



AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, September 19, 2023

6:00 PM

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

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1609353651> If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **160 935 3651** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@berkeleyca.gov.

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

Preliminary Matters

Roll Call:

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

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

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons attending the meeting in-person and 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.*

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

Consent Calendar

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

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

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

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. 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. Contract Amendment for Extending the Lease for the Real Property at 1461 University Avenue**
From: City Manager
Recommendation: Adopt an Urgency Ordinance authorizing the City Manager to execute an amendment to Contract No. 32200202 with Shree Jalasai Lodging, LP for the real property located at 1461 University Avenue, Berkeley, extending the term for 30 months and increasing the total cost by \$5,362,043, for a new contract not-to-exceed amount of \$8,367,313, for the purposes of extending the interim noncongregate shelter program at this location.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 2. Execute contract with Housing Consortium of the East Bay (HCEB) to operate shelter at the Rodeway Inn**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Housing Consortium of the East Bay (HCEB) to operate an interim housing program at the Rodeway Inn (1461 University Ave.) through April 30, 2026.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 19, 2023**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$22,472,259
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

- 4. 2024 Tax Rate: Transportation Network Company User Tax**
From: City Manager
Recommendation: Adopt first reading of an Ordinance setting the 2024 tax rate (effective January 1, 2024) for the transportation network company at the following rates: 56.162 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 27.424 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 5. Contract: Options Recovery Services – Encampment-based Mobile Wellness Center Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Options Recovery Services to provide Mobile Wellness services for individuals who are unhoused or living in encampments in Berkeley. The contract will be funded through California Mental Health Services Act (MHSA) Innovation (INN) funds, for a total not to exceed amount \$2,802,400, through June 30, 2028.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 6. Authorizing a Lease of 830 University Avenue to Lifelong Medical Care**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to enter into a lease for 830 University with Lifelong Medical Care (Lifelong).
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 7. Revenue Grant: California Office of Traffic Safety (OTS) for the 2024 “Selective Traffic Enforcement Program (STEP) Grant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the Chief of Police to accept the "Selective Traffic Enforcement Program (STEP)" grant and enter into the resultant grant agreement and any amendments, with the California Office of Traffic Safety. This OTS grant is for \$269,000 for the period of October 1, 2023 through September 30, 2024, which is Federal Fiscal Year 2024.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900

Consent Calendar

- 8. Revenue Grant: Cannabis Tax Fund Grant Program (CTFGP)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the Chief of Police to accept the CTFGP grant and enter into the resultant grant agreement and any amendments, with the California Highway Patrol. This grant is for \$59,168 for the period of July 1, 2023 through June 30, 2024.
Financial Implications: One-time Grant Program Fund - \$59,168
Contact: Jennifer Louis, Police, (510) 981-5900
- 9. License Agreement – RM Ventures, LLC, d.b.a, In the Wood Grill & Bar for Nonexclusive Use of the Elmwood Parking Lot Pedestrian Paseo**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a ground license agreement with RM Ventures LLC d.b.a., In the Wood Grill and Bar (In the Wood Grill & Bar) for the nonexclusive use of a portion of the Elmwood Parking Lot Pedestrian Access Path (“Paseo”), a City-owned midblock pedestrian path connecting the City’s Elmwood Parking Lot to College Avenue in the Elmwood Neighborhood Shopping District, for an initial term of five (5) years and authorize the City Manager to execute a renewal of this license, under the same terms, after the termination of the initial term.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
- 10. Contract No. 32200073 Amendment: Toole Design Group for Engineering Design and Construction Support Services for the Southside Complete Streets Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200073 with Toole Design Group for engineering design and construction support services for the Southside Complete Streets Project, increasing the contract by \$508,602, for a total amount not to exceed \$1,790,213, and extending the term of the contract from December 31, 2023 to June 30, 2025.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

11. **Agreement with Goldsmiths for Strawberry Creek Culvert Repair**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a Cost Sharing Agreement and Release with Steven and Cathy Goldsmith for repair of a section of Strawberry Creek Culvert. The culvert was reported to have failed on or about October 24, 2021 and the extents of the failure is alleged to include area in both City right-of-way and private property under the Goldsmiths' home. Per the agreement, the City would expend an amount not to exceed \$75,000 toward repair of the creek culvert in exchange for a release of claims relating to the October 24, 2021 culvert failure.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

12. **Amendment to the Agreement for Maintenance of State Highways in the City of Berkeley between the California Department of Transportation and the City of Berkeley**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley. The amendment will address three new traffic signals: 1) a new pedestrian hybrid beacon (PHB) at San Pablo Avenue and Virginia Street 2) a new PHB at San Pablo Avenue and Hearst Street, and 3) a new rectangular rapid flashing beacon (RRFB) at Ashby Avenue and California Street.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

13. **Contract No. 9977C Amendment: Portable Computer Systems dba PCS Mobile for Parking Permit and Citation Services**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9977C with Portable Computer Systems dba PCS Mobile, increasing the contract amount by \$1,650,000 for a total amount not-to-exceed of \$3,700,000 and extending the contract term through June 30, 2029.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

14. **Contract No. 32000078 and Contract No. 32000093 Amendments DC Electric Group, Inc. for On-Call Electrical Services**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager or designee to Amend the contract, increasing the amounts as outlined below, and extending the contracts through June 30, 2026:
1. Increasing Contract No. 32000078 with DC Electric Group, Inc. for the Facilities Electrical Division for on-call electrical services in the amount of \$300,000 for a total contract amount not to exceed \$475,000.
2. Increasing Contract No. 32000093 with DC Electric Group, Inc. for the Transportation Division for on-call electrical services for traffic calming devices in the amount of \$100,000 for a total contract amount not to exceed \$600,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
15. **Contract: Turnstone Data Inc. for Parking Data Analytics Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a three-year contract with an option for two one-year extensions, that require no additional funding, with Turnstone Data Inc., to provide parking data analysis and visualization services in an amount not to exceed \$375,000 for the period from January 1, 2024 through December 31, 2026.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Council Consent Items

16. **Budget Referral: Berkeley Food Network to address increased demand**
From: Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Refer \$200,000 to the November 2023 AAO #1 process to address the increased number of people experiencing food insecurity in Berkeley including people in danger of eviction due to the COVID-19 eviction moratorium expiration and rent debt due to inflation and rental increases. The proposed funding source is FY 2023-2024 Measure P tax receipts.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during one of the Action Calendar public comment periods on the item. Public comment will occur for each Action item (excluding public hearings, appeals, and/or quasi-judicial matters) in one of two comment periods, either 1) before the Action Calendar is discussed; or 2) when the item is taken up by the Council.

A member of the public may only speak at one of the two public comment periods for any single Action item.

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. 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 – Scheduled Public Comment Period

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

Action Calendar – 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, or use the "raise hand" function in Zoom, 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.

17. Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development

(Continued from July 25, 2023)

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an ordinance amending Berkeley Municipal Code (BMC) Title 23, and repealing BMC Chapter 12.99, relating to Accessory Dwelling Units and Junior Accessory Dwelling Units.

Financial Implications: See report

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

Council Action Items

18. Authorizing the City Attorney to Submit an Amicus Brief in Support of the UC Regents in Make UC a Good Neighbor v. Regents of University of California

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

Recommendation: Adopt a Resolution Authorizing the City Attorney to submit an amicus brief in support of the University of California Regents' in Make UC a Good Neighbor v. The Regents of University of California, currently before the California State Supreme Court on appeal.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor's Office, (510) 981-7100

Council Action Items

19. **Referral to Rezone Gilman Street to Maximize Revenue Productivity Per Acre**
From: Councilmember Kesarwani (Author), Councilmember Taplin (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Recommendation: Refer to the City Manager and Planning Commission to rezone Gilman Street—a major thoroughfare for entering and exiting the City—from San Pablo Avenue to Interstate 80 to maximize revenue-generating and job-creating uses. Specifically, the rezoning of Gilman Street should consider the following: Potential for applying the Manufacturing, Research and Development (M-RD) zoning district currently planned for the Pacific Steel Casting site to a portion of Gilman street. The M-RD zoning district seeks to better align with development interest by: allowing research and development, office, laboratory, and light manufacturing uses currently not permitted by the existing Manufacturing (M) zoning; and removing protections for existing manufacturing uses and constraints associated with certain development standards; and/or Consider a new zoning designation for a portion of Gilman Street west of San Pablo Avenue to I-80 that maximizes revenue productivity per acre via permitted uses and associated development standards; and Extend West Berkeley Commercial District (C-W) zoning on Gilman Street from Ninth Street further west for a certain number of blocks and enhance the flexibility of C-W development standards to increase the likelihood of redevelopment—in coordination with “Keep Innovation in Berkeley” Council referral (passed on Sept. 13, 2022) that seeks to allow research and development uses in C zones. Refer \$250,000 to the FY 2024-25 budget process for consulting services to assist with the planning process and associated environmental review and economic analyses.

Financial Implications: See report

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

Information Reports

20. **Settlement of California River Watch Notice of Intent to File Suit**
From: City Manager
Contact: Farimah Brown, City Attorney, (510) 981-6950

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.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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

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

Agendas and agenda reports may be accessed via the Internet at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 7, 2023.



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](#).

Berkeley's Crime

1. Robin Kibby
2. Shok Saidmuradov

Police Matters

3. David Freeling
4. Alex Merenkov
5. Carol Denney

Hotel Sales

6. Sabina McMurtry

Visit Berkeley

7. Visit Berkeley

Red Curb

8. Sherleen Brown
9. Amy Campos

Hiring Bonus'

10. Minda Berbeco

Cannabis Policy

11. Getting It Right from the Start

Second Hand Smoke

12. Carol Denny

Willard Park

13. Vincent Casalaina
14. Mary Oram

Homelessness

15. Sharon Sangco, on behalf of Windsor Management (2)
16. Peter Radu, Neighborhood Services
17. Aimee Baldwin

School Expansion

18. Leila Moncharsh

Ohlone Greenway

19. Rachel Edelson

Seismic Prep

20. John Parman

UN Association Venue

21. Dirk Neyhart

New Construction

22. Dan Auten

Gus Newport

23. Boona Cheema

Black Rep

24. Tanya Dennis, Post Newspaper Reporter

Waterfront Specific Plan

25. Claudia Kawczynska, Chair of Parks, Recreation and Waterfront Commission

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

ACTION CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Peter Radu, Assistant to the City Manager

Subject: Contract Amendment for Extending the Lease for the Real Property at 1461 University Avenue

RECOMMENDATION

Adopt an Urgency Ordinance authorizing the City Manager to execute an amendment to Contract No. 32200202 with Shree Jalasai Lodging, LP for the real property located at 1461 University Avenue, Berkeley, extending the term for 30 months and increasing the total cost by \$5,362,043, for a new contract not-to-exceed amount of \$8,367,313, for the purposes of extending the interim noncongregate shelter program at this location.

FISCAL IMPACTS OF RECOMMENDATION

Total costs for this lease are not to exceed \$124 per room per night for 43 rooms, plus a \$2000 per room fund for damages payable upon lease termination, for a total increase of \$5,362,043, which will be paid for using State of California Encampment Resolution Funding grant funds, leftover UC Berkeley donation funds from the original lease, as well as funding from Measure U1 that will no longer be needed for Homekey. These funds will be appropriated in the Second Amendment to the FY2024 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

On April 26, 2022, the Council adopted an urgency ordinance to enter into a lease for the Rodeway Inn, using a combination of a California Encampment Resolution Funding grant and a UC Berkeley donation to operate noncongregate interim housing at the Rodeway Inn for the cohort of individuals currently living in the encampment at People's Park. That program, since its inception, has successfully served 110 people; of the 72 people who have exited the program, 35 (49%) have moved directly into permanent housing – a success rate approaching half of all exits.

Shortly thereafter, staff issued an RFP, and eventually an application, for the State of California's Homekey Program to purchase the motel and convert it to permanent supportive housing for people experiencing homelessness. As of the drafting of this report, the State is still reviewing the City's Homekey application. With the lease for the existing interim shelter program ending on October 31, 2023, if the application is not

accepted, the immediate future of this successful noncongregate shelter program will be at stake.

The proposed contract amendment, as specified in Exhibit A attached to this report, continues the existing master lease for 43 rooms at a flat price of \$124 per room per night, as well as a renewed damage fund not to exceed \$2000/room payable at the end of the lease, for a total amount not to exceed \$5,080,450. This includes regular cleaning, linen service, and supplies to the rooms. Staff propose to contract with Housing Consortium of the East Bay (HCEB) to provide the social services component of the program, as the current service provider, Abode Services, is not interested in continuing their contract with the city. Staff are bringing a contract with HCEB to Council in a separate report on the 10/3/23 Council agenda.

Increasing access to interim housing for persons experiencing homelessness is consistent with the City's strategic priorities, and specifically the July, 2021 endorsement of the All Home Regional Action Plan.

BACKGROUND

In February 2022, the City was awarded just over \$4.7M in State of California Encampment Resolution Funding grant funds to operate the Rodeway Inn as the primary interim housing option for people living in People's Park. On April 26, 2023, the Council approved a lease and a services contract with Abode Services to operate the Rodeway Inn as an interim noncongregate housing program. On October 31, 2023, the current lease at the Rodeway will expire.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental impacts associated with this lease. Providing noncongregate interim housing for those currently living in encampments in Berkeley will reduce the negative impact of encampments on Berkeley's environment and waterways.

RATIONALE FOR RECOMMENDATION

If adopted, this lease amendment will allow the City to continue providing safe, low-barrier noncongregate shelter options to people living in encampments. Data from the Homeless Response Team (which will be the source of referrals for the extended Rodeway Inn program) shows that, between September 2021 and April 2023, roughly 500 shelter (both congregate and noncongregate) offers were made to people on the streets in Berkeley, with an overall acceptance rate of 43%; for noncongregate offers, that acceptance rate increased to 84%, demonstrating the effectiveness of this intervention for people living in encampments.

Adopting the agreement by Urgency Ordinance is appropriate in light of the current shelter crisis and the imminent expiration of the existing lease contract. By adopting this

agreement through an Urgency Ordinance, it will be possible to execute a lease with an effective date of November 1, 2023.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered a short-term extension of the Rodeway Inn through March 31, 2023 (to get through the immediate rainy season) using existing ERF and Measure P funding already approved for the program, but then closing the program and saving the \$8.5M in Homekey funding already approved by Council for a future Homekey funding opportunity in 2024 or some other similar use. Staff advise against this alternative action for three reasons:

1. There is an immediate need for continuing this interim shelter now, and no identified locations for those living in this program have been identified, whereas the future Homekey funding and real estate opportunities are unknown at this time; and
2. On July 12, 2021, Council adopted the All Home Regional Action Plan, which commits the city to a 75% reduction in unsheltered homelessness over 3 years. While prioritizing funding for interim housing over future permanent housing opportunities may seem inconsistent with the 1-2-4 framework in this plan, it is actually very consistent with the plan, which acknowledges that communities such as Berkeley may need to immediately invest in interim housing up front to quickly get people off the street before finding permanent solutions to their homelessness:

“1-2-4” is not a prescription or a one-size-fits-all solution. It’s a ratio that illustrates proportionate investment in three strategies simultaneously. In order to reduce unsheltered homelessness rapidly, most cities or counties will need to frontload investment into interim housing options, such as leasing or purchasing motels, tiny homes, mobile homes or other temporary housing options.¹

Given that the All Home Regional Action Plan is the City Council’s current endorsed unsheltered homelessness strategy, continuing this lease using freed-up Homekey funding now is consistent with this strategy.

3. Over the last year, the City has lost more year-round interim shelter capacity than it has gained: while we have added 27 beds at the Berkeley Inn and 23 beds at the new Super 8 program, we have lost 50 beds at Horizon and 40 safe RV parking spaces at SPARK (both at 742 Grayson, which closed in December 2022) and 22 beds at the Emergency Respite trailer program (which ended June

¹ See p. 13, <https://berkeleyca.gov/sites/default/files/documents/2021-07-13%20Item%2012%20Endorse%20All%20Home%20CA%20Regional%20Action.pdf>

2023) for a net loss of 62 beds/interim spaces. The City cannot afford to continue losing shelter capacity in the midst of a Council-declared shelter crisis.

CONTACT PERSON

Peter Radu, Assistant to the City Manager, 510 981-7045

Attachments:

1: Urgency Ordinance

Exhibit A: Contract Amendment

Exhibit B: Lease Agreement from May 1, 2022.

ORDINANCE NO. X,XXX N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXTEND A LEASE AND ANY NECESSARY AMENDMENTS WITH SHREE JALASAI LODGING, LP, DBA RODEWAY INN, BERKELEY, FOR REAL PROPERTY LOCATED AT 1461 UNIVERSITY AVENUE, BERKELEY, CA.

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

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing a growing housing and homelessness crisis, in part exacerbated by the acute lack of affordable housing and supportive housing for people experiencing homelessness; and
- b. Encampments in Berkeley are inherently unhealthy for their residents and frequently problematic for surrounding neighbors; and
- c. Resolving encampments requires working with their residents to find viable alternatives to their unsheltered status, such as low-barrier, noncongregate interim housing options; and
- d. April 26, 2022, the City Council adopted Ordinance No. 7,807-N.S. to master lease the Rodeway Inn at 1461 University Avenue to operate a low-barrier noncongregate shelter for people living in encampments; and
- e. The current lease expires on Oct. 31, 2023, putting the future of the interim program currently running at the Rodeway at risk of closure; and
- f. The property owner, Shree Jalasai Lodging, LP, dba Rodeway Inn, Berkeley, has offered to extend the lease on the same terms (43 rooms at a rate of \$124 per room per night and \$2000 per room in damage funds), to the City for purposes of establishing a homeless shelter for an additional 30 months.

Section 2. The City Manager or her designee is hereby authorized to enter into a lease contract amendment starting November 1, 2023 with Shree Jalasai Lodging, LP, dba Rodeway Inn, Berkeley for real property located at 1461 University Avenue on substantially the same terms as set forth in Exhibit A. The rent will be \$124 per room per night, including \$2000 per room in damage funds, and will be paid by State of California Encampment Resolution Funding grant funds and City of Berkeley General Funds.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar 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.

Public
Public

Contract #32200202

AMENDMENT TO CONTRACT

THIS CONTRACT is entered into on November 1, 2023 between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and Shree Jalasai Lodging, LP dba Rodeway Inn ("Contractor") a company, doing business at 1461 University Ave, Berkeley, CA.

WHEREAS, City and Contractor previously entered into Contract Number 32200202, dated May 16, 2022, which Contract was authorized by the City Council of the City of Berkeley.

WHEREAS, on October 3, 2023, by Ordinance No. -N.S., the Berkeley City Council authorized amendment of said Contract as set forth below.

THEREFORE, City and Contractor mutually agree to amend said Contract as follows:

1. Section 2 is amended to read as follows:

PAYMENT

For services referred to in Section 1, City will pay Contractor a total amount not to exceed \$8,367,313. City shall make payments to Contractor in accordance with provisions described in Exhibit B, which is attached to and made part of this Contract.

2. Section 3.a. is amended to read as follows:

TERM

This Contract shall begin on November 1, 2023 and end on April 30, 2026. The City Manager of the City may extend the term of this Contract by giving written notice.

3. Further, this Contract is amended to include the following language regarding the

Public
Public

City's Sanctuary Contracting Ordinance:

SANCTUARY CITY CONTRACTING

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

- a. "Data Broker" means either of the following:
 - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
 - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
 - i. The City's computer-network health and performance tools;
 - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and

Public
Public

cyber-forensic based investigations and prosecutions of illegal computer-based activity.

In all other respects, the Contract dated May 16, 2022 shall remain in full force and effect.

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date written in the first paragraph of this Contract.

CITY OF BERKELEY

By _____
City Manager

THIS CONTRACT HAS BEEN
APPROVED AS TO FORM BY
THE CITY ATTORNEY FOR
THE CITY OF BERKELEY
02/2022

Registered on behalf of the City Auditor by:

Finance Department

Attest:

Deputy City Clerk

CONTRACTOR

Jaydipsinh Devdhara
Name (Printed)

By J.V. Devdhar (owner)
Signature and Title

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Public

Public
Public
EXHIBIT B

PAYMENT

GENERAL: Contract Amendment is \$ 5,362,043 for a new Not to Exceed (NTE) amount of \$8,367,313.

BILLING: Contractor will submit invoices for services rendered monthly. Invoices for damage deposit payments will be submitted separately in accordance with the terms set forth in the lease.

INVOICES: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. **Email invoices to Accounts Payable and cc' Peter Radu, email pradu@berkeleyca.gov;** (List on invoice, Attn: Peter Radu, Assistant to the City Manager) and reference contract number 32200202.

City of Berkeley
Accounts Payable
P.O. Box 700
Berkeley, CA 94710-700
Email: AccountsPayable@berkeleyca.gov
Phone: 510-981-7310

Payments: The City will make payment to the vendor within 30 days of receipt of a correct, approved and complete invoice.

INTERNAL

**EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM
"NEW CONTRACT"**

Contract # 32200202 Vendor # 53334

CONTRACTOR NAME: Shree Jalasai Lodging, LP dba Rodeway Inn Berkeley Business License # BL-049456

Subject of Contract: Emergency Lease of Real Property - 1461 University Avenue

This contract package contains:	Attached	Waiver Attached	Not Required
3 Original Contracts (Vital Record and Vendor) in folder			
*The Vital Record contract MUST be in a folder. Vendor copies may be assembled with an Acco-fastener.			
**DocuSign Agreements only require 1 Original (Vital Record) copy.			
1. CONTRACT BOILERPLATE <i>Vendor's format. Approved by CM and Legal. Signed.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Scope of Services (Exhibit A @ boilerplate) <i>within contract body.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Payment Provisions (Exhibit B @ boilerplate) <i>Page two of contract</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Evidence of Competitive Solicitation OR Waiver by CM or by <u>Council Resolution</u> <i>ORDINANCE</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. CERTIFICATIONS			
a. Workforce Composition (<i>businesses with 5 or more employees</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Nuclear Free Berkeley Disclosure	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Oppressive States Disclosure (<i>Exception: Community-based, non-profit organizations</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Sanctuary City Compliance Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Certification of Compliance with Living Wage Ordinance (LWO): <i>use current form on web*</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Certification of Compliance with Equal Benefits Ordinance: <i>use current form on web*</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Community Agency: Certification of Anti-Lobbying	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h. Community Agency: Certification of Drug-Free Workplace	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (<i>originals, not copies</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Authorizing Council Resolution # <u>7,807-N.S. (ORDINANCE)</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Consultant Contracts: Form 700, Statement of Economic Interests	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9. Federally Funded Project Requirement: Debarment status printout (SAM.gov)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Requisition # _____ (*Hard copy attached*) Budget Code: 336-21-202-000-0000-000-412-612990 Amt. \$ _____
 Contract Amount \$3,005,270.00 *12208432* Amt. \$ _____
 Amt. \$ _____

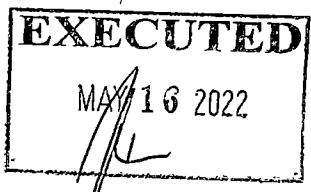
Council Approved Amount \$\$\$3,005,270.00

Was there any advance payment? No Yes If Yes, Advanced Amount \$ _____
 If Yes, Purchase Order # _____

Routing and signatures:

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

- | | | | |
|--|--------------------|-----------------------|-------------------|
| 1. <u>Melanie E. Beasley</u>
Project Manager (PRINT NAME/SIGN) | CMO
Department | 981-7005
Phone No. | 5/05/2022
Date |
| 2. <u>Peter Radu</u>
Department Administrative Officer/Accounting (PRINT NAME/SIGN) | | | 5/05/2022
Date |
| 3. <u>Paul Budd</u>
Department Head (PRINT NAME/SIGN) | | | 5/12/22
Date |
| 4. <u>Josh Roben</u>
Contract Administrator (PRINT NAME/SIGN) | | | 5/12/2022
Date |
| 5. <u>Sharon Friedrichsen</u>
Budget Manager (PRINT NAME/SIGN) | APPROVED VIA EMAIL | | 5/13/2022
Date |



Routing continues to the following persons, who sign directly on the contract:

6. City Manager (*Will not sign unless all signatures and dates appear above*)
 7. City Clerk: Destruct _____ Review _____

* For current vendor forms, go to City of Berkeley website: [Vendor Forms & Requirements](#)

Radu, Peter

From: Friedrichsen, Sharon
Sent: Friday, May 13, 2022 9:20 AM
To: Roben, Josh
Cc: Rosete, Michelle; Dupaya, Maricar C.
Subject: FW: New Contract: Shree Jalasai Lodging, LP dba Rodeway Inn

Importance: High

Follow Up Flag: Follow up
Due By: Monday, May 16, 2022 7:30 AM
Flag Status: Flagged

Josh,
Budget Final-Approved
Sharon

From: Rosete, Michelle
Sent: Friday, May 13, 2022 9:19 AM
To: Friedrichsen, Sharon <SFriedrichsen@cityofberkeley.info>
Cc: Murty, Rama <RMurty@cityofberkeley.info>; Dupaya, Maricar C. <MDupaya@cityofberkeley.info>
Subject: New Contract: Shree Jalasai Lodging, LP dba Rodeway Inn

Budget Initial – APPROVED

Notes:
Authorizing Council Ordinance# 7,807 urgency ordinance authorizing the City Manager to execute lease agreement and necessary amendment for real property located at 1461 University Avenue.
Contract Amount: \$3,005,270
Req#12208432 – NTE \$3,005,270 (encumbered contract method)
Funding is available in account code 336-21-202-000-0000-000-412-612990-

Michelle M. Rosete
Associate Management Analyst
City Manager's Office
Budget and Fiscal Management Division
Tel. (510) 981-7042
E-mail: mrosete@cityofberkeley.info

Internal

CITY OF BERKELEY

EMERGENCY OCCUPANCY AGREEMENT

<u>OCCUPANCY AGREEMENT COVERING PREMISES LOCATED AT:</u> Rodeway Inn 1461 University Avenue, Berkeley, CA 94702
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.:</u>
<u>TENANT:</u> City of Berkeley

File No:

THIS OCCUPANCY AGREEMENT, made and entered into this 1 day of May 2022 by and between

Preamble

SHREE JALASAI LODGING, LP dba RODEWAY Inn, Berkeley

hereinafter called the Owner, without distinction as to number or gender, and the City of Berkeley, hereinafter called the City ("Occupancy Agreement"). This Occupancy Agreement is entered into for the purposes of providing interim housing for persons experiencing homelessness in Berkeley, California.

