affordable Housing	started	x				JSISHL
Zoning Ordinance Revision Project Phase 1 & 2	started		x			
Green Affordable Housing	started	x				
Flexible Ground Floor Uses	25 and one started referral	x				
Housing Linkage Fees	started (short-term)	x				

RESOURCES	ACTIVITIES	OUTPUTS
LUP & OED staff time to write staff reports and Staff time to write staff reports		
Cannabis Commission Staff time to write Zoning	Commission will review language and provide feedback	Commission makes recommendations to Council
Staff time to write staff reports		
Staff time to write staff reports		
Consultant Staff time		
Staff time to write staff reports		
Staff time to write staff reports		
Adeline consultant Staff time		
JSISHL Subcommittee Staff time to write staff	JSISHL will review state housing laws, provide	JSISHL will make recommendations to the Council
Consultant ZORP Subcommittee		
Staff time to write staff reports and zoning		
Staff time to write staff reports		
Consultant Staff time		

Referrals Awaiting Action by Other Commission(s)		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Reclassify 1050 Paker from MU-LI to C-W	57			x		ZAB approval
Green Stormwater Requirements from CEAC			x			CEAC
Green Development Standards from CEAC			x			CEAC
Air Pollution Performance Standards from CEAC			x			CEAC
Denial of Permits to Violators			x			HAC

Staff time and ZAB		

Referrals ranked by City Council, work to begin after end of this work planning period (June 2019) TBD, based on resources and capacity		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?

Toxic Remediation Regulations	started		x		x	
Lower discretion for internal remodeling	14		x			
Expand boundaries of Downtown Arts District	17			x		
Junior ADUs	20	x				
San Pablo Ave Specific Area Plan	23		x			
ADUs in very high fire zones	43		x			
Health Equity and Innovation District	49		x			
Research Tiny Homes, YSA Tiny Homes	63	x				
Commercial Square Footage in C-E	59			x		

Staff time to write staff reports		
Staff time to write staff reports		
Staff time to write staff reports		
Staff time to write staff reports		
Funding Staff time Consultant? Subcommittee?		
Staff time to write staff reports		
Staff time to write staff reports		
Staff time to write staff reports		
Staff time to write staff reports		

Referrals not ranked by City Council for 2018-2019 work plan; will be added to work schedule once ranked based on ranking.		1. Increase Affordable Housing	2. Promote Healthy, Livable Communities	3. Support Economic Development and Commercial Vitality	4. Comply with or Exceed State Law	Waiting on other Commission ?
Demolition Ordinance		x				
ADUs for Homeless		x				
Fee Waivers for Housing Trust Fund projects		x				
Auto Uses in C-SA				x		
ADA Improvements in ADUs			x			
Inclusionary Requirement for Live/Work		x				

Mini Dorms (student housing)		x				
ADU Mods			x			

* "started" is a referral on which substantive work began before last Council RRV, thus not subject to re-ranking. If blank, the referral has not yet been ranked by the City Council



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