Owner is the record owner of or authorized party to grant such rights concerning certain real property defined as the Premises herein situated in the County of Alameda, State of California and has the authority to grant the rights contained herein this Occupancy Agreement to the City.

WITNESSETH

Description

1. The Owner hereby authorizes the City and the City hereby hires from the Owner those certain premises "AS IS" with appurtenances situated in the City of Berkeley, County of Alameda, State of California, and more particularly described as follows:

The Forty-Three (43) rooms (collectively, the "Rooms") located at 1461 University Avenue, Berkeley, CA as outlined in red on the attached Exhibit A - Aerial Site Plan, consisting of one (1) page, dated June 14, 2020, said Exhibit A, hereby being incorporated into this Occupancy Agreement, and including all parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities (collectively, the "Premises"). The City shall have exclusive access to and use of the Premises set forth in this Occupancy Agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions. During the Term, Owner shall not rent or allow occupancy of any room or facilities in the hotel.

Term; Early Termination

2. The term of this Occupancy Agreement shall commence on May 1, 2022, with the City taking physical occupancy on May 15, 2022, and continue for eighteen (18) months until October 31, 2023; however, at any time after the first twelve (12) months of the Term (any time after April 30, 2023), the City shall have the right to terminate this Occupancy Agreement at any time by giving written notice to the Owner at least sixty (60) days prior to the date when such termination shall become effective (the "Term"). If the City fails to move out by the end of the Term, additional rent shall be paid and prorated on a 30-day month, based

J.V.D

Internal

on the actual number of days the City occupies the Premises following the effective date of termination.

Rent and Invoicing

3. Rent payments shall be paid by the City, from legally available funds and subject to the California Constitution, in arrears on the last day of each month during said term as follows:

THE DAILY ROOM RATE SHALL BE ONE HUNDRED TWENTY-FOUR AND 00/100 DOLLARS (\$124.00) PER GUEST ROOM ("RENT"), REGARDLESS OF WHETHER THE GUEST ROOM IS OCCUPIED OR NOT. OTHER THAN THE RENT AND PAYMENT FOR ROOM RESTORATION DESCRIBED BELOW, THE CITY SHALL NOT BE RESPONSIBLE FOR ANY OTHER PAYMENT TO OWNER.

Rent shall be paid to Owner at the address specified in Paragraph 4 or to such other address as the Owner may designate by a notice in writing.

Notices

4. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either: 1) deposited in the United States Mail, certified and postage prepaid; or 2) sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver's signature required; and addressed as follows:

To the Owner: Shree Jalasai Lodging, LP
Jaydipsinh (Jay) Devdhara, Manager
547 35th Avenue
San Francisco, CA 94121
Phone No.: 415-812-0756
Hotel No.: 510-848-3840
Email: jrajput86@gmail.com

To the City: City Manager's Office
City of Berkeley
2180 Milvia St, 5th Floor
Berkeley, CA 94704
Attn: Peter Radu
Phone No. (510) 931-7045
Email: pradu@cityofberkeley.info

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE PREMISES ADDRESS.

Rent warrants shall be made payable to:

Shree Jalasai Lodging, LP,

and mailed to: 1461 University Avenue
Berkeley, CA 94702
Attn: Jay Devdhara

Nothing herein contained shall preclude the giving of any such written notice by personal service so long as it is acknowledged in writing by the parties. The address to which notices and correspondence shall be mailed to either party may be changed by giving written notice to the other party.

Internal

Parking

5. Parking spaces, upon commencement of the Term of the Occupancy Agreement, shall be unobstructed and completely accessible for City's use. Parking spaces shall be provided at no additional charge.

Services, Utilities, and Supplies

6. Owner, at Owner's sole cost and expense, shall furnish normal and standard hotel operation functions, such as utilities and supplies, including without limitation the following: electricity and gas for heating, ventilating, air-conditioning and gas and electric services as the City needs for its operations, sewer, trash disposal up to 3 yards per week, hot and cold water service, internet, linen and laundry service, housekeeping and janitorial service, including toiletries, not less than every 3 days.

All housekeeping/janitorial services, as well as linen/terry and laundry services shall be provided in accordance with any applicable, current health and safety protocols established by public health officials as detailed in Exhibit C.

If Owner fails to provide the foregoing services or utilities, City may furnish the same and deduct the cost, plus City's administrative expenses, from the Rent.

Repair and Maintenance

7. During the Term of this Occupancy Agreement, the Owner shall maintain the Premises in good repair and tenantable condition. With 24 hours' written notice given, Owner reserves the right to inspect any Room upon request. Owner warrants and represents the Premises shall be readily accessible to and usable by individuals with disabilities in compliance with Title III of the Americans with Disabilities Act of 1990 and California Title 24, as amended from time to time and regulations issued pursuant thereto and in effect from time to time. Any and all costs incurred to cause the Premises to comply with said Act shall be borne by Owner.

8. The City shall have the right to assign this Occupancy Agreement.

Quiet Possession

9. The Owner agrees that the City, while keeping and performing the covenants herein contained, shall at all times during the existence of this Occupancy Agreement, peaceably and quietly have, hold, and enjoy the Premises without suit, trouble, or hindrance from the Owner or any person claiming under the Owner.

Destruction

10. If the Premises are totally destroyed by fire or other casualty, this Occupancy Agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the Premises unusable for the purpose intended, Owner shall effect restoration of the Premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to City of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, City, in either such event, at its option may terminate this Occupancy Agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting the cost thereof from the Rent due or to become due under this Occupancy Agreement and any other occupancy agreement between Owner and City.

In the event of any such destruction other than total, where the City has not terminated the Occupancy Agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said Premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the City shall have the option to terminate this Occupancy Agreement or complete the repairs itself, deducting the cost thereof from the Rent due or to become due under this Occupancy Agreement and any other occupancy agreement between Owner and City.

It is understood and agreed that the City or its agent has the right to enter the destroyed or partially destroyed Premises no matter what the condition. At the City's request, the Owner

J.V.D

Internal

shall immediately identify an appropriate route through the building to access the Premises. If the Owner cannot identify an appropriate access route, it is agreed that the City may use any and all means of access at its discretion in order to enter the Premises.

**Subrogation
Waived**

11. To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the Premises, Owner hereby waives the subrogation rights of the insurer, and releases the City from liability for any loss or damage covered by said insurance.

**Prevailing
Wage
Provision**

12. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply:

- A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.
- B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

Department of Industrial Relations
 Division of Labor Statistics and Research
 455 Golden Gate Avenue, 8th Floor
 San Francisco, California 94102
 Phone: (415) 703-4774
 Fax: (415) 703-4771

For further information on prevailing wage: http://www.dir.ca.gov/dlsr/statistics_research.html

- C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.
- E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations

**Fair
Employment
Practices**

13. During the Term of this Occupancy Agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and the regulations or standards adopted by the awarding City to implement such article.

Holding Over

14. In the event the City remains in possession of the Premises after the expiration of the Occupancy Agreement Term, or any extension or renewal thereof, this Occupancy Agreement shall be automatically extended on a month to month basis, subject to a thirty day (30) day termination by the City and otherwise on the terms and conditions herein specified, so far as applicable. If the City fails to vacate the Premises within the notice period and remains for an extended period, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the City occupies the Premises following the effective date of

Internal

termination. Any such payments for additional rent shall be limited to the actual number of Rooms occupied by the City following the effective date of termination.

Surrender of Possession

15. Upon termination or expiration of this Occupancy Agreement, the City will peacefully surrender to the Owner the Premises in good order, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which City has no control or for which Owner is responsible pursuant to this Occupancy Agreement. Notwithstanding the foregoing, City's obligation to restore the Premises shall be limited to and in accordance with paragraph 19.

Time of Essence, Binding upon

16. Time is of the essence of this Occupancy Agreement, and the terms and provisions of this Occupancy Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties hereto. All of the parties hereto shall be jointly and severally liable hereunder.

No Oral Agreements

17. It is mutually understood and agreed that no alterations or variations of the terms of this Occupancy Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

Hazardous Substance

18. City agrees that it will comply with all applicable laws existing during the Term of this Occupancy Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event a government order is issued naming the City or the City incurs any liability during or after the Term of this Occupancy Agreement in connection with contamination which pre-existed the City's obligations and occupancy under this Occupancy Agreement or which were not caused by the City, Owner shall hold harmless, indemnify, and defend the City in connection therewith and shall be solely responsible as between City and Owner for all efforts and expenses thereto.

Restoration of Premises

19. Upon termination of this Occupancy Agreement, Owner agrees that the equipment installed by the City shall be and remain the property of the City, and City shall remove such property when vacating the Premises. At the end of the Term, the City will reimburse the Owner a Fee not to exceed \$2,000.00 per Room for the actual out-of-pocket costs to replacing any damaged furniture, flooring and/or hard goods, beds and/or soft goods in the Rooms and any required deep cleaning, including pest control and heat treatments. Subject to the \$2,000.00 per Room cap, City shall pay the amount due to Owner within thirty (30) days of City's receipt of Owner's proof of payment including actual costs for the goods, services and labor, which may include Owner's labor expenses, in order for the hotel to be able to transition back to operating at capacity once this Occupancy Agreement terminates. City's obligation to restore the Premises to its condition prior to taking occupancy, subject to the limits in paragraph 15, shall be limited to the terms of this paragraph 19. The Owner reserves the right not to repair/replace any damages caused maliciously or intentionally by the City or its program guests in excess of the \$2,000.00 per Room reimbursement cap. The City will include language in any program guest agreement paperwork stipulating that excessive damages caused to the Room may be grounds for discharge from the program.

Access

20. Owner shall permit City to access to those Rooms on the Premises that are not undergoing rehabilitation or repairs beginning on May 1, 2022, and all Rooms beginning May 15, 2022, to stage and prepare the Premises for occupants, or for any other purpose the City deems necessary.

Indemnification and Insurance

21. The City agrees to indemnify and hold harmless the Owner in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which Owner may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the City, its employees, or any person or persons acting under the direct control and authority of the City or its employees, in connection with the City's occupancy of the Premises under and during the Term of this Occupancy Agreement and agrees to repair or pay for any damage proximately caused by reason of the City's use of the Premises during the Term of this Occupancy Agreement, including fire damage caused by City occupants' sole

Internal

negligence or arson, except to the extent that any such damages suffered by Owner are the result of Owner's negligent or wrongful acts or the acts of any persons acting under or on behalf of the Owner and/or where the City is found to have no liability by reason of any immunity arising by statute or common law in connection with the fulfillment of the City's constitutional and statutory public responsibilities.

Owner agrees to indemnify and hold harmless the City in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which City may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the Owner, its employees, or any person or persons acting under the direct control and authority of the Owner or its employees, in connection with the City's occupancy of the Premises under and during the Term of this Occupancy Agreement except to the extent that any such damages or expenses suffered by City are the result of City's sole negligence. Owner specifically waives any claim to special or consequential damages it may have against City, including but not limited to claims concerning business reputation. Owner's defense and indemnity obligations under this paragraph shall not be limited by the policy limits of any policy of insurance.

Owner shall maintain in force at all times such policies of insurance as specified in Exhibit B, and shall abide by all of the terms and conditions of Exhibit B, which are incorporated by reference as if set forth in full herein.

For the Term of this Occupancy Agreement, City shall selfinsure or maintain, at its own expense, Comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single and aggregate limits for both bodily injury and property damage, personal injury, completed operations and products liability. City insures City's personal property located on or in the Premises.

22. Owner is solely responsible for all tax liabilities, including property taxes.

Exclusive Use

23. Owner shall not rent or allow occupancy of any vacant rooms or facilities in the hotel during the Term of the City's occupancy of the Premises.

Occupancy of

24. Owner and City understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from occupants of Rooms in exchange for access to or use of the Premises. Owner and City also understand that neither has entered into any contract with the occupants of the Rooms related to the use of the Premises within the meaning of California Civil Code section 1925. The occupants of the Rooms are not persons who hire any dwelling unit from Owner or City within the meaning of California Civil Code section 1940 and are not subject to the benefits of the California Civil Code or any other state statutes, rules, or regulations or local government rules, regulations or ordinances that confer tenancy rights on the occupants.

Remedies

25. In the event of a breach by the Owner of any term or provision of this Occupancy Agreement, the City shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Occupancy Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Owner of any of the provisions of this Occupancy Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Owner shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Occupancy Agreement, each party's rights and remedies under this Occupancy Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

Conflict of Interest

26. By executing this Occupancy Agreement, Owner certifies that it does not know of any fact which constitutes a violation of California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, and further agrees promptly to notify the City if it becomes aware of any such fact during the Term of this Occupancy Agreement.

J.V.D

HOTEL LABOR PROVISIONS

27. During the Term of this Occupancy Agreement, no employee shall be terminated except for just cause.

Employment

28. The Owner shall comply with all local, state and federal wage-and-hour and other employment standards laws covering employers in the hotel industry. The City shall have the right to audit the Owner for compliance with such wage-and-hour and other employment-standards laws.

Health & Safety

29. In the event a room is to be cleaned while it is occupied by a guest, Owner shall ensure that at least two employees are present to do so. Owner shall furthermore ensure that personnel or a manager are readily accessible to provide assistance while such occupied rooms are being cleaned, and shall follow any local law requiring the provision of "panic buttons" or emergency contact devices to employees.

30. In the event that an employee has a reasonable concern that an assignment does not conform to Exhibit C and thus places their health and safety at risk, the employee may refrain from performing the assignment. No employee shall suffer retaliation from doing so. Owner shall ensure employees have read, understood and follow all safety provisions in Exhibit C, which will be updated from time to time.

31. Owner will comply with the March 31, 2020 Alameda County Health Order Section 13(h) and take all necessary and reasonable steps to ensure employees are in compliance with the order as it applies to Essential Businesses. As future Health Orders have been or are released, Owner shall follow all applicable requirements. Owner shall take reasonable steps to ensure employees are able to remain at least six (6) feet apart from other hotel personnel and guests while they are performing their assigned work and during breaks, in addition to any other social distancing protocols required by state or local public health agencies. In no event shall any employee be required to work within six feet of, or in the same room as, an individual who is under quarantine or in isolation, or who has or is suspected to have COVID-19.

32. Owner will comply with all relevant CDC standards, as listed in Exhibit C of this Occupancy Agreement.

33. Employees shall be considered third-party beneficiaries of the requirements set forth in Paragraphs 27-33.

Enforcement

CITY OF BERKELEY PROVISIONS

34. City Non-Discrimination Ordinance. Owner hereby agrees to comply with the provisions of the Berkeley Municipal Code ("**B.M.C.**"), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Occupancy Agreement, Owner agrees as follows:

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

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

35. Non-Discrimination Against Persons With Disabilities.

Internal

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

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

36. Conflict of Interest Prohibited.

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

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

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

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

38. Oppressive States.

a. In accordance with Resolution No. 59,853-N.S., Owner certifies that it has no contractual relations with, and agrees during the Term of this Occupancy Agreement to forego contractual relations to provide personal services to, the following entities:

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

Internal

b. For purposes of this Occupancy Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed Oppressive States.

c. Owner's failure to comply with this paragraph 60 shall constitute a default of this Occupancy Agreement and Owner may terminate this Occupancy Agreement on five days' written notice to Owner. In the event that City terminates this Occupancy Agreement due to a default under this provision, City may deem Owner a non-responsible bidder for five (5) years from the date this Occupancy Agreement is terminated.

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

a. "Data Broker" means either of the following: (1) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; (2) the aggregation of data that was collected for another purpose from that for which it is ultimately used.

b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include: (1) The City's computer-network health and performance tools; (2) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

Internal

IN WITNESS WHEREOF, this Occupancy Agreement has been executed by the parties hereto as of the dates written below.

Internal

CITY:

CITY OF BERKELEY

By Dee Williams-Ridley
D.W. Ridley

Date 5/13/22

Approved as to Form
Sara Stephens
Deputy CITY ATTORNEY
By Sara Stephens

ATTEST FOR THE CITY OF BERKELEY
[Signature]
DEPUTY CITY CLERK
ASST.

Registered on behalf of the City Auditor:

[Signature]
Finance Department

OWNER:

SHREE JALASAI LODGING, LP

By J.V. Devdharma
JAYDIPSINH DEVDHARA,
Managing Member

Date 04-27-2022

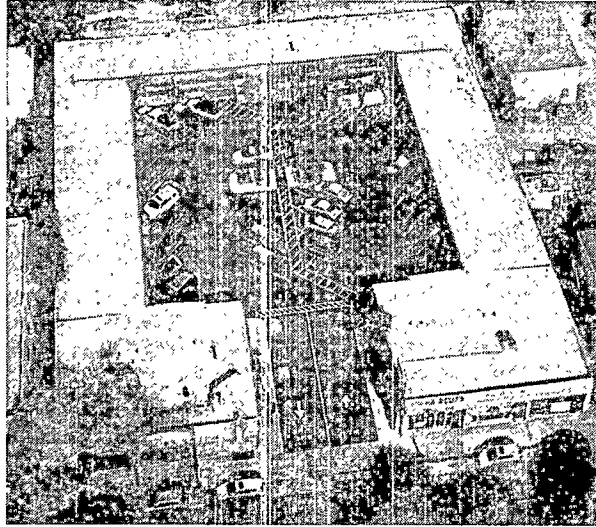
Date _____

Internal
Exhibit A
Aerial Site Plan

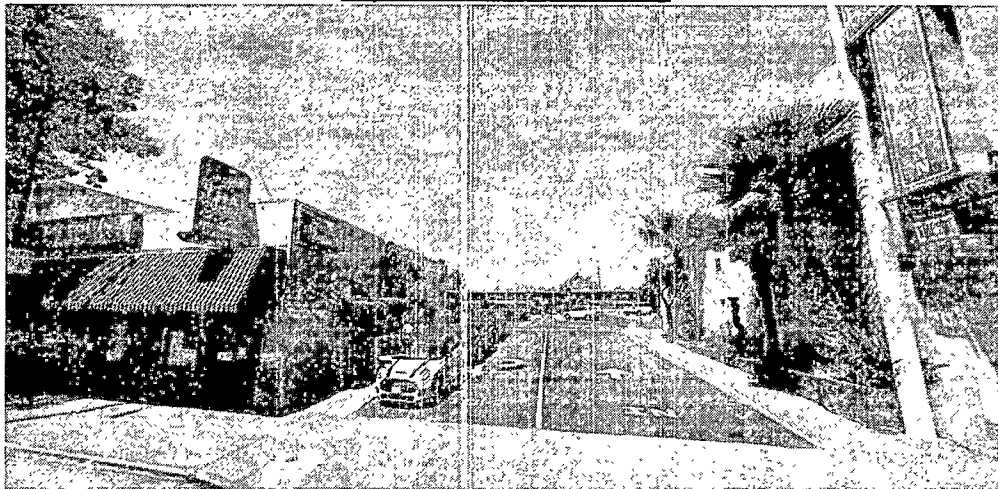
This is an aerial site plan including all parking spaces contiguous to the subject hotel building.

<https://earth.google.com/web/search/1461+University+Avenue,+Berkeley,+CA,+USA/@37.87052798,-122.28331165,29.73265671a,130.83737455d,35y,0.00000001h,44.99566261t,360r/data=CigiJgokCREM3UOQ70JAEbC2JKSD70JAGVEzhUqikV7AlbHGd7y7kV7A>

Dated 06/14/2020



<https://earth.google.com/web/search/1461+University+Avenue,+Berkeley,+CA,+USA/@37.87032048,-122.28330065,30.80211199a,0d,88.22010856y,332.71991788h,99.18980124t,0r/data=CigiJgokCREM3UOQ70JAEbC2JKSD70JAGVEzhUqikV7AlbHGd7y7kV7AlhoKFjU5X3JJbIpMcGVoejFhY2NGaTRkT3cQAq>



Internal
Exhibit B

City of Berkeley Minimum Insurance Requirements

a. Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000 (two million dollars); an automobile liability insurance policy in the minimum amount of \$1,000,000 (one million dollars); and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds or certificate holder and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured or certificate holder form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below.

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

c. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Contract Administrator; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator.

d. Contractor shall forward all insurance documents to:

Department Name: City Manager

Department Address: 2180 Milvia Street, Berkeley, CA 94704

Internal
Exhibit C

Health and Safety Requirements for Housekeeping and Hotel Staff*

Sanitation of Rooms Between Guest Departure and Arrival

In addition to standard room cleaning procedures usually followed by the hotel provider between guest departures and arrivals, hotel staff will take the following additional cleaning measure for room cleaning between guests:

- All cleaning shall be performed in alignment with guidelines as set forth in the California State Department of Public Health and CalOSHA's publication, "COVID-19 INDUSTRY GUIDANCE: Hotels and Lodging", most recent release date of May 6, 2020 and all updates issued thereafter and incorporated as procedure herein.
- Personal protective equipment and training of housekeepers will be provided in alignment with guidelines available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
- Owners shall ensure compliance with social distancing protocol as required and updated by the local health official and as first introduced in the 3/31/20 Alameda County Health Order Section 13(k).
- Owner shall ensure that employees are provided break rooms in compliance with social distancing protocols that avoid congregate settings.
- Owner shall ensure that employees are practicing social distancing while performing all functions.

Sanitation of Guest Rooms During Guest Stays

Owner will provide guests cleaning supplies at the beginning of their stay to maintain cleanliness of their own rooms, and informed of their responsibility to maintain cleanliness of their rooms. Hotel staff will not enter the guest rooms during guest stays. Any towels and linens that the guest would like to be laundered may be left outside their door every third day in single-use, sealed bags within an established laundry pickup schedule every 3 days, to be exchanged for a clean set of towels and linens.

*City reserves the right to modify these requirements as necessary to conform to any changes to rules, regulations, guidance or advice from public health officials.

NON-DISCRIMINATION/WORKFORCE COMPOSITION

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

ORGANIZATION Shree Jalasai Lodging, LP dba Rodeway Inn, Berkeley
ADDRESS 1461 University Avenue, Berkeley, CA 94702
BUSINESS LICENSE # BL-049456

You may complete this online & make entries in these cells they will be automatically totaled at the bottom. or print the form & complete by hand/typewriter.

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)*	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators	1						1					
Professionals												
Technicians												
Protective Service Workers												
Para-professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance	1	3	1							3		
Other Occupation: Specify*												
Totals												

*Specify other occupation:

**Specify other ethnicity:

Is your business MBE/WBE/DBE certified? If Yes, by what agency? _____
 If Yes, please specify: or ethnic identification: _____
 Do you have a policy of non-discrimination?

Signature J.V. Devdhar Date 04/29/2022
 Print/Type Name of Signer Jaydipsinh Devdhara

Verified by _____ Date _____

City of Berkeley Contract Administrator

OCCUPATIONAL CATEGORIES

Officials and Administrators - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

Professionals - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and public relations workers, social workers, doctors, psychologists, registered nurses, economists, clergymen, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

Technicians - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Protective Service Workers - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Para-Professionals - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machine occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

1. I am (we are) fully cognizant of any and all contract(s) held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90-170 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90 Ordinance No. 578- NS) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90-130.

 "Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

 "Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

 "Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).
4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: Jaydipsinh Devdhara Title: Partner

Signature: J.V. Devdhar Date: 04/29/2022

Business Entity: Shree Jalasai Lodging, LP

Contract Description/Specification No. Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of Shree Jalasai Lodging, LP (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59.853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means, Tibet Autonomous Region and the Provinces of Amdo, Kham and U-Tsang

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Printed Name: Jaydipsinh Devdhara Title: Partner

Signature: J.V. Devdhar Date: 04/29/2022

Business Entity: Shree Jalasai Lodging, LP

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

Contract description/Specification No.: _____

CITY OF BERKELEY
Sanctuary City Compliance Statement

The undersigned, an authorized agent of Shree Jalasa Logging LP (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"), Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

- a. "Data Broker" means either of the following:
 - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private and public business and government agencies;
 - ii. The aggregation of data not was collected for another purpose from that for which it is primarily used;
- b. "Extreme Vetting" means "a combination of background, predictive risk analysis, or other similar services." Extreme Vetting does not include:
 - i. The City's computer-interactive health and performance tools;
 - ii. Cybersecurity capabilities, technologies, and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cyberattacks, as well as cyber-forensic based investigations and prosecutions of illegal computer-based activity.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor's failure to comply with the SCCO shall constitute a material default of the Contract and the City Manager may terminate the Contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 29th day of April, 2022 at Berkeley, California.

Printed Name: Jaydeep Devdara Title: Partner

Signed: J.V. Devdara Date: 04/29/2022

Business Entity: Shree Jalasa Logging LP

CITY OF BERKELEY

Living Wage Certification for Lessees of Public Property, Licensees, Concessionaires, And Franchisees

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that lessees of public property, licensees, concessionaires, and franchisees ("user of public property" or "user") shall comply with all provisions of this Ordinance. The LWO requires a user of public property to provide City-mandated minimum compensation to all eligible employees, as defined in the LWO. In order to determine whether this lease, license, concession, or franchise ("agreement") is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those agreements where the user generates a certain amount of annual gross receipts. In addition, the agreement may become subject to the LWO if the status of the user's employees change (i.e. additional employees are hired) or the annual gross receipts in a subsequent year meet the threshold level, so that the user falls within the scope of the Ordinance.

Section I.

1. PLEASE ANSWER THE FOLLOWING QUESTIONS

a. Do you generate \$350,000 or more in annual gross receipts?
YES [checked] NO []

If no, this agreement is NOT subject to the requirements of the LWO at this time, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?
YES [] NO [checked]

If you have answered, "YES" to questions 1(a) and 1(b) this agreement IS subject to the LWO. If you responded "NO" to 1(b) this agreement IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS AGREEMENT IS SUBJECT TO THE LIVING WAGE ORDINANCE. []

THIS AGREEMENT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE. [checked]

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, as indicated above, and the applicability of the subject agreement. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If at any time during the term of the agreement, the answers to the questions posed herein change so that the user would be subject to the LWO, the user will promptly notify the City Manager in writing. User further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the agreement as it applies to the LWO, shall constitute a default of the agreement and the City Manager may terminate the agreement and bar the user from future agreements with the City for five (5) years from the effective date of the agreement termination. If the LWO is applicable to this agreement, the user must pay a living wage to all 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.

These statements are made under penalty of perjury under the laws of the state of California.

By: David Dworkin, One Stop Integration, Inc., a California corporation, On behalf of Shree Jalasai Lodging
Printed Name: Its: President Title:
Signature: [Signature] Date: 05/09/2022

Business Entity: Shree Jalasai Lodging, LP

Agreement Description/Specification No: _____

Section III

• **** FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY ****

I have reviewed this Living Wage Certification form, and determined that this Agreement IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

To be completed by
Contractor/Vendor

Form EBO-1
CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a contractor, return this form to the originating department/project manager. If you are a vendor (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name: Shree Jalsal Lodging, LP dba Rodeway Inn, Berkeley		Vendor No.:	
Address: 1461 University Avenue	City: Berkeley	State: CA	ZIP: 94702
Contact Person: Jay Devdhara		Telephone: 415-812-0756	
E-mail Address: rajput86@gmail.com		Fax No.:	

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
 Yes No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
 Yes No
 If "Yes," continue to Question C.
 If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? Yes No
 If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.)
 If you answered "Yes" to both Questions C and D, please continue to Question E.
 If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? Yes No
 If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
 If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
 - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
 - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
 - Upon expiration of the contractor's current collective bargaining agreement(s).
- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? Yes No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this 29th day of April in the year 2022 at Berkeley CA
(City) (State)

Jaydipsinh Devdhara
Name: (please print)

J.V. Devdhara
Signature

Partner
Title

Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY		
<input type="checkbox"/> Non-Compliant (The City may not do business with this contractor/vendor)		
<input type="checkbox"/> One-Person Contractor/Vendor	<input type="checkbox"/> Full Compliance	<input type="checkbox"/> Reasonable Measures
<input type="checkbox"/> Provisional Compliance Category, Full Compliance by Date: _____		
Staff Name (Sign and Print): _____		Date: _____

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Shree Jalasai Lodging, LP

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-278 Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompanying herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

Name of Authorized Official

Title

Jaydipsinh Devdhara

Partner

Signature

Date (mm/dd/yyyy)



04/29/2022

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Shree Jalasai Lodging, LP

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f

2. Sites for Work Performance. The Applicant shall list (on separate pages) the sites for the performance of work done in connection with the HUD funding of the program/activity shown above. Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program activity receiving grant funding.)

Check here, if there are workplaces on file that are not identified on the attached sheets

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C 1001, 1010, 1012; 31 U.S.C 3729, 3802)

Name of Authorized Official
Jaydipsinh Devdhara

Title
Partner

Signature

Date

X *J.V. Devdhara*

04/29/2022

form HUD-50070 (3/98)
ref Handbooks 7417, 7475, 13, 7485 1 & 3

Internal

REQUEST FOR WAIVER OF INSURANCE

To Contract Administrator

From/Dept Contact Peter Radu Phone: 510-981-7045

Department City Manager's Office - Neighborhood Services

Date 5/2/22

CONTRACTOR NAME SHREE JALASAI LODGING, LP dba RODEWAY Inn, Berkeley

INSTRUCTIONS

A written request must be submitted for any waiver consideration. Please complete and submit this request to Darryl Sweet, Contract Administrator.

We are requesting one or more waivers of insurance on the above contract. Explanation must clearly state why this request meets the required criteria. See Contracts Online, Section III for details on Insurance Requirements & waivers.

1. Type of service to be performed for the City (explain in detail)

The Rodeway Inn will be leasing their real property at 1461 University Avenue, Berkeley, for the purposes of providing emergency shelter for persons experiencing homelessness.

2. Reason/s for waiver requested (ex: service does not warrant insurance; insurance not available)

Insurance is not available to this provider. Insurance carriers no longer offered additional insured to hotel providers for the purposes of providing homeless shelters. Alameda County and the State of California have been partnering with this property owner to operate a homeless shelter and have accepted certificate holder, rather than additional insured.

3. Specific insurance waiver/s requested (check all that apply)

auto general liability professional liability workers comp

Other or details - please explain _____

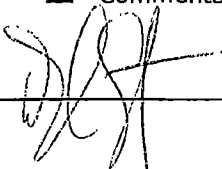
4. Other Comments. NOTE: Lack of advanced planning does not constitute conditions for waiver.

The City Attorney has reviewed and advised the City Manager and Mayor of potential risks.

WAIVER/S RECOMMENDED Comments liability endorsement as add'l insured

WAIVER/S DENIED Comments _____

Contract Administrator



5/2/22

Date

ORDINANCE NO. 7,807-N.S.

URGENCY ORDINANCE AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH SHREE JALASAI LODGING, LP, DBA RODEWAY INN, BERKELEY, FOR REAL PROPERTY LOCATED AT 1461 UNIVERSITY AVENUE, BERKELEY, CA.

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

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing a growing housing and homelessness crisis, in part exacerbated by the acute lack of affordable student housing and supportive housing for people experiencing homelessness; and
- b. To help address this crisis, on December 14, 2021, the City Council affirmed its support of the development of People's Park into affordable housing, including permanent supportive housing for people experiencing homelessness, by unanimously voting to commit \$14.4M in funding to help close the financing at this development; and
- c. Providing low-barrier, noncongregate interim housing options will be critical to end the unsheltered status and avoid the mere displacement of those currently living in People's Park to the surrounding communities of Berkeley; and
- d. On December 29, 2021, City staff partnered with the University of California, Berkeley to submit a grant application to the State of California, requesting \$4,708,015 in Encampment Resolution Funding (ERF) grant funds for one year of operations at the Rodeway Inn on University Avenue in Berkeley, which staff proposed as the primary interim housing option for those in the Park; and
- e. On February 24, 2022, the City learned that its ERF grant had been funded by the State in full; and
- f. The property owner, Shree Jalasai Lodging, LP, dba Rodeway Inn, Berkeley, has offered to lease 43 rooms at the property at 1461 University Avenue, Berkeley, at a rate of \$124 per room per night and \$2000 per room in damage funds, to the City for purposes of establishing a homeless shelter for 18 months.

Section 2. The City Manager or her designee is hereby authorized to enter into a lease and necessary amendments starting May 1, 2022 with Shree Jalasai Lodging, LP, dba Rodeway Inn, Berkeley for real property located at 1461 University Avenue on substantially the same terms as set forth in Exhibit A. The rent will be \$124 per room per night, including \$2000 per room in damage funds, and will be paid by State of California Encampment Resolution Funding grant funds and funds from the University of California, Berkeley.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.


Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 26, 2022, this Urgency Ordinance was adopted by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

ATTEST: 

Mark Numainville, City Clerk

In effect: Immediately

RECEIVED
MAY 16 2022
CITY OF BERKELEY
CITY CLERK DEPARTMENT



Office of the City Manager

ACTION CALENDAR
SEPTEMBER 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Peter Radu, Assistant to the City Manager
 Subject: Execute contract with Housing Consortium of the East Bay (HCEB) to operate shelter at the Rodeway Inn

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with Housing Consortium of the East Bay (HCEB) to operate an interim housing program at the Rodeway Inn (1461 University Ave.) through April 30, 2026.

FISCAL IMPACTS OF RECOMMENDATION

If approved, this resolution will result in an expenditure contract with HCEB for an amount not to exceed \$4,000,000 for program operations through April 30, 2026. This contract will be paid for using State of California Encampment Resolution Funding grant funds (Fund #336), leftover UC Berkeley donation funds from the original lease (Fund #147), as well as funding from the City General Fund (Measure P and/or U1) previously reserved for HomeKey. These funds will be appropriated in the Second Amendment to the FY2024 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The City is currently funding Abode Services to provide interim emergency shelter at the Rodeway Inn through October 31, 2023. Abode Services is not interested in extending its contract with the city. There are currently 38 households enrolled in the program with 79% being eligible for permanent supportive housing.

On May 10, 2023, Health, Housing and Community Services Department, Housing and Community Services Division staff, in partnership with MPI Homes and HCEB, submitted a proposal to the State of California's Homekey Program to purchase the Rodeway Inn and convert and operate it as permanent supportive housing for people experiencing homelessness. As of the drafting of this report, the State is still reviewing the City's Homekey application. Since Abode Services will end on October 31st, a contract with HCEB is needed to continue to provide interim shelter services in the event the City is not awarded Homekey funding. Because of the time sensitive nature of this item, the budget reflects service and operations through April 30, 2026 including some funding for HCEB to be on-site in October to get familiar with site operations and

Execute contract with Housing Consortium of the East Bay
to operate shelter at the Rodeway Inn

ACTION CALENDAR
SEPTEMBER 19, 2023

program participants to be ready to take over full operations starting on November 1, 2023.

BACKGROUND

In February 2022, the City was awarded just over \$4.7M in State of California Encampment Resolution Funding grant funds to operate the Rodeway Inn as the primary interim housing option for people living in People's Park. On April 26, 2023, the Council approved a lease with Shree Jalasai Lodging, LP and a services contract with Abode Services to operate the Rodeway Inn as an interim non-congregate housing program. Abode Services contract will end on October 31, 2023.

ENVIRONMENTAL SUSTAINABILITY

Continuing to provide interim shelter and services to previously unsheltered people while they wait to be permanently housed minimizes the detrimental environmental impacts associated with encampment homelessness, including vector and fire hazards, accumulation of trash and waste, and impacts on sensitive waterways.

RATIONALE FOR RECOMMENDATION

Housing Consortium of the East Bay is an experienced non-congregate shelter provider, having contracted with the County to provide services at Project Roomkey sites in Alameda County. They are also the co-applicant in the Homekey application for this site and are prepared to assume full site operations starting on November 1, 2023 whether or not the Homekey application is awarded.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered circulating a competitive solicitation (request for proposals) for the services at the Rodeway, but determined it wasn't feasible nor would it be in the program's best interest to do so. Specifically, this is because HCEB is the co-applicant in the Homekey application and is prepared to take over short- or long-term operations as of November 1st. If the Homekey project is awarded, having another provider take over short-term operations, would have been disruptive for program participants and general operations. This way, HCEB will be on-site and working with Abode Services in October so they are fully prepared to take over operations on November 1, 2023.

CONTACT PERSON

Peter Radu, Assistant to the City Manager, 510-981-7045.

Attachments:
1: Resolution

RESOLUTION NO. XX,XXX N.S.

AUTHORIZING A CONTRACT WITH HOUSING CONSORTIUM OF THE EAST BAY (HCEB) SERVICES TO OPERATE INTERM HOUSING AT THE RODEWAY INN FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$4,000,000 FOR THE PERIOD OCTOBER 1, 2023 TO APRIL 30, 2026.

WHEREAS, the severe lack of housing affordable for people who are experiencing homelessness, is contributing to an acute housing shortage that is worsening the rates of homelessness in Berkeley; and

WHEREAS, the City received State of California Encampment Resolution Fund (ERF) grant funds to operate the Rodeway Inn as an intensive interim housing destination and the current services will end on October 31, 2023; and

WHEREAS, there are currently 38 households enrolled in the interim shelter program, the majority of them waiting to be referred to permanent supportive housing;

WHEREAS, the City partnered with MPI Homes and Housing Consortium of the East Bay, to submit a proposal to the State of California's Homekey Program to purchase the Rodeway Inn and convert it to permanent supportive housing for people experiencing homelessness and the State is still reviewing the application; and

WHEREAS, Housing Consortium of the East Bay is an experienced non-congregate shelter provider, having contracted with the County to provide services at Project Roomkey sites in Alameda County and are prepared to assume full site operations starting on November 1, 2023 whether or not the Homekey application is awarded.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a contract and necessary amendments for the period October 1, 2023 through April 30, 2026 with Housing Consortium of the East Bay for operating a non-congregate interim housing program at the Rodeway Inn.

BE IT FURTHER RESOLVED that the contract amount will not exceed \$4,000,000 with a payment of \$387,100 to be advanced prior to contract execution to cover staffing and operating costs. Contract payments will be paid from Encampment Resolution Fund grant moneys, the City General Fund (Measure P and/or U1), and leftover donation funds from the University of California, Berkeley. A recorded signature copy of said contract and any amendments will be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Henry Oyekanmi, Director, Finance
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 19, 2023

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$22,472,259**.

<u>PROJECT</u>	<u>Fund</u>	<u>Source</u>	<u>Amount</u>
Berkeley Fire Station Landscape Project	011	General Fund	\$172,259
Street Rehabilitation FY 2024	127	State Transportation Tax	\$14,000,000
	130	Measure B	
	133	Measure F	
	134	Measure BB	
	501	Capital Improvements	
Berkeley Water Transportation Ferry Pier Project Traffic & Parking	606	Coastal Conservancy Grant	\$150,000
	307	ACTC Grant	
	336	WETA Funding	
Berkeley Water Transportation Ferry Pier Project Design	606	Coastal Conservancy Grant	\$5,800,000
	307	ACTC Grant	
	336	WETA Funding	

Formal Bid Solicitations and Request for Proposals
 Scheduled for Possible Issuance After Council
 Approval on September 19, 2023

CONSENT CALENDAR
 September 19, 2023

Berkeley Water	606	Coastal Conservancy Grant	
Transportation Ferry Pier	307	ACTC Grant	\$2,200,000
Project Environmental	336	WETA Funding	
"HARD HATS" labor compliance consultant	011	General Fund	\$150,000
Total:			\$22,472,259

CURRENT SITUATION AND ITS EFFECTS

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

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Need for the goods and/or services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Formal Bid Solicitations and Request for Proposals
Scheduled for Possible Issuance After Council
Approval on September 19, 2023

CONSENT CALENDAR
September 19, 2023

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance
After Council Approval on September 19, 2023

- a. Berkeley Fire Station Landscape Project
- b. Street Rehabilitation FY 2024
- c. Berkeley Water Transportation Ferry Pier Project Traffic & Parking
- d. Berkeley Water Transportation Ferry Pier Project Design
- e. Berkeley Water Transportation Ferry Pier Project Environmental
- f. HARD HATS Compliance Consultant

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

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
24-11622-C	Berkeley Fire Station Landscape Project	October 2023	November 2023	Landscape services for the Station 4 Demonstration Garden	\$ 172,259.00	011-72-743-000-0000-000-422-612990	Berkeley Fire Department, Wildland Urban Interface Division	Jesse Figoni x5598
DEPT. TOTAL					\$ 172,259.00			
24-11624-C	Street Rehabilitation FY 2024	1/1/24	March 2024	Pavement rehabilitation of various streets	\$ 14,000,000.00	127-54-623-673-0000-000-431-665110 - \$1,000,000 130-54-623-673-0000-000-431-665110 - \$725,309 133-54-623-673-0000-000-431-665110 - \$155,000 134-54-623-673-0000-000-431-665110 - \$3,500,000 501-54-623-673-0000-000-431-665110 - \$7,619,691 601-54-623-673-0000-000-431-665110 - \$1,000,000 Total – \$14,000,000	Public Works/ Engineering	Srinivas Muktevi 981-6402 Rpn Nevels 981-6439
DEPT. TOTAL					\$ 14,000,000.00			

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
24-11625-C	Berkeley Water Transportation Ferry Pier Project Traffic & Parking	10/1/23	Nov-23	Environmental services for the Berkeley Water Transportation Ferry Pier Project environmental analyses, CEQA and permitting support services.	NTE \$150,000 over the course of 3 years	Multiple – Coastal Conservancy Grant: 606-52-545-000-0000-000-461-612990-PRWWF24002 ACTC Grant: 307-52-545-000-0000-000-461-612990-PRWWF24002 WETA Funding: 336-52-545-000-0000-000-461-612990-PRWWF24002	Parks, Recreation & Waterfront	Liza McNulty 510-542-4131

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
24-11626-C	Berkeley Water Transportation Ferry Pier Project Design	10/1/23	November 2023	Design services for the Berkeley Water Transportation Ferry Pier Project	NTE \$5,800,000 over the course of 3 years	Multiple – Coastal Conservancy Grant: 606-52-545-000-0000-000-461-612310-PRWWF24002 ACTC Grant: 307-52-545-000-0000-000-461-612310-PRWWF24002 WETA Funding: 336-52-545-000-0000-000-461-612310-PRWWF24002	Parks, Recreation & Waterfront	Liza McNulty 510-542-4131

DATE SUBMITTED: SEPTEMBER 19, 2023

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
24-11627-C	Berkeley Water Transportation Ferry Pier Project Environmental	10/1/23	November 2023	Environmental services for the Berkeley Water Transportation Ferry Pier Project environmental analyses, CEQA and permitting support services.	NTE \$2,200,000 over the course of 3 years	Multiple – Coastal Conservancy Grant: 606-52-545-000-0000-000-461-612990-PRWWF24002 ACTC Grant: 307-52-545-000-0000-000-461-612990-PRWWF24002 WETA Funding: 336-52-545-000-0000-000-461-612990-PRWWF24002	Parks, Recreation & Waterfront	Liza McNulty 510-542-4131
DEPT. TOTAL					\$ 8,150,000.00			
24-11631-C	"HARD HATS" labor complinace consultant	9/26/2023	10/31/2023	Consultant to design and implement a program to enforce the provisions outlined in Chapter 13.107 of the Berkeley Municipal Code	\$ 150,000.00			
DEPT. TOTAL					\$ 150,000.00	011-21-201-000-0000-000-412-612990	Planning/Ofc of Director	Jenny McNulty 981-7451
TOTAL					\$ 22,472,259.00			



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Henry Oyekanmi, Director, Finance Department
Subject: 2024 Tax Rate: Transportation Network Company User Tax

RECOMMENDATION

Adopt first reading of an Ordinance setting the 2024 tax rate (effective January 1, 2024) for the transportation network company at the following rates: 56.162 cents on the user for each prearranged trip that originates in the City that is not part of a pooled prearranged trip and 27.424 for each pooled prearranged trip on each user who arranges each prearranged trip that originates in the City and which comprises part of the pooled prearranged trip.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 56.162 cents for each non-pooled prearranged trip and 27.424 cents on each user for each pooled prearranged trip will result in estimated collections of \$1,022,160.

CURRENT SITUATION AND ITS EFFECTS

The 2023 tax of 53.775 cents tax per each non-pooled prearranged trip and the 26.259 cents tax per each pooled prearranged trip is being adjusted by the Personal Income Growth of 4.440% as authorized on November 3, 2020 by voter approved Measure GG as the voters approved the greater of the Consumer Price Index in the immediate San Francisco Bay Area of 4.192% or Personal Income Growth increase in California of 4.440%.

BACKGROUND

On November 3, 2020, over 66% of Berkeley voters approved Measure GG which authorized a transportation network company user tax for prearranged trips for private and pooled trips for general municipal services in the City until January 1, 2041.

The tax may be increased or decreased annually in May, according to the greater of the increase or decrease in the cost of living in the immediate San Francisco Bay Area or personal income growth in the state of California, as verified by official United States economic report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

ALTERNATIVE ACTIONS CONSIDERED

The fiscal impact on general municipal services of forgoing an adjustment to the fiscal year's transportation network company user tax would be a reduction of \$2,427 in estimated collections.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

IMPOSING A GENERAL TAX ON USERS OF TRANSPORTATION NETWORK COMPANIES AT A RATE OF 56.162 CENTS FOR PRIVATE TRIPS AND 27.424 CENTS FOR POOLED TRIPS

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

Section 1. The 2024 Tax Rate, effective January 1, 2024, to fund general municipal services is set at 56.162 cents for private trips and 27.424 for pooled trips.

Section 2. This tax rate will result in estimated total collections of \$1,022,160.

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



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Health, Housing, and Community Services

Subject: Contract: Options Recovery Services – Encampment-based Mobile Wellness Center Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Options Recovery Services to provide Mobile Wellness services for individuals who are unhoused or living in encampments in Berkeley. The contract will be funded through California Mental Health Services Act (MHSA) Innovation (INN) funds, for a total not to exceed amount \$2,802,400, through June 30, 2028.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$1,201,000 provided from the State of California Mental Health Services Act Fund 315, is available in the Fiscal Year 2024 budget. The remaining funding for this project, in the amount of \$1,601,400, will be included in future budgets.

CURRENT SITUATION AND ITS EFFECTS

In March 2023, per Bid Specification 23-11592-C a Request for Proposal (RFP) was released to obtain a community partner to implement this project. Following proposal review and rating from a panel of reviewers, which included community members, Options Recovery Services was selected as the vendor to implement these services in Berkeley.

The City Council approved, Encampment-based Mobile Wellness Center Project will offer a customizable menu of services (i.e. food/hygiene, service navigation, wellness activities, and community/enrichment) to Berkeley's unhoused population. Services and activities through this project will be responsive to the changing needs of the community and will be planned on a weekly basis based on on-going conversations with encampment community members. Coordination with local partners involved in current homeless outreach efforts will be central to service provision. This project is funded through Mental Health Services Act (MHSA) Innovation (INN) funds.

BACKGROUND

The State of California provides MHSAs funding for local mental health services and supports. One of the annually recurring MHSAs funding components is Innovation (INN). MHSAs regulations require that INN funds are to be utilized on short-term pilot projects that increase learning in the mental health field. In order to utilize funds, stakeholder informed INN Plans outlining how funds are to be allocated are required to be developed and locally approved. MHSAs INN Plans also require approval from the California Mental Health Services Oversight and Accountability Commission (MHSOAC).

Following extensive community engagement, the MHSAs INN Encampment-Based Mobile Wellness Center Project Plan was written and circulated for a 30-Day Public Review. A Public Hearing before the Mental Health Commission Meeting was held at the end of the 30-Day Public Review Period. In April 2022, both the City Council and the California Mental Health Services Oversight and Accountability Commission (MHSOAC) approved the MHSAs INN Project Plan.

Following project plan approvals, a panel which included members of the community was convened to inform what would be requested in the Request for Proposal (RFP). The RFP was released at the end of March 2023 and closed in May. A separate review panel that included members of the community was convened to review and rate the received proposals and Options Recovery Services was the selected vendor.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The execution of this contract will ensure that additional mental health wellness services are implemented for individuals who are unhoused in Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered as City Council previously approved the Encampment-based Mobile Wellness Center Project Plan to implement services for unhoused individuals.

CONTACT PERSON

Jeff Buell, Manager of Mental Health, HHCS, (510) 981-7682
Karen Klatt, Community Services Specialist III, HHCS, (510) 981-7644

Attachments:
1: Resolution

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

CONTRACT: OPTIONS RECOVERY SERVICES – ENCAMPMENT-BASED MOBILE WELLNESS CENTER PROJECT

WHEREAS, the City’s Health, Housing, and Community Services, Mental Health Division (HHCS/MHD), currently receives Mental Health Services Act (MHSA) Innovation (INN) funds on an annual basis to implement short-term projects that will increase learning in the mental health field through strategies that increase the access, quality, or outcomes of services, and/or promote community collaborations; and

WHEREAS, the HHCS/MHD often collaborates with community partners in the implementation of MHSA INN funded services; and

WHEREAS, in order to utilize MHSA INN funds, the HHCS/MHD must have a stakeholder informed, local and state approved plan in place; and

WHEREAS, following an extensive community engagement process, a draft plan was developed to allocate \$2,802,400 of INN funds to implement a Mobile Wellness Center for services, activities, and supports for the unhoused population in Berkeley; and

WHEREAS, on April 22, 2022, per Resolution No. 70,287-N.S, City Council authorized approval of the Encampment-based Mobile Wellness Center Project Plan and any extensions for services, activities and supports for homeless individuals in Berkeley for a total project amount not to exceed \$2,802,400; and

WHEREAS, on April 26, 2022 the California Mental Health Oversight and Accountability Commission (MHSOAC) approved the Encampment-based Mobile Wellness Center Project Plan; and

WHEREAS, in March 2023, per Bid Specification 23-11952-C a Request for Proposal was released to find a local provider to implement this project; and

WHEREAS, in June 2023, following proposal review from a panel that included individuals from the community, Options Recovery Services was chosen as the vendor to implement these services in Berkeley; and

WHEREAS, funds for this contract in the amount of \$1,201,000 are available in the Fiscal Year 2024 budget in the Mental Health Services Act Fund 315; and

WHEREAS, funds in the amount of \$1,601,400 will be available for this contract in the Fiscal Years 2025 through 2027 budgets in the Mental Health Services Act Fund 315.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to execute a contract and any amendments with Options Recovery Services to implement Mobile Wellness services to

individuals who are unhoused or living in encampments for a total contract amount not to exceed \$2,802,400 through June 30, 2028, with a record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

Internal



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services
 Subject: Authorizing a Lease of 830 University Avenue to Lifelong Medical Care

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to enter into a lease for 830 University with Lifelong Medical Care (Lifelong).

FISCAL IMPACTS OF RECOMMENDATION

Lifelong will pay \$2,000 per month in facility costs for the duration of the lease. Revenue will be deposited into Fund 673, a building maintenance fund, so that these funds can be available for maintenance and repairs to this historic building.

CURRENT SITUATION AND ITS EFFECTS

Lifelong is currently operating a Trust Clinic in Oakland, which was created through a close partnership with Alameda County. The purpose of the Trust Clinic is to serve the mental and physical health needs of people experiencing homelessness, by being very accessible and offering a range of services. Lifelong proposes to duplicate the success of that clinic at 830 University.

Berkeley Free Clinic will be losing the site that they have occupied for years, due to redevelopment plans at that property, and proposes to relocate their services to 830 University as well. The Berkeley Free Clinic is a worker-run collective that works to ensure that comprehensive, private health services are available to everyone.

Lifelong and Berkeley Free Clinic worked together to plan for use of the building, and will enter into an agreement regarding mutual responsibilities for this project prior to executing this lease. They are planning to make limited interior updates and renovations. This lease will run for five years with an option to renew. Staff anticipate submitting a lease with Berkeley Free Clinic for approval later this fall.

BACKGROUND

The Council previously approved \$525,000 in Measure P funds for Lifelong to support the operation of this new Trust Clinic. Lifelong will use some of these funds to cover initial facility costs. Because this is a landmarked building, changes that can be made to the building are very limited.

The City has owned and operated the building at 830 University as a public health clinic since 1916. Ann Chandler (1941-2012) was a director of the Alameda County Public Health Laboratory for 25 years and a Berkeley City Council member from 1984 to 1992. She backed the creation of a teen health clinic at Berkeley High School, advocated for people with HIV/AIDS, pressed for increased TB testing, and expanded mental health services, and the facility was named after her (the Ann Chandler Public Health Center).

In recent years the Department of Health, Housing, and Community Services Public Health Division (HHCS/PH) operated out of this site. Services included sexual and reproductive health, immunizations, Black Infant Health, and the Women, Infant, and Children (WIC) nutrition program. With changes in health insurance provision and benefits, demand for services decreased at this clinic over time. In 2022, HHCS/PH consolidated its sexual and reproductive health services at the High School Health Center and moved other services to the West Berkeley Family Center at 1900 Sixth Street, with a goal of creating a service-enhanced, welcoming environment for children and families.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental sustainability and climate impacts associated directly with the subject matter of this report.

RATIONALE FOR RECOMMENDATION

Leasing the 830 University site to Lifelong and Berkeley Free Clinic will ensure that a robust array of health care services, reaching both people experiencing homelessness and people who are not well-served or served at all by other health care options, will continue to be available in Berkeley. People who are based in Berkeley and going to the Oakland Trust Clinic will be able to access care closer to home. Lifelong and Berkeley Free Clinic will expand and carry on Berkeley's more than 100 year tradition of providing health services at this site.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify another use of the site which would continue the legacy of the Ann Chandler Health Center and make full use of a site designed for clinic services.

CONTACT PERSON

Amy Davidson, Deputy Director, HHCS, 510-981-5406

Attachments:

1: Ordinance

Exhibit A: Lease by and between City of Berkeley and Lifelong Medical Care

ORDINANCE NO. -N.S.

LEASING THE ANN CHANDLER HEALTH CENTER AT 830 UNIVERSITY TO
LIFELONG MEDICAL CARE AND THE BERKELEY FREE CLINIC

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

Section 1. FINDINGS:

1. The City of Berkeley acquired 830 University Avenue in 1933 for use as a health clinic.
2. The Department of Health, Housing, and Community Services' Public Health Division ceased operating clinic services in 830 University Avenue in early 2023.
3. Lifelong Medical Care has proposed using the site to offer homeless health care services, and the Berkeley Free Clinic has proposed to move their current operations to this location.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A LEASE FOR 830 UNIVERSITY.

The City Manager is hereby authorized to enter into a five-year lease agreement with the option for a five-year extension with Lifelong Medical Care for real property located at 830 University and known as the Ann Chandler Health Center. Such lease shall be on substantially the terms set forth in Exhibit A.

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

Internal

LEASE

By and Between

CITY OF BERKELEY
a Charter City organized and existing under the laws of the State of California
("Landlord")

and

LIFELONG MEDICAL CARE
a non-profit corporation
("Tenant")

Dated: , 2023

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EXHIBITS

Exhibit A-1	Legal Description of Property
Exhibit A-2	Depiction of the Premises
Exhibit B	May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc.

Internal

LEASE

BASIC LEASE INFORMATION

- 1. **Landlord:** City of Berkeley, a Charter City organized and existing under the laws of the State of California
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704
Attn: Deputy Director, Health, Housing, and Community Services
Telephone: 510-981-5400

- 2. **Tenant:** Lifelong Medical Care, a non-profit corporation
2344 Sixth Street
Berkeley, CA 94710
Phone: 510-981-4177

- 3. **Effective Date:** , 2023

- 4. **Premises:** Approximately ten thousand (10,000) rentable square feet of space in the building commonly known and referred to as 830 University Avenue, Berkeley, California 94710 (the "**Premises**").

- 5. **Permitted Uses:** Medical office and clinical operations to serve low income and unhoused residents of the City of Berkeley. Any other associated or related legal uses shall be permitted.

- 6. **Initial Term:** Five (5) years, commencing as of the "**Commencement Date**" as that term is defined in the Lease.

- 7. **Rent:** In lieu of base rent, a monthly Maintenance Fee of two thousand dollars (\$2,000) (hereinafter "Maintenance Fee" or "Rent") shall be paid due during the Initial Term and during any Additional Term.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD'S INITIALS

TENANT'S INITIALS

LEASE

This Lease Agreement ("**Lease**") is made and entered into as of the effective date specified in Section 3 of the Basic Lease Information, above ("**Effective Date**"), by and between City of Berkeley, a Charter City organized and existing under the laws of the State of California ("**Landlord**" or "**City**"), and Lifelong Medical Care, a non-profit corporation ("**Tenant**").

1. PREMISES.

1.1. Premises. Landlord is the owner of the land parcel(s) on which the Premises are located (the "**Property**"). A legal description of the Property is attached hereto and incorporated by reference as Exhibit A-1. Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Any improvements or alterations existing in the Premises, or otherwise constructed by Tenant or on Tenant's behalf therein pursuant to Section 9 of this Lease are referred to in this Lease as "**Tenant Improvements.**"

1.2. Commencement Date: [REDACTED], 2023

1.3. Delivery Condition. Except as otherwise expressly provided, Tenant shall accept the Premises "as is."

1.4. Premises Name. Tenant acknowledges that the Premises has been known as the Ann Chandler Public Health Clinic, and agrees that any name Tenant gives to its operations at the Premises shall include the term "Ann Chandler." By way of example, Tenant may use the name "Trust Clinic at the Ann Chandler Health Center."

2. TERM.

2.1. Initial Term. The "**Initial Term**" of this Lease shall be as set forth in Section 6 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 1.2 of the Lease. The Initial Term together with any Renewal Term(s), if any, are collectively referred to herein as the "**Term.**"

2.2. Renewal Term. Tenant shall have one (1) option to renew this Lease for a term of five (5) years (the "**Renewal Term**").

2.2.1 Right to Exercise. Tenant may exercise the option to renew this Lease only if it is fully compliant and current with all obligations after any applicable notice and cure periods as provided for under the Lease.

2.2.2 Notice. Tenant will provide Landlord with written notice of its election to renew the Lease with no less than six (6) months, prior to the end of the Term. If Tenant fails to provide such notice, its right to renew the Lease will not expire until fifteen (15) working days after the Tenant's receipt of Landlord's written demand that the Tenant exercise or forfeit the option to renew.

2.2.3 Extension of Term. Upon the commencement of a Renewal Term, all references to the Term of this Lease will be deemed to mean the Term as extended pursuant to this Section 2.2.

3. RENT

3.1. Maintenance Fees in Lieu of Base Rent. In lieu of base rent, Tenant shall pay Maintenance Fees as set forth in Section 7 of the Basic Lease Information. Maintenance Fees under this Lease shall become due as of the Commencement Date. Maintenance Fees shall be paid as set forth in Section 7 of the Basic Lease Information and this Section 3. Tenant shall pay to Landlord, at Landlord's address designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Maintenance Fees, the Maintenance Fees designated in Section 7 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Maintenance Fees. If Maintenance Fees are due for a period of less than a full month, the amount due shall be prorated for such partial month on the basis of a 30-day month.

3.1.1 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

4. UTILITIES

4.1. Tenant Utility and Service Costs. Tenant shall pay for all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, including: (i) heat and air conditioning; (ii) water; (iii) gas, if applicable; (iv) elevator or lift service, if any; (v) electricity; (vi) telephone, computer, communications; (vii) trash pick-up; and (viii) any other materials, services, or utilities (individually and collectively, the "**Services**").

4.2. Conservation and Use Policies. Tenant, at its expense, shall comply with federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term.

5. TAXES

5.1. Taxes. Tenant represents and warrants that Tenant is a not for profit organization and is exempt from possessory interest tax.

6. INSURANCE

6.1. Landlord. Landlord shall maintain insurance or an insurance equivalent insuring the Premises (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent

may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 6.1 is referred to herein as "**Landlord's Insurance.**"

6.2. Tenant.

6.2.1 Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000, and property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision, including glass insurance and property damage limits of not less than \$200,000 insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the indemnity provisions set forth in Section 7. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City. All such insurance or insurance equivalent maintained by Tenant pursuant to this Section 6.2 is referred to herein as "**Tenant's Insurance.**"

6.2.2 If the insurance referred to in this Section 6.2 is written on a Claims Made Form, then following termination of this Lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

6.2.3 Tenant at its cost shall maintain on all its personal property, Tenant's Improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of Tenant's Improvements or alterations.

6.2.4 If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord (or, if the insurer will not agree to give such notice, Tenant must promptly notify the City of any such cancellation, termination or modification of coverage); provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager, such approval not to be unreasonably withheld, conditioned or delayed.

6.2.5 Tenant shall forward copies of all insurance documents to: Department of Public Works, Real Property Division, 1947 Center Street, Fifth Floor, Ste. 521, Berkeley, California, 94704.

6.2.6 Waivers of Subrogation. Notwithstanding every other provision of this Lease to the contrary, Landlord shall not be liable (by way of subrogation or otherwise) to Tenant (or to any insurance company insuring Tenant), and Tenant shall not be liable (by way of subrogation or otherwise) to Landlord (or to any insurance company insuring Landlord), for any loss or damage to any of the property of Landlord or Tenant, as applicable, with respect to the Building, the Property or the Premises or any addition or improvements thereto, or any contents therein, to the extent covered by insurance carried or required to be carried by Landlord or Tenant, as applicable, even though such loss might have been occasioned by the negligence or willful acts or omissions of Landlord or Tenant, as applicable, or their respective employees, agents, contractors or invitees. Landlord and Tenant shall give their respective insurance providers which issue policies of insurance, with respect to the items covered by this waiver, written notice of the terms of this mutual waiver, and shall have such insurance policies properly endorsed, if necessary, to prevent the invalidation of any of the coverage provided by such insurance policies by reason of such mutual waiver. For the purpose of the foregoing waiver, the amount of any deductible applicable to any loss or damage shall be deemed covered by, and recoverable by Landlord or Tenant, as applicable, under the insurance policy to which such deductible relates.

7. INDEMNITY; LIABILITY EXEMPTION.

7.1. Indemnity. Except to the extent claims are caused by Landlord's negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, where the same continues beyond applicable notice and cure periods; (ii) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or the Property; (iii) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, Ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990; or (iv) any act, error or omission of Tenant in or about the Property or any portion thereof (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord; provided, additionally, that the Berkeley City Attorney's Office may participate in the response to or defense of any Indemnification claim under this Section 7.1 at the City's sole expense. Without limiting Tenant's Indemnification obligations, Landlord shall be entitled to participate in the defense of any third party claim that is reasonably likely to give rise to Indemnification claim under this Section 7.1. Landlord shall indemnify, protect, defend, and hold harmless Tenant and its officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs,

Internal

liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection (1) the active negligence or willful misconduct of Landlord, or its officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns, and (2) any default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease. The obligations of Tenant and Landlord under this Section 7.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

7.2. Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property and any Tenant Improvements, and injury to or death of persons in, upon or about the Premises or the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's active negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant's officers, agents, or employees, or any other person in or about the Premises or the Property, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Premises or the Property or from other sources or places, except damage or injury caused by Landlord's active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Premises or the Property except to the extent such damages are caused by Landlord's failure to enforce the terms of any agreements or any applicable law with parties other than Tenant.

8. REPAIRS AND MAINTENANCE.

8.1. Landlord's Repair and Maintenance. During the Term, Landlord shall be responsible for maintaining in good order, condition, and repair the following elements of the Premises: the foundations and footings of the Premises; all structural elements of the Premises, including roof structure, exterior walls, and interior bearing walls. Landlord's repair and maintenance requirements under this Section 8.1 shall include the necessary replacement of any of the listed elements of the Premises; provided, however, the scope of such requirements shall be subject to whether landlords of comparable buildings in the City of Berkeley would make the replacements of the listed elements of the Premises.

8.1.1 Performance by Tenant. If Tenant determines that any elements of the Premises subject to this Section 8.1 require maintenance, repair, or replacement, Tenant shall provide written notice of such to Landlord. Should Landlord fail to perform, within a reasonable time after such notice by Tenant, any maintenance, repairs, or replacements subject to this Section 8.1 (and expressly including Landlord's reasonable discretion hereunder), Tenant shall have the right (but not the obligation) to undertake such actions as may reasonably be required to effect a cure of Landlord's failure to so perform. Prior to undertaking any such actions, however,

Tenant shall consult with Landlord's Director of Public Works or their designee to determine the appropriate scope and cost of such actions. Landlord shall reimburse Tenant for all agreed upon, reasonable and necessary costs of cure within thirty (30) days after Tenant's delivery if an itemized statement of such costs, together with reasonable supporting documentation. Tenant may offset against Rent and other sums due to Landlord under the Lease any undisputed sums not timely paid by Landlord to Tenant, including interest thereon at the maximum lawful rate.

8.2. Parking, Exterior Lighting, Landscaping. Tenant shall maintain the exterior lighting system and landscaping of the Building, in good order, condition, and repair.

8.3. Security. Tenant shall maintain all locks and key systems used in the Premises.

9. TENANT IMPROVEMENTS.

9.1. Pre-Approved Tenant Improvements. Subject to obtaining all required permits and approvals, including from the Director of Public Works representing the Landlord, Tenant will perform all maintenance, repairs and replacements called for by the May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc. (including all appendices but with the exception of roof maintenance or replacement), attached hereto as Exhibit B at its sole cost and expense.

9.2. Further Tenant Improvements. Tenant may make future alterations and improvements to the Premises with Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed. Tenant shall have no duty to remove any alterations or improvements unless they are not customary for medical office use and Landlord notifies Tenant of the removal requirement at the time Landlord gives its consent to the alterations or improvements. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace an alarm, access control, or other building security system. Tenant may, at its sole cost and expense, install, operate, maintain, upgrade, repair, or replace, a solar electric generating system, which may include rooftop solar panels and battery backups. Landlord expressly grants Tenant the right to install solar panels on the roof of the Premises, and Tenant shall have no duty to remove such solar panels.

9.3. Standard of Work. All work to be performed by or on behalf of Landlord and Tenant shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all applicable Laws and all insurance carrier requirements. Landlord shall have the right, but not the obligation, to periodically inspect such work and may require changes in the method or quality thereof. In no event shall such work materially obstruct access to the Property or any portion thereof.

9.4. Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of alterations or other work performed by or on behalf of Tenant. If Landlord requires Tenant to remove improvements under Section 9.2, Tenant shall remove Tenant's trade fixtures and other improvements, alterations and additions and restore the Premises to their condition existing prior to the construction or installation of any such items and perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under

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Hazardous Materials Laws (as hereinafter defined) or by any other applicable Laws, but only to the extent Tenant, and not the Landlord or BFC (or their respective officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns), is responsible for causing the presence or suspected presence of Hazardous Materials in violation of Hazardous Materials Laws. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises or the Property whatsoever and in strict accordance with all applicable Laws.

9.5. Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within twenty (20) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

9.6. Bonds. Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, lien, performance, and payment completion bonds in an amount equal to one and one-half times the estimated cost of any alterations, additions, or improvements to insure Landlord, the Premises and the Property against any liability for mechanic's and materialmen's liens, and to ensure completion of the work and payment of any contractors or subcontractors.

10. USE; JOINT POSSESSION; INSPECTION; QUIET ENJOYMENT.

10.1. Usage. The Premises shall be used only for the permitted uses set forth in Section 5 of the Basic Lease Information and for no other purpose without the prior written consent of Landlord. Tenant acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, any Tenant Improvements, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises; provided, however, if the Hazardous Materials was pre-existing prior to the Commencement Date, then Landlord, at its sole cost and expense, shall remedy such condition to comply with all Laws, and further provided that Tenant shall not be required under this Lease to remedy any such condition to the extent it is caused by BFC. Tenant shall be responsible for obtaining any permit or license required by any governmental agency permitting Tenant's use of the Premises.

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10.2. Joint Possession of and Operations on the Premises. Landlord and Tenant acknowledge and agree that, Landlord shall enter into a separate lease for the Premises with Berkeley Free Clinic ("**BFC**") to run concurrently with this Lease. Landlord and Tenant further acknowledge and agree that concurrently with the execution of this Lease, Tenant, and BFC will enter into a joint operating agreement ("**JOA**") under which Tenant will occupy the Premises between the hours of 8:00 a.m. and 5:30 p.m. Monday through Friday, and BFC will occupy the Premises on weekends and during the weekday hours not devoted to Tenant's use. It is understood that BFC shall be required under the JOA to operate in a manner consistent with the terms of this Lease. The JOA, as it may be revised or amended from time to time, shall be subordinate to the terms of this Lease. The parties agree their usage of the Premises space shall comply with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements. In the event that the lease between Landlord and BFC terminates or expires, then Tenant shall have exclusive possession of the Premises twenty-four (24) hours a day, seven (7) days a week with no reduction in the Maintenance Fee. Upon the termination or expiration of the lease between Landlord and BFC, the JOA shall be automatically terminated.

10.3. Inspection. Landlord, or its representative or contractor, may enter the Premises by prior appointment with at least two business days' written notice between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, holidays excepted, to determine that (i) the Premises is being reasonably cared for, (ii) no waste is being made and that all actions affecting the Premises are done in the manner best calculated to preserve the Premises, and (iii) Tenant is in compliance with the terms and conditions of this lease.

10.4. Quiet Enjoyment. Tenant may not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing that may disturb the quiet enjoyment of any other occupant of the Building. For so long as Tenant is in compliance with the material terms of this Lease, Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Term. Tenant acknowledges and agrees that possession or use of the Premises by BFC in a manner consistent with the terms of any JOA pursuant to Section 10.2 and any applicable laws shall not constitute a violation of this Section 10.4.

11. ENVIRONMENTAL MATTERS.

11.1. Hazardous Materials Defined. As used in this lease, the term "**Hazardous Materials**" refers to any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous, biohazardous, or toxic materials, hazardous, biohazardous, or toxic wastes, hazardous, biohazardous, or toxic substances, carcinogenic materials or contaminants, and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act.

11.2. Warranty; Hold Harmless. Landlord warrants that Landlord has no knowledge of the presence of any Hazardous Materials or other contamination in or under the Premises or Property in violation of any laws, codes, rules, orders, ordinances, directives, regulations,

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permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials. Landlord shall defend, save, protect and hold Tenant harmless from any loss arising out of the presence of any Hazardous Materials on the Property that was not brought to the Property by or at the request of Tenant, its agents, contractors, invitees or employees. Landlord acknowledges and agrees that Tenant has no obligation to clean up or remediate, or contribute to the cost of clean-up or remediation, of any Hazardous Materials unless such Hazardous Materials are released, discharged or spilled on or about the Property by Tenant or any of its agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Lease.

12. DAMAGE AND DESTRUCTION.

12.1. Perilous Condition. If, during the Term, Landlord's Director of Public Works becomes aware of a perilous condition on the Premises that, in his or her opinion, substantially and significantly threatens the health and safety of Tenant's employees or invitees (a "**Perilous Condition**"), the Director of Public Works, or his or her designee, will immediately notify Tenant of such Perilous Condition, and Tenant shall use best efforts to promptly eliminate the Perilous Condition. Tenant shall immediately address any condition reasonably constituting an emergency, whether Tenant learns of the condition through Landlord or otherwise. If Tenant fails to address a Perilous Condition within thirty six (36) hours after Landlord's notice or to immediately address an emergency situation, Landlord may attempt to resolve the Perilous Condition or emergency situation. Subject to repair and maintenance obligations set forth in Section 8, Tenant shall reimburse Landlord for any costs incurred by Landlord in addressing the Perilous Condition or emergency situation promptly upon receipt of any Landlord's invoice for such costs.

12.2. Insured Casualty. If, during the Term, the Premises are totally or partially destroyed or utility services are cut off from any cause rendering the Premises totally or partially inaccessible or unusable (the "**Casualty**"), and if the restoration can be made under then existing Laws and can be completed within one hundred twenty (120) days after obtaining all necessary permits therefor and if the costs of such restoration are compensable by Landlord's insurance (an "**Insured Casualty**"), then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the existing Laws do not permit the restoration or if the costs of such restoration are not compensable by Landlord's insurance, either party may terminate this Lease by giving ninety (90) days' prior written notice to the other party. In case of Insured Casualty, there shall be an abatement or reduction of Maintenance Fees owed to Landlord, between the date of Insured Casualty and the date of completion of restoration if restoration takes place, or the earliest allowed date of termination if restoration does not take place and whether or not the Lease is terminated, based on the proportion to which the destruction renders the Premises unusable by Tenant for the ordinary conduct of business.

12.3. Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of its agents, employees,

contractors, invitees or other representatives and Tenant fails to cure such damage within a reasonable amount of time following written notice from Landlord, Maintenance Fees owed to Landlord shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 12.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

12.4. Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 6.2 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 12.1.

12.5. Waiver. The provisions of this Lease contain an express agreement between Landlord and Tenant that applies in the event of any Casualty. Tenant fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4) (as amended from time to time, and successor statutes thereto) for any rights or obligations concerning a Casualty.

13. EMINENT DOMAIN

13.1. Effect on Rights and Obligations. If the whole or any substantial part of the Premises, or if the Property or any portion thereof which would leave the remainder of the Property unsuitable for the Permitted Uses, or if the land on which the Property is located or any material portion thereof, shall be taken or condemned for any public or quasi public use under governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (each a "Taking"), then Landlord may, at its option, terminate this Lease and Maintenance Fees shall be abated during the unexpired portion of this Lease, effective when the physical taking of said Premises or said portion of the Property or land shall occur. However, if Landlord does not, in its sole discretion, opt to terminate this Lease in accordance with this Section 13, then this Lease shall remain in effect. Landlord shall maintain or terminate the leases of all other tenants in the Property who are similarly situated to Tenant consistent with its option with regard to Tenant. Notwithstanding the foregoing, if the whole of the Premises is subject to the Taking, or if the portion of the Premises not affected by the Taking is not in Tenant's business judgment reasonably suitable for Tenant's continued occupancy, Tenant may terminate this Lease as of the date of the Taking and be relieved of all obligations thereafter accruing under this Lease. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within 30 days after the Taking, as of the date of termination, which date shall not be earlier than 30 days nor later than 90 days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of Taking if the date of Taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the 30-day period, this Lease shall continue in full force and effect, except that the Maintenance Fees owed to Landlord thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or

threatened action. Where only a portion of the Premises is subject to a Taking and neither Landlord nor Tenant terminates this Lease, Landlord shall promptly restore the remainder of the Premises into an architectural whole and functional condition and the Maintenance Fees for any portion of the Premises subject to (or rendered unusable by) the Taking shall be abated during the unexpired Term effective when the physical taking of said portion of the Premises shall occur. Provided that Landlord complies with the preceding sentence, the Taking shall not be construed to constitute an actual or constructive eviction of Tenant or a breach of any express or implied covenant of quiet enjoyment.

13.2. Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise ("**Award**") and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the "**bonus value**" of the Lease). Notwithstanding the foregoing, any portions of such award or proceeds which are specifically allocated by the condemning or purchasing party for the taking of or damage to trade fixtures of Tenant and moving and relocation costs shall be reserved specifically for Tenant.

14. DEFAULT.

14.1. Events of Default. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default**:"

14.1.1 As to Tenant: (i) Tenant's failure to pay Maintenance Fees within ten business days after receipt of a written notice of such failure from Landlord to Tenant; (ii) Tenant's failure to comply with any other material term or provision of this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice specifying the nature of the breach in reasonably sufficient detail; provided, however, if such default cannot reasonably be remedied within such thirty day period, then a default will not be deemed to occur until the occurrence of Tenant's failure to comply within the period of time that may be reasonably required to remedy the default, up to an aggregate of ninety days (90), provided Tenant commences curing such default within thirty (30) days and thereafter diligently proceeds to cure such default.

14.1.2 As to Landlord: Landlord's failure to perform any obligation under this Lease if such failure is not remedied within thirty (30) days after receipt of a written notice from Tenant to Landlord specifying the nature of the breach in reasonably sufficient detail; provided, however, if such breach cannot reasonably be remedied within such thirty (30) day period, then a default will not be deemed to occur until the occurrence of Landlord's failure to perform within the period of time that may be reasonably required to remedy the breach, up to an aggregate of ninety (90) days, provided Landlord commences curing such breach within thirty (30) days and thereafter diligently proceeds to cure such breach. Notwithstanding the foregoing, if Landlord's failure to perform any obligation under this Lease renders the Premises wholly or partially

unusable by Tenant for the ordinary conduct of business for more than two (2) consecutive business days, then Landlord shall remedy such failure within five (5) business days after receiving written notice from Tenant to Landlord and Tenant shall be entitled to an abatement of Maintenance Fees owed to Landlord, to be prorated on the basis of a 30-day month, for the number of days such failure is not remedied after Landlord receives written notice from Tenant. For the avoidance of doubt, the abatement of rent provided for under this Section shall not be Tenant's sole remedy for Landlord's failure to perform Lease obligations.

14.2. Remedies.

14.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date shall be at least three (3) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

A. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant, or remove Tenant therefrom and any other persons occupying the Premises following reasonable written notice, using such legal proceedings as may be available; (ii) repossess the Premises or relet the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

14.3. Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Maintenance Fees nor any endorsement on any check or letter accompanying any check or payment of Maintenance Fees shall be deemed an accord and satisfaction of full payment thereof; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Maintenance Fees or to pursue other remedies.

15. ASSIGNMENT AND SUBLETTING.

15.1. Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Upon the assignment of the Lease by Tenant, the Tenant will have no further obligation under the Lease.

15.2. Joint Possession not a Sublease. Landlord and Tenant acknowledge and agree that the JOA shall not constitute a sublease or assignment under this Section 15.

16. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

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

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

17. CITY NON-DISCRIMINATION ORDINANCE

17.1. Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

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

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

18. NUCLEAR FREE BERKELEY

18.1. Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

19. OPPRESSIVE STATES

19.1. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

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

19.2. For purposes of this lease, the Tibet Autonomous Region and the provinces of ADO, Kham, and U-Tsang shall be deemed oppressive states.

19.3. Tenant's failure to comply with this section following thirty (30) days' written notice from Landlord shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 14. In the event that the City terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

20. BERKELEY LIVING WAGE ORDINANCE

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

20.2. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered an Event of Default. The City shall (i) handle such records and documents in accordance with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements and (ii) not disclose Tenant's Confidential Information, except as expressly permitted in this Lease or otherwise required by law.

The term "Confidential Information" shall include non-public information about the Tenant's business or activities that is proprietary and/or confidential, including, without limitation, all business, financial, technical, and other information of a party marked or designated as "confidential" (or some similar designation) or that, by its nature or the circumstances

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surrounding its disclosure, should reasonably be regarded as confidential. Landlord hereby agrees to (i) use the Confidential Information of the Tenant solely for the purpose of performing its obligations under this Agreement; (ii) hold the Tenant's Confidential Information in strict confidence, and; (iii) not disclose such Confidential Information or any part thereof, to any person, except those officers, employees, agents or professional advisors (or those of its Affiliates) with a strict "need to know" in order for the Landlord to perform its obligations hereunder, provided that such officers, employees, agents or professional advisors shall prior to any disclosure, have agreed by signed writing or otherwise to be bound by confidentiality obligations no less strict than those described herein. Confidential Information shall not include (i) any information already rightfully in the public domain at the time of its disclosure or subsequently released into the public domain by the Tenant; (ii) any information already rightfully in the possession of the Landlord at the time of its disclosure by the Tenant without an obligation to maintain its confidentiality; (iii) any information that is independently developed by the Landlord without use of or reference to any Confidential Information of the Tenant, in either case such fact being proven through documentary evidence; (iv) information obtained by the Landlord from a third Party not in breach of any confidentiality obligations to the Tenant (v) information required to be disclosed by law, a court order or competent government authority, provided that in such case the Landlord shall, to the extent permitted by law, promptly inform the Tenant of such requirement of disclosure such that the Tenant has an opportunity to object to the production or disclosure by seeking a protective order.

Landlord acknowledges that the Tenant considers its Confidential Information to contain confidential, proprietary, trade secret information of the Tenant and that any unauthorized use or disclosure of such information would cause the Tenant irreparable harm for which its remedies at law would be inadequate. Accordingly, Landlord acknowledges and agrees that the Tenant will be entitled in addition to any other remedies available to it at law or in equity, to seek the issuance of injunctive relief, enjoin any breach or threatened breach of the Landlord's obligations hereunder with respect to the Confidential Information of the Tenant, in addition to such further injunctive relief as any court of competent jurisdiction may deem just and proper.

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

20.4. If Tenant fails to comply with the requirements of this the LWO and this Lease, the City shall have the rights and remedies described in this Section 20, in addition to any rights and remedies provided by law or equity.

20.5. Tenant's failure to comply with this Section 20 shall constitute an Event of Default. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to

fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

21. BERKELEY EQUAL BENEFITS ORDINANCE

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

21.2. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered an Event of Default. The City shall (i) handle such records in accordance with any and all applicable requirements under the Health Insurance Portability and Accountability Act and other legal and health care regulatory requirements and (ii) not disclose Tenant's Confidential Information, except as expressly permitted in this Lease or required by law.

21.3. If Tenant fails to comply with the requirements of this Section 21, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

21.4. Tenant's failure to comply with this Section 21 shall constitute an Event of Default. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section 21. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

22. SANCTUARY CITY CONTRACTING ORDINANCE

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

- a. "Data Broker" means either of the following:
 1. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such

Internal

information to their customers, which include both private-sector business and government agencies;

2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
1. The City's computer-network health and performance tools;
 2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

23. CONFLICT OF INTEREST PROHIBITED

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

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

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

24. RIGHT OF FIRST REFUSAL

24.1. First Refusal Notice. If, during the Term, Landlord desires to sell or otherwise dispose of the Property, except as part of an Excluded Transaction (a "**Proposed Transfer**"), Tenant shall have a right of first refusal to purchase the Property in accordance with this Section 24 ("**ROFR**"), and Landlord shall not consummate the sale unless Landlord shall first deliver to Tenant a notice (the "**First Refusal Notice**") setting forth: (a) the identity of the proposed purchaser (the "**Offeree**"); (b) the sale price and each of the material terms of the proposed

transaction, including but not limited to financial terms, use restrictions, or other covenants (the "**Purchase Terms**"); and (c) the proposed closing date of the Proposed Transfer (the "**Closing Date**").

24.2. Response Period. Tenant shall, for sixty (60) days following receipt of the First Refusal Notice, have the exclusive right to purchase the Premises on terms and conditions set forth in the First Refusal Notice ("**ROFR Response Period**"). If Tenant notifies Landlord in writing of its decision to exercise its right of first refusal on or before 5:00 p.m. on the last day of the ROFR Response Period, then Tenant shall be bound to purchase from Landlord, and Landlord shall be bound to sell to Tenant, the Property on the Purchase Terms.

24.3. Waiver of ROFR. If Tenant shall either: (a) deliver written notice of rejection of the First Refusal Notice to Landlord; or (b) fail to deliver written notice of acceptance of the First Refusal Notice within the ROFR Response Period, Tenant's ROFR hereunder shall conclusively be deemed to be waived with respect to the sale disclosed in the First Refusal Notice and Landlord shall be free, for a period of one (1) year from the end of the ROFR Response Period, to complete the Proposed Transfer to the Offeree or to any other third party on the Purchase Terms, and the Offeree or such other third party shall acquire the Property free and clear of the Tenant's ROFR (which shall be extinguished, null, void, and of no further force or effect upon such sale). In addition, if as of the Closing Date, Tenant has failed to complete its purchase of the Property due to any act or omission by Tenant, including but not limited to any failure to deliver funds or otherwise meet the Purchase Terms, then Tenant's ROFR shall be extinguished, null, void, and of no further force or effect as to any future sale, transfer, or disposition of the Property.

24.4. Excluded Transactions. Notwithstanding anything to the contrary contained in this Section 24, Tenant's right of first refusal shall not apply to the following transactions (the "**Excluded Transactions**"):

- (a) any condemnation of all or part of the Property;
- (b) any transfer, conveyance, covenant, or restriction by Landlord to change or limit the use of the Property for any public purpose.

24.5. Lease Termination. Upon the completion of such any purchase pursuant to this Section 24, this Lease and all obligations and liabilities of Landlord and Tenant hereunder shall terminate, except for those obligations which by their terms survive the termination hereof.

25. MISCELLANEOUS.

25.1. General.

25.1.1 Integration. This Lease, together with all exhibits and attachments hereto, the separate lease between Landlord and BFC, and the JOA, set forth all the agreements

between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth therein.

25.1.2 Time of Essence. Time is of the essence of this Lease.

25.1.3 Attorneys' Fees. If any action is commenced which arises out of or related to this Lease, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge to be reasonable attorneys' fees, expert fees, and expenses in the action, in addition to costs and expenses otherwise allowed by Law. In all other situations, including any matter arising out of or relating to any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, Tenant agrees to pay all of Landlord's costs and expenses, including attorneys' fees and expert fees, which may be incurred in enforcing or protecting Landlord's rights or interests.

25.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

25.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the State of California, without reference to its choice of law provisions.

25.1.6 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties.

25.1.7 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this Lease shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

25.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 15, Tenant.

25.1.9 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

25.1.10 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

Internal

25.1.11 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

25.2. Business License. Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

25.3. Fixtures and Signs. Tenant may (i) make any lawful and proper minor alterations to the Premises; (ii) attach fixtures and interior signs in and on the Premises; and attach signage on the exterior of Building ("**Tenant Fixtures**"). Any signs referring to the name of the Premises shall include the term "Ann Chandler" consistent with the requirements of Section 1.3. Any Tenant Fixtures will remain the property of Tenant and may be removed from the Premises by Tenant at any time during the Term. All alterations and Tenant Fixtures are subject to Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed, and must comply with existing code requirements. All Tenant Fixtures shall be at Tenant's sole cost and expense. Installations and removals of Tenant Fixtures shall be made in such manner as to avoid injury or defacement of the Premises, and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Tenant Fixtures. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within thirty (30) days after receipt of such invoice.

25.4. Pesticides. All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

25.5. Prior Possession. Prior to the Commencement Date, Tenant has the right to (i) undertake Tenant Improvements, and (ii) store supplies and equipment in the Premises.

25.6. Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

25.7. Limitation of Liability. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

Internal

25.8. Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's address and Tenant's address set forth in Sections 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

25.9. Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Commission**") is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of Tenant.

25.10. Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

25.11. Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that any obligations resulting from any JOA shall only hold over to the extent the JOA is still in effect. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Maintenance Fees by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Initial Term or the Renewal Term, as the case may be, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay Maintenance Fees of two thousand dollars (\$2,000) per month. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

25.12. Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant shall peaceably and quietly leave and surrender to Landlord the Premises, along with appurtenances and fixtures at the Premises (except Tenant Fixtures), all in good condition, ordinary wear and tear, damage by casualty, condemnation, acts of God, and Landlord's failure to make repairs required of Landlord excepted.

25.13. Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

25.14. Covenants and Conditions. Each provision to be performed by Tenant or Landlord hereunder shall be deemed to be both a covenant and a condition.

25.15. Intentionally Omitted.

25.16. Accessibility; Disability Laws. To Landlord's actual knowledge, the Premises have not undergone an inspection by a Certified Access Specialist.

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. "

Since compliance with the ADA and other federal and state disability laws (collectively, "**Disability Laws**") is dependent upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with Disability Laws, except as otherwise expressly provided in this Lease. In the event that Tenant's specific and particular use of the Premises, as distinguished from uses generally associated with those permitted under Section 5, requires modifications or additions to the Premises in order to be in compliance with Disability Laws, Landlord agrees to make any such necessary modifications and/or additions at Tenant's sole cost and expense.

25.17. OFAC Compliance. Tenant represents and warrants to Landlord that Tenant is not a party with whom Landlord is prohibited from doing business pursuant to the regulations of the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of the Treasury, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List. Tenant is currently in compliance with, and shall at all times during the term of this Lease remain in compliance with, the regulations of OFAC and any other governmental requirement relating thereto. In the event of any violation of this section, Landlord shall be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY LANDLORD ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING CERTIFICATIONS. These indemnity obligations shall survive the expiration or earlier termination of this Lease.

[SIGNATURES FOLLOW ON NEXT PAGE]

Internal

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

TENANT:

LIFELONG MEDIAL CARE, a non-profit corporation,

By: _____

Print Name: David B. Vliet

Its: Chief Executive Officer

--AND--

LANDLORD:

CITY OF BERKELEY, a California municipal corporation

By: _____

Print Name: Dee Williams-Ridley

Its: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Internal

EXHIBIT A-1
Legal Description of Property

APN: 56-1066-1

All those certain lots, pieces or parcels of land situate, lying and being in the City of Berkeley, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the Southern line of University Avenue with the Eastern line of 6th Street, as said Avenue and Street are shown on the Map hereinafter referred to; running thence Easterly along said line of University Avenue One Hundred and Forty-Seven feet; thence at right angles Southerly One Hundred feet; thence at right angles Westerly One Hundred Forty-Seven feet to the point of intersection thereof with said Eastern line of 6th Street; thence Northerly along said line of 6th Street One Hundred feet to the point of beginning.

Being all of Lots Numbered 1, 2, 3, and the Western Three feet of Lot Numbered 4, in Block Numbered 96, as said Lots and Block are delineated and so designated upon that certain Map entitled, "Map of the Sisterna Tract, Berkeley" – filed May 15, 1880 in Liber 7 of Maps, at page 43, in the office of the County Recorder of Alameda County.

Internal

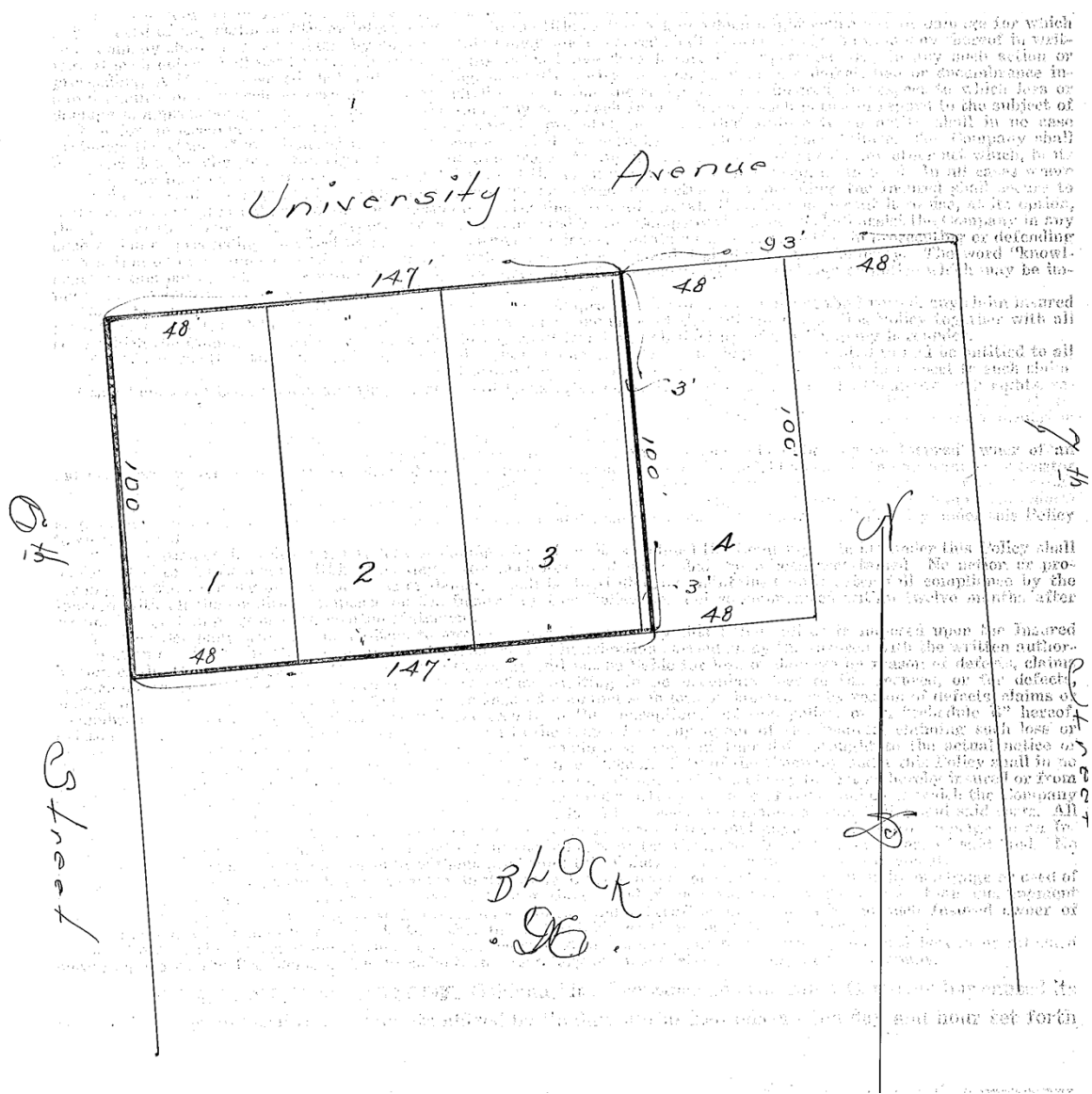


EXHIBIT A-2

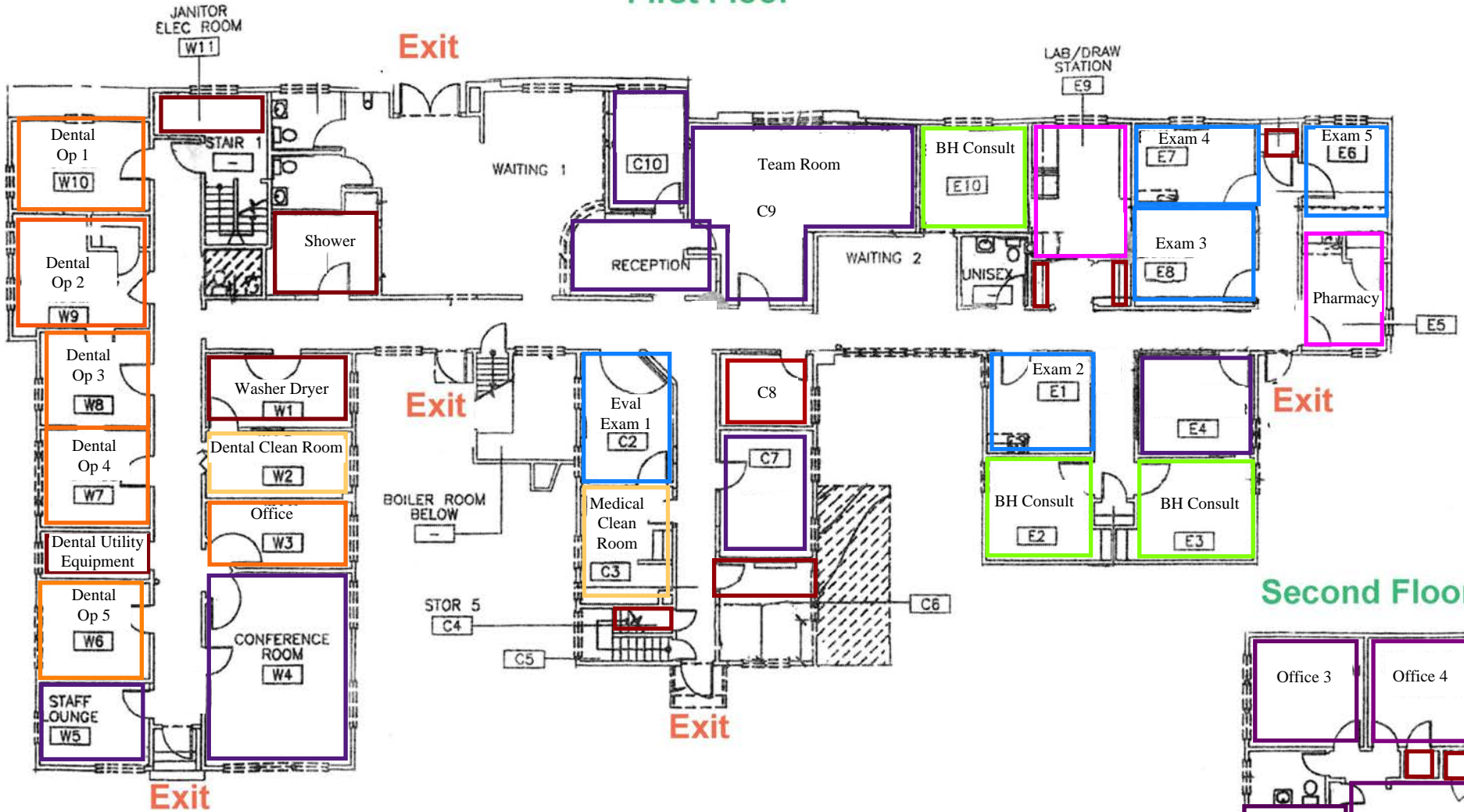
Depiction of Premises

Internal

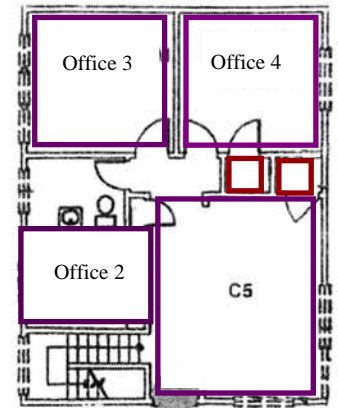
EXHIBIT B

May 20, 2022 Building Inspection Report by E. A. Davidovits & Co., Inc

Page 35 of 77
830 University Avenue
First Floor



Second Floor



- Storage/Utility
- Dental
- Clean Room
- Behavioral Health/Counseling
- Medical Exam Room
- Shared Use
- Lab or Pharmacy

E.A. DAVIDOVITS & Co., INC.

General Contractors

Tony Ng, Director of Facilities Management
Shad Klein, Project Manager, New Initiatives
Lifelong Medical Care
PO Box 11247
Berkeley, CA 94712

June 3, 2022

Re. ROM Pricing Estimate
830 University Ave.
Berkeley, CA 94712

Gentlemen,

Please see the following ROM Pricing Estimate based upon the Building Inspection performed. This ROM is intended as a Preliminary Estimate and should not be considered final pricing.

This is based upon the visual inspection of the property and historical pricing estimates. EA Davidovits reserves the right to modify the scope of work and pricing should additional information become available in the future. ROM makes several assumptions pertaining to the building structure, condition and capacities that may not have been able to be concluded during the brief site visit process.

This ROM is not intended to present guarantees or assurances. In order to confirm pricing, additional inspections, plans, details and review would need to be performed. Thank you for the opportunity to submit this Preliminary ROM estimate.

- Structural Report Follow Up. Includes removal of wall finishes at one location to assess substrate construction and condition. Includes replacement of sheetrock, finished to match existing, and paint touch up. Does not include structural reinforcement if necessary. ROM estimate also includes 24 additional man hours of minor (non structural) crack repair and associated touch up paint. ROM does not include waterproofing or leak repair as further evaluation is necessary.
Estimated Cost: \$ 7,850.
- Roof. ROM Estimated pricing below
 - General Maintenance of Roof System Estimated Cost: \$ 14,500.
 - Stucco Repair Estimated Cost: \$ 5,250.
 - Gutter Repair Estimated Cost: To Be Determined
 - Replacement of Flat Roofs (if deemed necessary) Estimated Cost: \$ 65,000.
- Plumbing. Per plumbing inspection, general condition of plumbing components is good. No major improvements are recommended without first considering future usage and plans.
- Electric. No electrical improvements were recommended as a result of the electrical inspection.
- Termite treatment for the control of subterranean termites. Includes soil treatment at foundation
Estimated Cost: \$ 6,500.

Daniel May, EA Davidovits & Co.



555 PRICE AVENUE, SUITE 200
REDWOOD CITY, CA 94063
LICENSE #708744

E.A. DAVIDOVITS & Co., INC.

G e n e r a l C o n t r a c t o r s

Tony Ng, Director of Facilities Management
Shad Klein, Project Manager, New Initiatives
Lifelong Medical Care
PO Box 11247
Berkeley, CA 94712

May 20, 2022

Re. Building Inspection
 830 University Ave.
 Berkeley, CA 94712

Gentlemen,

Please see the following information pertaining to the Building Inspection performed over two site visits on Thursday, April 28th and Tuesday May 3rd, 2022. The site inspections were performed by Construction Industry Professionals to assess the existing conditions of the building, including:

- Structural Engineering
- Roof
- Plumbing
- Electric
- Termite

Dan Williams, General Superintendent, EA Davidovits & Co, was in attendance during inspections. The follow up reports received from each of the above trades have been reviewed by Daniel May, Senior Project Manager, EA Davidovits & Co. These reports are based upon the visual inspection of the property on the dates as noted above and the experience of the industry professionals who performed them. The conclusions and/or recommendations presented within each section of this report are to be considered the opinion of the particular industry professional who wrote it. EA Davidovits & Co. shall not be held liable for any finding, conclusion or recommendation by others.

This report is to be considered an assessment of the conditions available for visual inspection and is not intended to present guarantees, assurances of code, environmental or feasibility. The inspections and reports were performed within time and accessibility restraints. In order to ensure all manner of building or property condition, suitability, compliance or potential, additional inspection and review would need to be performed.

Thank you for the opportunity to submit this report



Daniel May, EA Davidovits & Co.



555 PRICE AVENUE, SUITE 200
REDWOOD CITY, CA 94063
LICENSE #708744

830 University Ave.
Berkeley, CA

Section One: Structural

DRE STRUCTURAL DESIGN

May 9, 2022

Dan May
E.A. & Davidovits
555 Price Avenue, Suite 200
Redwood City, CA 94063

RE: 830 University Ave Berkeley, CA
General Observations and Recommendations for Existing Buildings

Dear Mr. May,

Per your request, DRE Structural Design (DRE) has completed a limited building observation to review the current existing conditions of 830 University Ave in Berkeley, California. Specifically, DRE scope is to visually review the existing building and provide structural feedback regarding the conditions with proposed conceptual structural strengthening (if any). The following letter provides a summary of observations, as well as recommendations based on engineering judgment and professional opinion regarding the current condition of the building.

BACKGROUND

On April 28, 2022, DRE performed a site observation to review the general conditions of the existing building located at the above-mentioned address. As DRE understands it, the Owner is currently in the process of leasing the building and is requesting a structural observation of the existing conditions including feedback regarding structural strengthening. As part of the observation, a general structural review was performed to observe the building in its current configuration to identify any observable modification, damage, or other deficiencies which may affect the building performance.

The observation and recommendations presented in this report have been based on DRE initial site visit only. No as-built drawings of the original building were available for review.

OBSERVATIONS: BUILDING DESCRIPTION

The existing building is a one-story approximately 10,000 square foot building located on a generally flat site. The building is located in a moderately developed area surrounded by commercial buildings. The current building is a public health center with medical rooms and offices. The date of construction is approximately 1950. The south-east portion of the building was added in 1982 and the elevator was added in 2009.

Based on visual observations, the existing framing appears to be a combination of wood and concrete construction. The vertical load-bearing elements consists of wood-framed roof supported by wood framed walls. There is an existing basement with concrete retaining walls. The roof framing consists of 2x6 collar tie trusses @ 2'-0" oc which span from exterior wall to exterior wall. All interior walls are wood-framed and appear to be non-bearing walls. The site is in a seismically active area and has experienced moderate to strong ground shaking from earthquakes over the design life of the structure. The seismic force resisting system (SFRS) consists of a flexible wood diaphragm which spans horizontally to wood framed walls. The existing foundations are currently unknown but likely concrete shallow footings.

The current occupancy are medical exam rooms and offices.

OBSERVATIONS: EXISTING BUILDING

Conditions Assessment

Based on visual observations, the existing building appears to be in good condition with little or no signs of deterioration. The following below summarizes DRE observations.

1. Foundations: No significant wall or ceiling cracks were observed indicating foundation settlement or lateral movement. Current building tenants confirmed that there are no doors or windows getting stuck or jamming. The crawl space access was not accessible. The crawl space access is located outside below the Conference Room (W4).
2. Exterior Walls: Minor cracks were observed along south-west of the building, but no obvious significant damages were observed. See Photo 2.
3. Interior Walls: There are minor cracks in the ceiling and above the interior doors, but does not appear to indicate significant damages. Given the age of the building, this is to be expected. There is a potential structural crack in the hallway adjacent to the Evaluation Room 1 (C2). See below for additional recommendations.
4. Basement: The basement concrete walls look good. Minor cracks were observed but no signs of significant deficiencies. There are signs of efflorescent. See Photo 3. Efflorescence is a crystalline deposit of salts that can form when water is present in or on brick, concrete, stone, stucco or other building surfaces. It has a white or greyish tint and consists of salt deposits left behind when water evaporates. Efflorescence alone does not pose a major problem, but it can be an indication of moisture intrusion, which may compromise the structural material. In addition, the existing wall reinforcement is unknown. See below for additional for additional recommendations.
5. Roof Framing: The observable roof framing appeared to be in good condition. There were no signs of damages, excessive deflections, or decay were observed. There are signs are of rodents in the attic space.
6. Mezzanine Floor Framing: Existing finishes were in place which made it difficult to fully assess, but based on the accessible locations, it appears the existing

mezzanine is in good condition. No signs of excessive deflections were observed or felt.

Geological Site Hazards

Evaluation of geologic site hazards was not performed and no site specific geotechnical report was made available. However, the available California Geological Survey (CGS) seismic hazard maps were reviewed. According to California Geological Survey (CGS) hazard maps, the site is located within an area that is considered to have potential liquefaction occurrence. Please note that roughly one quarter of the San Francisco Bay region may be exposed to liquefaction with the shaking that has been forecast. The liquefaction susceptibility mapping is based on assessments of the potential for liquefaction in each Quaternary geologic map unit and applied across the entire area. A more detailed evaluation will be required, such as geotechnical borings, if any significant structural modification to the existing building considered.

Site susceptibility to seismically induced landslides and surface fault ruptures are considered to be low to moderate. Referenced geologic hazard map is included in Appendix B.

RECOMMENDATIONS

DRE site observations did not identify any imminent hazards or issues of immediate concern. There does not appear to be any potential structural or architectural conditions that pose a significant risk to occupants under gravity, wind, seismic, or daily vibration loading. Furthermore, it appears the building is compliant with the governing regulations at the time of original construction. However, there are a few concerns which are outlined below. Please note the following recommendations are conceptual only and still requires further engineering to determine size, spacing, and extent.

Excessive Wall Crack:

1. A significant wall crack was observed next to room C2. See Figure 1 for location and Photo 1 for crack. There appears to be a beam above the hallway and extends into the wall. The crack begins at the bottom of the beam and extends along the height of the wall. DRE recommends to remove the existing finishes to ensure the beam is properly supported with a column.

Basement Waterproofing and Water Drainage:

1. As mentioned above, there are signs of efflorescent in the basement level. This usually indicates water ponding or build up behind the wall (outside). DRE recommends to review the exterior water drainage to ensure all water drains away from the building.

The recommendations given above are based on site observations only. No calculations were performed. It is recommended that a more detailed existing building evaluation be performed with an accepted evaluation procedure such as ASCE 41-13, Seismic Evaluation and Retrofit of Existing Buildings (ASCE 41) if the owner decides to retrofit and seismically strengthen to meet current code. However, as mentioned above, the existing building appears to be compliant with the governing regulations at the time of the original construction.

LIMITATIONS

The services performed for this project have been provided at a level that is consistent with the general level of skill and care ordinarily provided by engineers practicing Structural Engineering. Work provided is done under the constraints of time and budget. It should also be noted that a number of factors make it difficult to fully assess the current condition of the existing structural

elements which include limited documentation available and the presence of finishes in many areas. All proposed existing framing will need to be field verified prior to construction.

DRE appreciates the opportunity to provide engineering services for this project and is available to be of further assistance as the project moves forward.

If you have any questions concerning this letter, please do not hesitate to contact me.

Sincerely,

DRE STRUCTURAL DESIGN

A handwritten signature in blue ink, appearing to read "D. Espino".

Daniel Espino, S.E.

APPENDIX A – EXISTING FLOOR PLAN

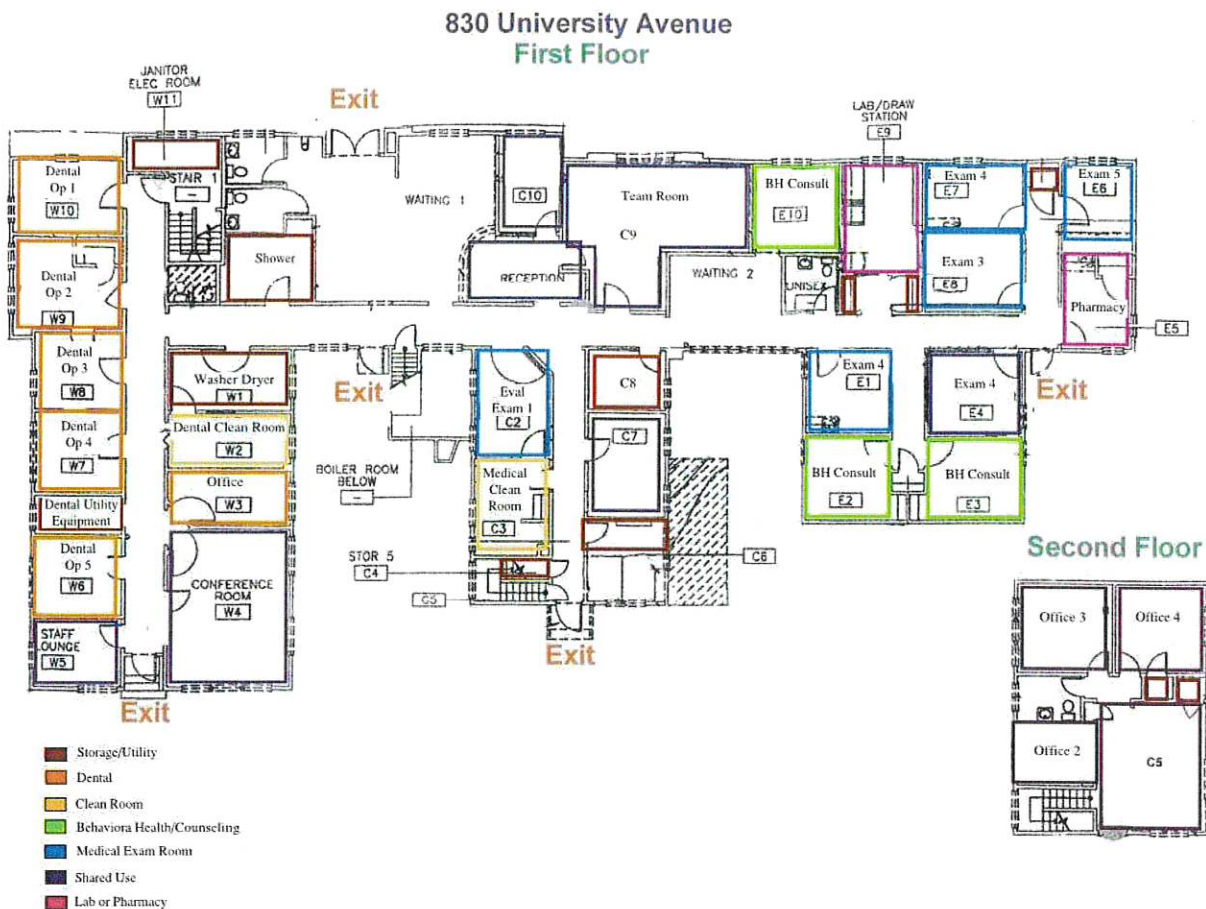


Figure 1 – Existing Floor Plan

APPENDIX B – GEOLOGICAL HAZARD MAPS

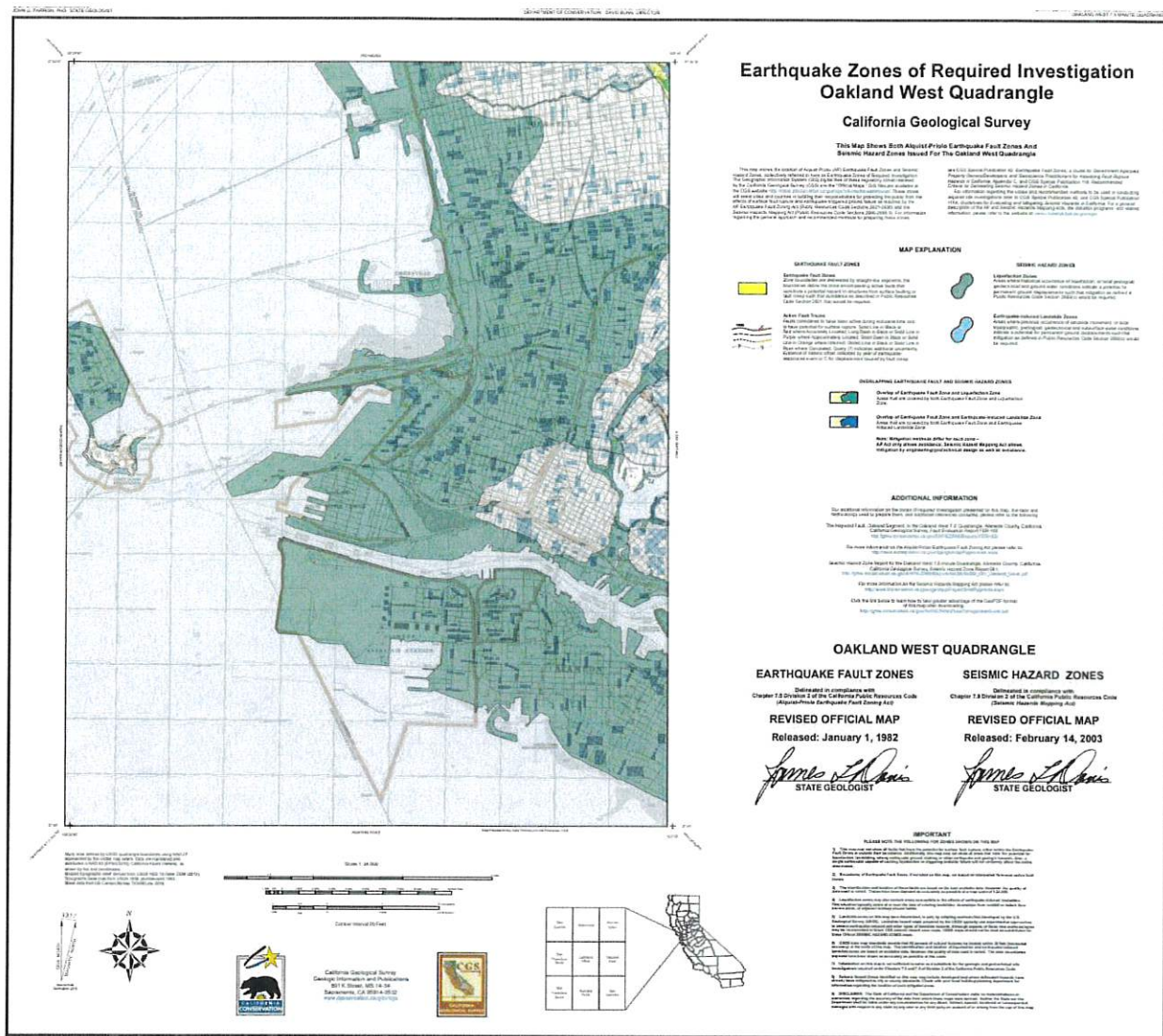


Figure 1 – USGS Geological Hazard Maps

APPENDIX C – PHOTOS

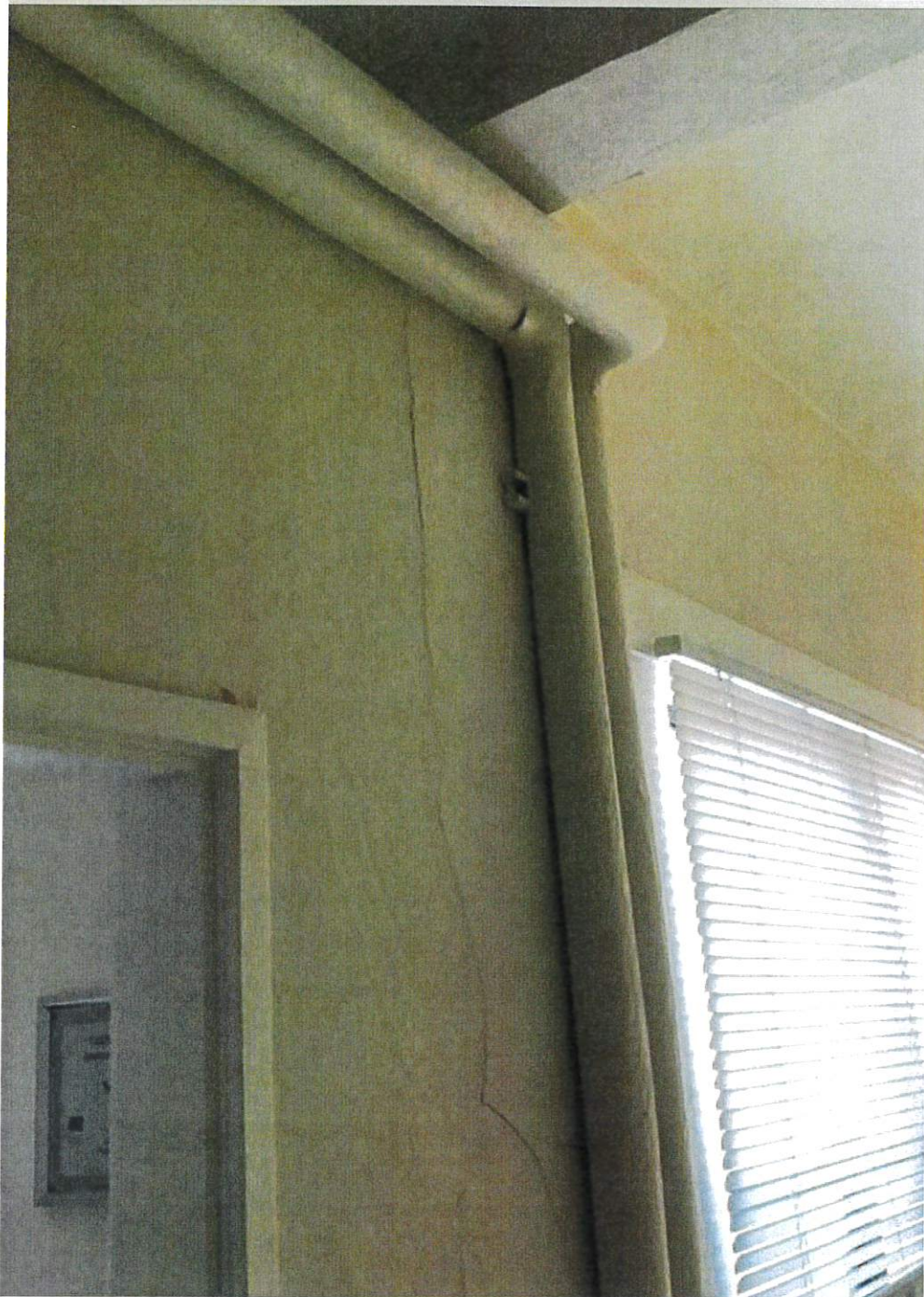


Photo 1 – Crack Below Beam at Room C2



Photo 2 – Crack in Exterior Wall



Photo 3 – Basement Walls

830 University Ave.
Berkeley, CA

Section Two: Roof



Roof Condition Assessment Report



**830 University Ave.
Berkeley, CA 94710**

Date: May 12, 2022
Inspector: Daniel Estrada

Prepared for:

E. A. Davidovits & Co., Inc.

EXECUTIVE SUMMARY AND PROPERTY DESCRIPTION

GoGreen Roofing Corporation was contracted by E. A. Davidovits., Inc. to perform a visual inspection of the existing roofing systems at 830 University Ave Berkeley, CA. The purpose of this inspection was to assess overall condition of the existing roofing systems, identify and document readily-visible material and roofing system defects that may significantly impact the integrity of the existing roofing systems, and provide recommendations for continued operations.

Note: This inspection was limited to visual observation only.

Flat Roof Evaluation and Synopsis

The inspector observed the overall condition of the BUR roofing system in poor condition and are in need of replacement. Cap sheet seams are found loose in many areas and membrane is deteriorated and showing signs of wear.

Life expectancy: 1 year (Gravel BUR Roof/Cap sheet roof).

BUR Cap sheet/gravel roof systems including all other roof components and flashings are recommended to be replaced with new Carlisle 60 Mil TPO membrane with a 20 year No Dollar Limit Warranty.

Coping cap seams are loose and sections are fastened at top face. It is recommended for coping cap to be replaced during re-roof process or sealed at best.

PC pipe jack flashings are recommended to be replaced during re-roof process or re-sealed at best.

Parapet walls consist of cap sheet membrane which also have loose seams and are recommended to be replaced or sealed at best.

Roof flashings in general are recommended to be replaced during reroof process or resealed at best.

Flat roof drains are in need of resealing through roof maintenance or roof replacement.

Attics were not inspected at this time.

Gutters are rusting and are in need of replacement or cleaned out at best.

Downspouts appear to be in fair condition but recommended to be replaced during gutter replacement.

Observations/Recommendations:



Observation:

The surface materials on the flat roof sections throughout are severely weathered, brittle and cracking from old age. Damage to the cap sheet and seam failure was observed throughout.

Recommendations:

GRC highly recommends replacing all flat roofs or performing a maintenance at best; 3-course using Metacrylic's gel and polyester fabric at all loose seams if re-roof is not an option at this time. Due to current conditions, we consider the flat roofs to have met the end of its useful life. Re-roof options consist of: Carlisle TPO Single Ply 20 Year Warranty (overlay).



Observation:

Cap sheet corners damaged and opened to water intrusion.

Recommendation:

GRC highly recommends replacing all flat roofs or performing a maintenance at best; 3-course using Metacrylic's gel and polyester fabric at all loose seams if re-roof is not an option at this time. Due to current conditions, we consider the flat roofs to have met the end of its useful life. Re-roof options consist of: Carlisle TPO Single Ply 20 Year Warranty (overlay).



Observation:

The surface materials on the flat roof sections throughout are severely weathered, brittle and cracking from old age. Damage to the cap sheet and seam failure was observed throughout.

Recommendations:

GRC highly recommends replacing all flat roofs or performing a maintenance at best; 3-course using Metacrylic's gel and polyester fabric at all loose seams if re-roof is not an option at this time. Due to current conditions, we consider the flat roofs to have met the end of its useful life. Re-roof options consist of: Carlisle TPO Single Ply 20 Year Warranty (overlay).



Observation:

Top coat showing signs of wear.

Recommendations:

GRC highly recommends replacing all flat roofs or performing a maintenance at best; 3-course using Metacrylic's gel and polyester fabric at all loose seams if re-roof is not an option at this time. Due to current conditions, we consider the flat roofs to have met the end of its useful life. Re-roof options consist of: Carlisle TPO Single Ply 20 Year Warranty (overlay).



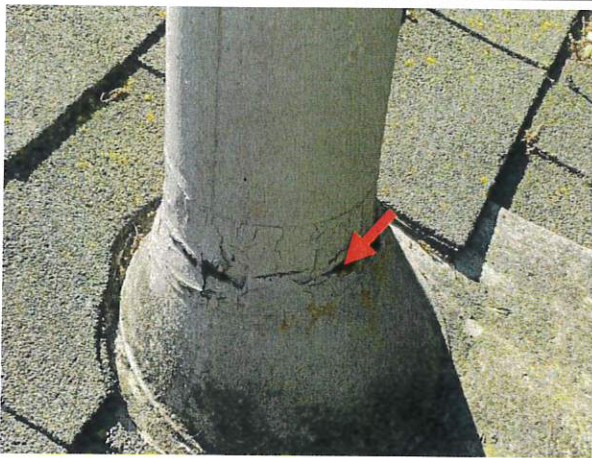
Observation:

Roof shingles appear to be in fair conditions and expected to last 5-8 years with proper maintenance repairs performed.



Observation:

Debris at shingle roofs to be cleaned out.



Observation:

Pipe jack seal cracked and deteriorated.

Recommendations:

Install new EPDM rubber collars as needed.

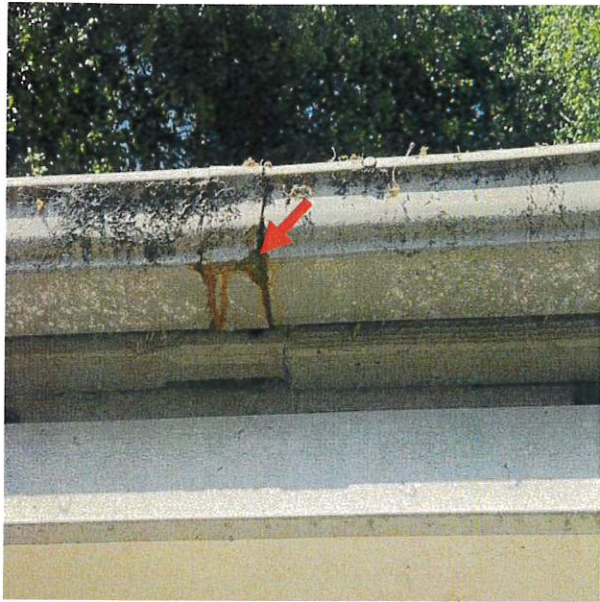


Observation:

Gutters were observed with debris or with organic growth.

Recommendations:

GRC recommends full replacement of gutters and downspouts or cleaning at best.

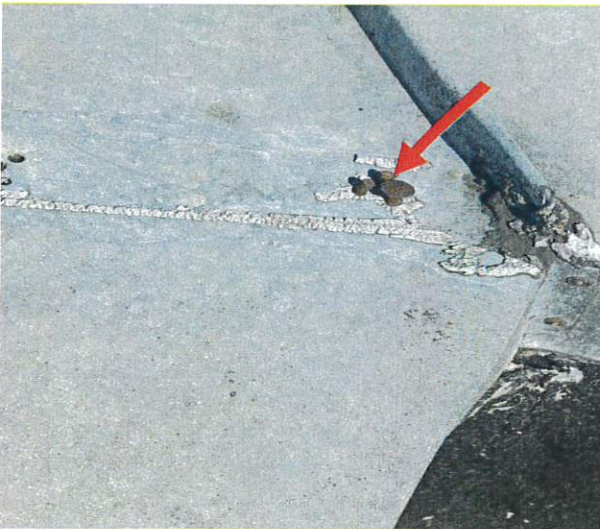


Observation:

Gutter seams rusting and failing.

Recommendations:

Remove and replace gutters with new seamless type aluminum or steel with new aluminum downspouts.



Observation:

Method used to secure coping metal failing resulting in damages.

Recommended Corrective Action:

Seal coping cap as best as possible with approved sealant.

Replace coping metal during roof replacement.



Observation:

Clogged collector box and rusting.

Recommendations:

Remove and replace collector heads and replace scuppers or clean out at best.



Observation:

Skylights appear to be failing at this time and sealant failing.

Recommendations:

Remove and replace skylights with new skylights.



Observation:

Severe stucco damages observed.

Recommendations:

Perform stucco repairs as needed and install new 3 coat stucco patch primed and painted to match as close as possible.



Observation:

Water intrusion damages from upper hog valley area between C8-C9.

Recommendations:

Perform water test at roof areas over water intrusion area and provide scope of work for required repairs.

Shingle Roof Evaluation and Synopsis

The inspector observed the overall condition of the shingle roofing system which includes: field, ridge, hips, penetrations, eaves, gutters, downspouts etc. Shingle roofs appear to be in fair conditions, but maintenance is required to extend the life expectancy 5-8 years.

Shingle roofs consist of composition shingles. Maintenance is recommended including but not limited to: flashing refastening, collar installation, roof jack painting, cleaning etc.

Ventilation Please be advised no calculations have been verified or inspected through attic space.

Hip and Ridge shingles appear to be installed correctly and performing as intended.

PC pipe jack flashings appear to be installed correctly but are in need of EPDM rubber collars and storm collars installed per manufacture recommendations.

Roof flashings in general appear to be installed correctly with only regular maintenance required which may include paint, caulk, re-fastening with neoprene rubber fasteners.

Skylights are in need of replacement as sealant appears to be damaged, brittle and deteriorating.

Gutters and downspouts are recommended to be replaced or a cleaning at best.

Stucco in need of repairs at confined rake area for proper tie in with roofing step flashings to avoid immediate water intrusion during inclement weather.

Water test required over C8 and C9 to determine leak source area to perform proper repairs at cricket/hog valley at steep sloped roof.

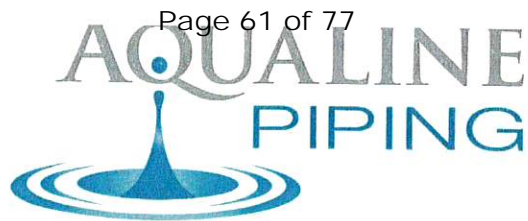
BUR Roof Evaluation and Synopsis

The inspector observed the overall condition of the BUR (cap sheet/gravel) roofing system which includes: scuppers, coping cap, parapet walls, jacks, curbs etc.

BUR roofs have met the end of their useful lifespan and are in need of replacement. GRC recommends the installation of a new TPO single ply roof system.

830 University Ave.
Berkeley, CA

Section Three: Plumbing



Daniel May
EA Davidovits

May 12, 2022

RE: 830 University Ave, Berkeley- Plumbing Building Inspection Report

GENERAL OVERVIEW: Arrived on site around 9:30 and started by doing my general plumbing inspection. I checked all fixtures, water and waste lines + valves and I didn't find any leaks apparent, but I did find two areas that had signs of leaks that may have sealed themselves over time: (1) hot angle stop in C2 and in the attic there are 3 booster pumps and the pump on the left, if facing the system, has signs at the outlet where there may be the same thing happened where it sealed itself. Also there was a 3rd place in the boiler room on the circulation pump 1-1/4 copper going in and out, leak signs at the flange at bottom of pump. Looks like it sealed itself as well, I found everything inside to be functioning properly at the boiler which is from 2010 and all the fixtures were draining properly and had good pressure on hot and cold lines. valves look to be in good condition as well as the pee traps.

SEWER & VENT CONDITIONS: I found 5 clean outs on the exterior of the property. And 2 closer to the street for city access. There are two in the front: one on the right and one on the left of the front entrance. The one on the right side of property is tied in with the addition on back of the building which wraps around to the front and goes through the building to the back, where it does a loop and runs into a clean out in the back left if facing the back door. And there is another to the right and the tie-in at a wye fitting that was actually backed up and holding water when I found it.

I ran the camera through the abs clean out on the right corner of the building downstream where I found two offsets: One downstream where city tie in is, and another at the service tee going up stream. **The line is back graded in some places and flat in others which cause build up.** I went out about 40 feet to the main and pulled back then found the off set up stream and couldn't clear it approximately one in gap.

I went next to the back where I found the back up. It was holding so I didn't run the camera until after it was clear and the line seemed to be in good functional condition for about 10 feet until it tied in at the wye to pick up the 2 story addition in the back. Then 45s down the back driveway before wrapping around the building picking up the service tee then it goes right again and picks up front clean out to the right. **Once I made it about 135 feet in, I found another major off set under the floor between the toilet and sink in first bathroom in front lobby area.** I located and continued to run camera until it wouldn't go anymore. I made it past 2-45s that align with the back left clean out. Approximately 145 feet then pulled back.

I noticed the section where the wye was, so I worked my camera back and forth to help push the buildup down the line once it came out of the connection underground. I ran my blow bag at left clean out and got the build up to go back into the pipe coming from the 2 story section, so I put my blow bag through the clean out on that side past the combo and was able to flush the line completely. The roof was too steep, and I wasn't able to do the vents. **I didn't find any signs of there being venting issues Either.**

DOMESTIC WATER CONDITIONS: I found all copper water lines except in the back 2 story section for C2 sink. **I found a 3/4 backflow in front for irrigation and another 2" backflow on left of property if facing the building which is for the domestic water. This is where I believe the water goes in to feed the building. Boiler is all copper from 2" lines down to 3/4 lines and all in good condition.**

SEWER PIPING MATERIAL: I found cast iron drains in some sections and what looks to be 4 inch gray sdr pipe in others on the exterior and under the floor where the drain loops and runs underneath. The clean out on the right corner property line is abs, this looks like it sunk over time and the section where off set is appears to be flat.

WATER HEATER: There is an electric 50 gallon water heater on the roof which also fed the 3-pump system which is hydronic and the air conditioning system.

Plumbing Inspection, 830 University.

Please use this link to access videos pertinent to the plumbing inspection performed

<https://www.dropbox.com/sh/ah7vmxvd8aziinh/AACxcVq9m4DkdpX6a1e5bhbka?dl=0>

830 University Ave.
Berkeley, CA

Section Four: Electric

EA Davidovits
555 Price Ave Suite 200
Redwood City Ca 94063

Attn: Dan May

Subject: 930 University Ave Berkeley Field Inspection Report

Dan,

The building has an existing 120/240volt single phase three wire 400amp switchgear. The switchgear has one PGE meter and three separate branch breakers. The breakers are feeding panels L-1 and L-2. The third breaker in the switchgear feeds the elevator. Panel L-1 and L-2 are fed with 2 pole 90-amp breakers and the elevator is serviced with a 2 pole 150-amp breaker. We removed the inspection covers from the switchgear and assessed the interior condition of the gear. It is in fair to good condition. No major issues were noted.

PANEL L-1 – Located in the electrical room directly to the right of the electrical switchgear. This panel is in fair to good condition. Upon inspection we did not find any major issue. Voltages were observed to be in the normal ranges.

PANEL L-2 – Located on the east side of the building in room E4. This panel is in fair to good condition. Upon inspection we did not find any major issue. Voltages were observed to be in the normal ranges.

Generator: The building has an existing 5kw natural gas generator. The generator, automatic transfer switch and panel are located outside on the south west portion of the building. The generator has 4 – 20amp 120 circuits that it backs up. The circuits are all labelled refrigerator. The clinic was operational during our site visit. We did not perform a start up test on the generator so its function is unknown.

Lighting:

The lighting system in the building has surface mount four-foot fluorescent wrap around style fixtures in the treatment rooms. These fixtures are all in good operating condition. They are controlled by standard toggle switches.

The lights in the hallways are either wall mount our ceiling mount four-foot fluorescent fixtures. Several are out throughout the space. However, these fixtures all appear to be in good physical condition and with a little maintenance could very likely provide years of good service.

Exit Signs: The building has operational exit signs and it appears they follow a proper egress path in the event of a fire. Other than one exit sign all of the exit signs all tested operation in the test mode.

Attic/Crawl Spaces: We looked at the attic areas and crawl spaces. No abnormal electrical conditions were observed. All junction boxes and wiring were closed up and the wiring was properly secured.

Exterior Lighting: The building has 5 – exterior wall packs on the rear of the building. They are controlled by a time clock in the electrical room. We tested the lights and all four were operational.

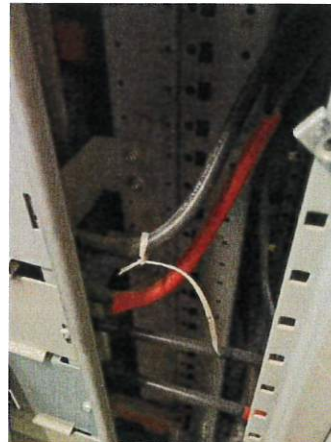
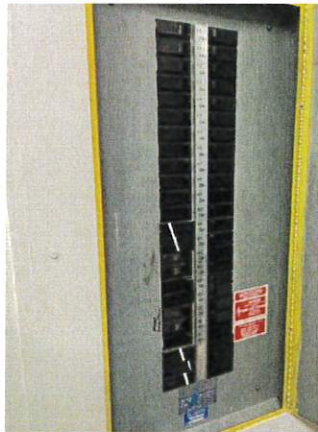
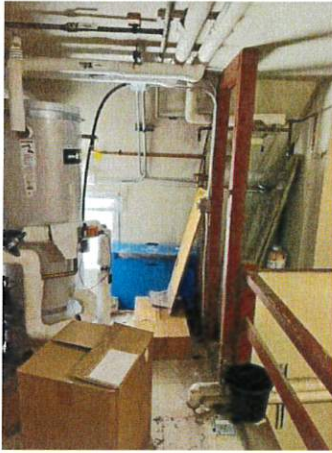
Summary:

Over-all the building is in very good condition electrically. Although the building is old and the electrical system is older it is very functional and safe. This building should provide years more of great service with some light maintenance.

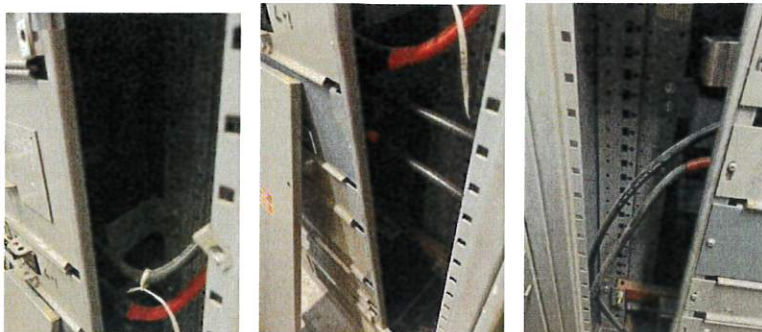
Electrical Photos – 830 University



Electrical Photos – 830 University



Electrical Photos – 830 University



830 University Ave.
Berkeley, CA

Section Five: Termite

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No. 830	Street University Ave	City Berkeley	Zip 94710-2044	Date of Inspection 05/04/2022	Number of Pages 1 of 8
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Pacific Coast Termite Inc.
40487 Encyclopedia Circle
Fremont, CA 94538
 Tel 510-252-0801 Fax 510-252-0826
 Registration #: BR5139

A LICENSED PEST CONTROL OPERATOR IS AN EXPERT IN HIS/HER FIELD. QUESTIONS RELATIVE TO THIS REPORT SHOULD BE REFERRED TO HIM/HER.

Report #: 268517

Ordered by: E A 830 University Ave Berkeley, CA 94710-2044 650-222-0675	Property Owner and/or Party of Interest: E A 830 University Ave Berkeley, CA 94710-2044 650-222-0675	Report sent to: E A 830 University Ave Berkeley, CA 94710-2044 650-222-0675
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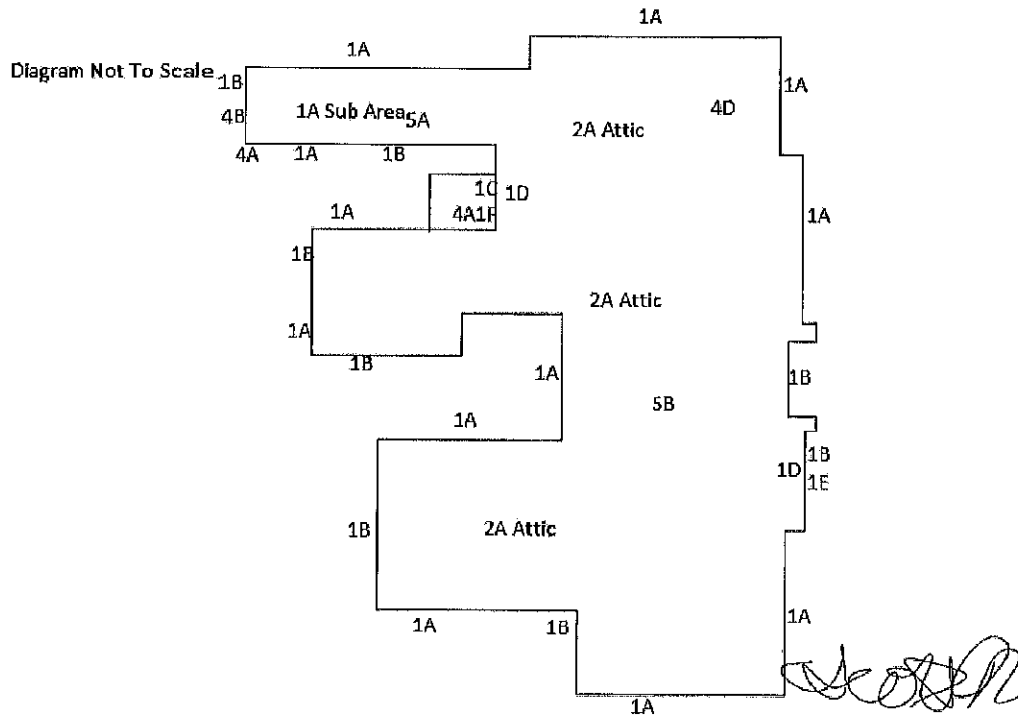
COMPLETE REPORT LIMITED REPORT SUPPLEMENTAL REPORT REINSPECTION REPORT

General Description: 2 Story, Commercial health car Building, Occupied and Furnished	Inspection Tag Posted: Attic
	Other Tags Posted: None

An inspection has been made of the structure(s) shown on the diagram in accordance with the Structural Pest Control Act. Detached porches, detached steps, detached decks and any other structures not on the diagram were not inspected.

Subterranean Termites Drywood Termites Fungus/Dryrot Other Findings Further Inspection

Key: 1 = Subterranean Termites 2 = Drywood Termites 3 = Fungus/Dryrot 4 = Other Findings 5 = Unknown Further inspection



Inspected By: Scott Nelson State License No.: FR45955 Signature: _____

You are entitled to obtain copies of all reports and completion notices on this property reported to the Structural Pest Control Board during the preceding two years. To obtain copies contact: Structural Pest Control Board, 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815

NOTE: Questions or problems concerning the above report should be directed to the manager of the company. Unresolved questions or problems with services performed may be directed to the Structural Pest Control Board at (916) 561-8708, (800) 737-8188 or www.pestboard.ca.gov. Page 146
43M-41 (REV. 04/2015)

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
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General Comments

WHAT IS A WOOD DESTROYING PEST AND ORGANISM INSPECTION REPORT? READ THIS DOCUMENT. IT EXPLAINS THE SCOPE AND LIMITATIONS OF A STRUCTURAL PEST CONTROL INSPECTION AND A WOOD DESTROYING PEST AND ORGANISM INSPECTION REPORT.

A Wood Destroying Pest and Organism Inspection Report contains findings as to the presence or absence of evidence of wood destroying pests and organisms in visible and accessible areas and contains recommendations for correcting any infestations or infections found. The contents of Wood Destroying Pest & Organism. Inspection Reports are governed by the Structural Pest Control Act and regulations.

Some structures do not comply with building code requirements or may have structural, plumbing, electrical, mechanical, heating, air conditioning or other defects that do not pertain to wood destroying organisms. A Wood Destroying Pest & Organism Inspection Report does not contain information on such defect, if any, as they are not within the scope of the licenses of either this company, or it's employees.

The Structural Pest Control Act requires inspection of only those area which are visible and accessible at the time of inspection. Some areas of the structure are not accessible to inspection, such as the interior of hollow walls, spaces between floors, areas concealed by carpeting, appliances, furniture or cabinets. Infestations or infections may be active in these areas without visible and accessible evidence. If you desire information about areas that were not inspected, a further inspection may be performed at an additional cost. Carpets, furniture or appliances are not moved and windows are not opened during a routine inspection.

INACCESSIBLE AREAS: Certain areas are recognized by the industry as inaccessible and or for other reasons not inspected, as indicated in Section 1990, Paragraph (d) of the California Structural Pest Control Act. These include, but are not limited to: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as Porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

NOTE: "THE EXTERIOR SURFACE OF THE ROOF WAS NOT INSPECTED. IF YOU WANT THE WATER TIGHTNESS OF THE ROOF DETERMINED, YOU SHOULD CONTACT A ROOFING CONTRACTOR WHO IS LICENSED BY THE CONTRACTOR'S STATE LICENSE BOARD". This company does not certify or guarantee against any leakage, such as (but not limited to) plumbing, appliances, walls, doors, windows, any type of seepage, roof or deck coverings. This company renders no guarantee, whatsoever, against any infection, infestation or any other adverse condition which may exist in such areas or may become visibly evident in such area after this date. Upon request, further inspection of these areas would be performed at an additional charge.

In the event damage or infestation described herein is later found to extend further than anticipated, our bid will not include such repairs. **OWNER SHOULD BE AWARE OF THIS CLOSED BID WHEN CONTRACTING WITH OTHERS OR UNDERTAKING THE WORK HIMSELF/HERSELF.**

Having termite treatment including preventative work done on your home is not a substitute for regular home maintenance.

This Wood Destroying Pest & Organisms Report **DOES NOT INCLUDE MOLD** or any mold like conditions. No reference will be made to mold or mold-like conditions. Mold is not a Wood Destroying Organism and is outside the scope of this report as defined by the Structural Pest Control Act. If you wish your property to be inspected for mold or mold like conditions, please contact the appropriate mold professional.

This company will reinspect repairs done by others within four months of the original inspection. A charge, if any, can be no greater than the original inspection fee for each reinspection. The reinspection must be done within ten (10) working days of request. The reinspection is a visual inspection and if inspection of concealed areas is desired, inspection of work in progress will be necessary. Any guarantees must be received from parties performing repairs.

Wall paper, stain, or interior painting are excluded from our contract. New wood exposed to the weather will be prime painted, only upon request at an additional expense.

All pesticides and fungicides must be applied by a state certified applicator (sec. 8555 Business and Professions Code Division 3) and in accordance with the manufacturer's label requirements.

"NOTICE: REPORTS ON THIS STRUCTURE PREPARED BY VARIOUS REGISTERED COMPANIES SHOULD LIST THE SAME FINDINGS (I.E. TERMITE INFESTATIONS, TERMITE DAMAGE, FUNGUS DAMAGE, ETC.) HOWEVER, RECOMMENDATIONS TO CORRECT THESE FINDINGS MAY VARY FROM COMPANY TO COMPANY. YOU HAVE THE RIGHT TO SEEK A SECOND OPINION FROM ANOTHER COMPANY."

Please note: drywood termite droppings may be observed for a period of up to 6 months following treatment. Should activity continue please call the offices of Pacific Coast Termite. Should you see any live activity (Swarms), please call to schedule a service call right away.

_____ initials

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
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SUBTERRANEAN TERMITES**Description of Findings**

- Finding: 1A Treatment for the control of subterranean termites at the subarea and exterior perimeter soil areas.
Recommendation: Treat the soil with Altriset at all probable entry points around the foundation of the structure. This may include rod injection to the soil, trenching around the foundation walls of the exterior, subarea and pier posts in the sub area. It may be necessary to drill through any attached slab foundation. While due caution is exercised, Pacific Coast Termite, Inc. is not responsible for damage to plumbing, electrical, or any other service lines beneath the slab. Scrape and/or remove all accessible subterranean termite shelter tubes.
- Finding: 1B Treatment for the control of subterranean termites at the exterior perimeter slab areas.
Recommendation: Treat the soil with Altriset at all probable entry points around the foundation of the structure. This may include rod injection to the soil, trenching around the foundation walls of the exterior, subarea and pier posts in the sub area. It may be necessary to drill through any attached slab foundation. While due caution is exercised, Pacific Coast Termite, Inc. is not responsible for damage to plumbing, electrical, or any other service lines beneath the slab. Scrape and/or remove all accessible subterranean termite shelter tubes.
- Finding: 1C Evidence of subterranean termites noted at basement threshold and framing.
Recommendation: Scrape and/or remove all accessible subterranean termite shelter tubes.
- Finding: 1D Evidence of subterranean termites noted at basement wall framing and bottom plate.
Recommendation: The following areas will be treated for the control of subterranean termites in the prescribed manner with a foam solution (Termidor SC, Alpine Foam or Altriset). It will be injected in areas where active subterranean termite infestation was noted. Scrape and/or remove all accessible subterranean termite shelter tubes.

DRYWOOD TERMITES

- Finding: 2A Preventative treatment for the control of drywood termites at the accessible attic wood framing members.
Recommendation: A foam solution of Bora-Care will be applied on all accessible exposed wood framing for the control of drywood termite infestation.

OTHER FINDINGS

- Finding: 4A The gutter downspout diverter(s) were noted to be missing and/or broken.
Recommendation: The repair noted above is outside the scope of our operations. The owner should employ the services of a licensed tradesperson to inspect and/or repair this damage.
- Finding: 4B The stucco was noted to be below grade.
Recommendation: This is a normal construction style for a home this age. There is no practical or economical method to make this area accessible or to eliminate the below grade, stucco below grade or brick veneer below grade condition. No further recommendations are made. Periodic inspections are advised.
- Finding: 4C Cracked stucco was noted throughout the exterior of the structure.
Recommendation: The repair noted above is outside the scope of our operations. The owner should employ the services of a licensed tradesperson to inspect and/or repair this damage.

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

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Finding: 4D Damaged sheet rock was noted to the interior of the structure.
Recommendation: The repair noted above is outside the scope of our operations. The owner should employ the services of a licensed tradesperson to inspect and/or repair this damage.

FURTHER INSPECTIONS

Finding: 5A The subarea was not inspected due to low clearance and no practical access.
Recommendation: There is no practical economical method to make this area accessible for inspection. No opinions are rendered at this time. Periodic inspections are advised.

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
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Disclaimer

Limited Warranty, Disclaimer and Limitation of Claims. Company guarantees that the work will be performed in a good workmanlike manner within generally accepted pest control practices. The warranty covers all work performed by Company in accordance with the recommendations noted in the Inspection Report, and if termite infestation is found in any of those areas in which work was performed within two (2) years of the completion of Company's work, further treatments will be performed at no additional charge to remediate such infestation in accordance with any recommendations made in a subsequent inspection report identifying such infestation. The warranty covers all structural repair work performed against defects in workmanship and materials for a period of one (1) year from the date of its completion, and is limited to the performing the repairs necessary to correct any such defects in workmanship. This warranty does not cover damage or defects that are the result of characteristics common to the materials used, or conditions resulting from consideration, expansion, or contraction of such materials. Further, Company makes no warranties or representations concerning any pesticides or other materials installed by Company. Warranty work will be completed within sixty (60) days from the date of receipt of written request from Owner. Company's sole obligation shall be to repair, or replace, such work, or portion thereof, that has been promptly reported as defective by Owner within the warranty period and which has been determined by Company to have been defective. "Local treatment is not intended to be an entire structure treatment method. If infestations of wood destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated."

This report is not to be used for escrow purposes, unless specified and separated.

If you decide to sell your home while it is under warranty and the buyer demands that your home be fumigated, Pacific Coast Termite is not responsible for the cost of fumigation or any expenses incurred during the process.

THE ABOVE LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY COMPANY. COMPANY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTY, INCLUDING ALL WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL HAVE NO LIABILITY FOR ANY INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES TO OWNER WITH RESPECT TO COMPANY'S OBLIGATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITES, EMOTIONAL DISTRESS, AGGRAVATION, OR ANY OTHER SIMILAR DAMAGES EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Force Majeur-Delay-Extension of Time. Company shall not be liable for any delay or nonperformance caused by an act of God, acts of the Owner, the Owner's architect, engineer, contractor, or the building department, stormy weather, strikes or other labor troubles not the fault of Company, extra work ordered by the Owner, Owner's architect, engineer, contractor, or the building department, unavailability of materials, failure of the Owner to make progress payments when due that substantially interferes with the Company's ability to continue performance of the work, or any other contingency beyond the Company's reasonable control.

NOTICE TO OWNER:

Under the California Mechanics Lien Law any structural pest control company which contracts to do work for you, any contractor, subcontractor, laborer, supplier or other person who helps to improve your property, but is not paid for his or her work or supplies, has a right to enforce a claim against your property. This means that after a court hearing, your property could be sold by a court officer and the proceeds of the sale used to satisfy the indebtedness. This can happen even if you have paid your structural pest control company in full if the subcontractor, laborers or suppliers remain unpaid. To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are required to provide you with a document entitled "Preliminary Notice." Prime contractors and laborers for wages do not have to provide this notice. A Preliminary Notice is not a lien against your property. Its purpose is to notify you of persons who may have a right to file a lien against your property if they are not paid.

*****NOTICE TO OCCUPANT*****

In accordance with the laws and regulations of the State of California, we are required to provide you the following information prior to application of pesticides to your property.

State law requires that you be given the following information: CAUTION, PESTICIDES ARE TOXIC CHEMICALS.

Structural Pest Control companies are licensed and regulated by the Structural Pest Control Board, and apply pesticides

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
830	University Ave	Berkeley	94710-2044	05/04/2022	6 of 8

which are registered and approved for use by the California Dept. of Pesticide Regulation and the United States Environmental Protection Agency. Registration is granted when the State finds that, based on existing scientific evidence there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized.

If within 24 hours following application, you experience symptoms similar to common illness comparable to the flu, contact your physician or poison control center (800)876-4766 and your pest control company immediately. Effects of over exposure to these materials can include tremors, lethargy, CNS stimulation and tonic and colonic convulsions.

For further information contact any of the following:

Pacific Coast Termite, Inc. (800) 669-1900

Poison Control Center (800) 876-4766

For Health Questions: County/ City Health Departments

Alameda (510) 267-3250 Amador (209) 223-6407 Berkley City (510) 981-5300
 Calaveras (209) 754-6460 Contra Costa (925) 313-6767 El Dorado (530) 621-6100
 Fresno (559) 445-3550 Kern (661) 321-3000 Kings (559) 584-1401
 Lake (707) 994-9433 Long Beach (562) 570-7468 Los Angeles (213) 351-7800
 Marin (415) 473-6007 Mariposa (209) 966-3689 Mendocino (707) 472-2600
 Merced (209) 381-1023 Monterey (831) 755-4683 Napa (707) 253-4270
 Orange (800) 564-8448 Pasadena (626) 744-6012 Placer (530) 889-7141
 Riverside (951) 358-5107 Sacramento (916) 875-7468 San Benito (831) 637-5367
 San Bernardino (909) 387-6521 San Diego (866) 358-2966 San Francisco (415) 554-2830
 San Joaquin (209) 468-3481 San Luis Obispo (805) 781-5500 San Mateo (650) 573-2877
 Santa Barbara (805) 346-8420 Santa Clara (408) 792-5040 Santa Cruz (831) 454-4343
 Solano (707) 553-5402 Sonoma (707) 565-4567 Stanislaus (209) 558-8872
 Tulare (800) 834-7121 Tuolumne (209) 533-7401 Ventura (805) 981-5211
 Yolo (530) 666-8645

For Application Information: County Agricultural commissioners offices:

Alameda (510) 670-5232 Amador (209) 223-6487 Calaveras (209) 754-6504
 Contra Costa (925) 646-5250 El Dorado (530) 621-5520 Fresno (559) 600-7510
 Kern (661)868-6300 Kings (559) 582-3211 Los Angeles (626) 575-5471
 Lake (707) 263-0217 Marin (415) 473-6700 Mariposa (209) 966-2075
 Mendocino (707) 463-4208 Merced (209) 385-7431 Monterey (831) 759-7325
 Napa (707) 253-4357 Orange (714) 955-0100 Placer (530) 889-7372
 Riverside (951) 995-3000 Sacramento (916) 875-6603 San Benito (831) 637-5344
 San Bernardino (909) 387-2115 San Diego (858) 694-2741 San Francisco (415) 252-3830
 San Joaquin (209) 953-6000 San Luis Obispo (805) 781-5910 San Mateo (650) 363-4700
 Santa Barbara (805) 681-5600 Santa Clara (408) 918-4600 Santa Cruz (831) 763-8080
 Solano (707) 784-1310 Sonoma (707) 565-2371 Stanislaus (209) 525-4730
 Tulare (559) 684-3350 Tuolumne (209) 533-5691 Ventura (805) 477-1620
 Yolo (530) 666-8140

For regulatory information: Structural Pest Control Board (916) 561-8704
 2005 Evergreen Street, Suite 1500, Sacramento, Ca 95815

TERMITE AND FUNGUS CONTROL CHEMICALS

XT-2000 Orange Oil Plus (EPA Reg No. 71986-2)

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
830	University Ave	Berkeley	94710-2044	05/04/2022	7 of 8

Active Ingredients: d-Limonene.....95%

Bora-Care (EPA Reg No. 64405-1)

Active Ingredients: Disodium Octaborate
Tetrahydrate.....98%

Premise 75 WP (EPA Reg No. 432-1332)

Active Ingredients: Imidacloprid,
1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidinimine.....75%

Premise Foam (EPA Reg No. 432-1391)

Active Ingredients: Imidacloprid; 1-[(6-chloro-3-pyridinyl)methyl]-N
nitro-2-imidazolidinimine.....0.05%

Altriset (EPA Reg No. 352-829)

Active ingredients:Chlorantraniliprole,
3-Bromo-N-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)
-1H-pyrazole-5-carboxamide.....18.4%

Termidor SC (EPA Reg No. 7969-210)

Active Ingredients: fipronil; 5-amino-1-(2,6dichloro-4-(trifluoromethyl)
phenyl)-4-((1,R,S-trifluoromethyl)sulfinyl)-1-H-pyrazole-3-carbonitrile.....9.1%

Termidor HE (EPA Reg No. 7969-329)

Active Ingredients: fipronil; 5-amino-1-(2,6dichloro-4-(trifluoromethyl)
phenyl)-4-((1,R,S-trifluoromethyl)sulfinyl)-1-H-pyrazole-3-carbonitrile.....8.73%

Alpine Termite Foam (EPA reg. no. 499-526)

Active Ingredient: Dinotefuran,
N-methyl-N'-nitro-N'[(tetrahydro-3-furanyl)methyl]guanidine.....0.025%

Tim-Bor Professional (EPA Reg. No. 64405-8)

Active Ingredients: Disodium Octaborate
Tetrahydrate.....98%

Advanced 375A (EPA Reg. No. 499-370)

Active Ingredients: Abamectin*B1.....0.011%

THANK YOU FOR CHOOSING PACIFIC COAST TERMITE, INC., to perform a structural pest control inspection on your property. Our inspection has determined that your property will benefit from the safe application of a chemical commonly used for structural pest control.

By signing below I authorize the following recommendations to be performed as stated in this report and for the price as set forth in the above report.

Authorized Signature/Date

Pacific Coast Termite, Inc. Rep/Date

WOOD DESTROYING PESTS AND ORGANISMS INSPECTION REPORT

Building No.	Street	City	Zip	Date of Inspection	Number of Pages
830	University Ave	Berkeley	94710-2044	05/04/2022	8 of 8



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jennifer A. Louis, Chief of Police
 Subject: Revenue Grant: California Office of Traffic Safety (OTS) for the 2024
 "Selective Traffic Enforcement Program (STEP) Grant"

RECOMMENDATION

Adopt a Resolution authorizing the Chief of Police to accept the "Selective Traffic Enforcement Program (STEP)" grant and enter into the resultant grant agreement and any amendments, with the California Office of Traffic Safety. This OTS grant is for \$269,000 for the period of October 1, 2023 through September 30, 2024, which is Federal Fiscal Year 2024.

FISCAL IMPACTS OF RECOMMENDATION

The total of this project will not exceed \$269,000. Grant revenues will be deposited into budget code 309-71-703-812-0000-000-000-431-110 to offset expenditures. Appropriation of the expenditures is being included in the First Amendment to the Appropriations Ordinance. This grant will fund overtime, benefits, equipment, training costs, and reduce additional General Fund expenditures.

CURRENT SITUATION AND ITS EFFECTS

Securing OTS grant funding is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

Currently the Traffic Bureau at the Berkeley Police Department is staffed by one Motor Officer, one Traffic Data Analyst, a Provisional Sergeant, and a Provisional Lieutenant. Motor officers' responsibilities include injury-collision investigations and traffic enforcement; however, resources often deplete rapidly due to ancillary duties and personnel shortages in the operations/patrol division. OTS funding builds upon our current traffic safety efforts by allowing patrol and motor officers opportunities to address traffic safety issues-most significantly pedestrian and bicycle safety, distracted and impaired driving- in addition to and outside of their regularly scheduled duties. Additionally, the funds provide opportunities for leadership development and learning in traffic safety and DUI/impaired driving enforcement, and enhance the department's overall mission of public safety. This grant year's funding also provides for the replacement of the department's 2004 DUI Checkpoint Trailer.

BACKGROUND

Office of Traffic Safety (OTS) rankings place the City of Berkeley number one for the past seven years in pedestrian and bicycle related injury collisions when compared to fifty-nine other cities with comparable populations. Each year hundreds of people are injured in traffic collisions that occur in the City of Berkeley. Berkeley maintains a high ranking in total fatal and injury collisions, hit and run injury collisions, speed related collisions, nighttime collisions, and motorcycle involved collisions. With assistance from the 2024 Office of Traffic Safety Grant, the department will continue our efforts to reduce the number of community members injured in collisions whether they choose to walk, drive, bike or ride a motorcycle in our city.

In 2020, the City of Berkeley was number three (3/61) for injury collisions involving pedestrians; number two (2/61) for collisions involving bicyclists; number four (4/61) for collisions involving pedestrians 65+, and twelfth (12/61) for collisions involving motorcyclists. Based on these statistics and OTS rankings, the City of Berkeley is one of the most dangerous cities in the State of California to be a pedestrian or bicyclist.

Between 2012-2022, there have been thirty-three fatal auto collisions in the City of Berkeley. Sixteen of those involved pedestrians, and four of those sixteen were pedestrians 65+. Five fatal collisions involved a bicyclist, three involved DUI, and two involved a motorcycle.

The OTS Grant and the City Council's Vision Zero Program have shared ideologies. BPD's participation directly supports two of three of Vision Zero's tenets. BPD's efforts directly support Public Awareness Education and Traffic Enforcement. Public Awareness through our social media, departmental messaging, and direct contact with the public (in the field and at community meetings) and data-driven enforcement of primary collision factor offenses in areas where they have the highest probability of occurring.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City of Berkeley continues to have one of the highest bicycle and pedestrian usage rates in the County of Alameda and, as a result, there are a large number of bicyclists and pedestrians sharing the roadway with motorists. This grant will support the City of Berkeley's efforts to promote more sustainable forms of transportation, reducing greenhouse gas emissions-with the goal of reducing traffic injuries and fatalities related to all modes of transportation.

RATIONALE FOR RECOMMENDATION

The Police Department requests this funding be approved to enhance our current mission of providing a safer environment for pedestrians, bicyclists, motorcyclists, and motorists on all City of Berkeley roadways and highways.

Revenue Grant: California Office of Traffic Safety Grant
for the 2024 STEP Grant

CONSENT CALENDAR
September 19, 2023

ALTERNATIVE ACTIONS CONSIDERED

The California Office of Traffic Safety currently provides the only known grant funding specific to traffic enforcement and related education. Not accepting this OTS grant would require additional overtime expenditures from General Fund resources or could result in a decrease in the overall safety of the citizens of Berkeley.

CONTACT PERSON

Provisional Lieutenant Andrew Frankel, Police Traffic Bureau, (510) 981-5982

Attachment:

1: Resolution

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

REVENUE GRANT: SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP)
GRANT FROM THE OFFICE OF TRAFFIC SAFETY TO FUND STRATEGIES TO
REDUCE THE NUMBER OF INJURIES AND DEATHS RELATED TO TRAFFIC
COLLISIONS IN THE CITY OF BERKELEY

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

WHEREAS, the Office of Traffic Safety (OTS) has made grant funding available to the Police Department to assist them in their mission of increasing traffic safety; and

WHEREAS, this grant will provide funding to support efforts to reduce injury and fatal collisions involving pedestrians, bicyclists, motorcyclists, and motorists on all City of Berkeley roadways and highways; and

WHEREAS, grant revenues will be deposited into budget code 309-71-703-812-0000-000-000-431110, in the DUI Enforcement Education Program Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Chief of Police is authorized to accept the Selective Traffic Enforcement Program (STEP) Grant and enter into the resultant grant agreement and any amendments, with the Office of Traffic Safety (OTS) to fund increased levels of impaired or distracted driving enforcement, nighttime seatbelt enforcement, motorcycle safety enforcement, and educational programs regarding bicycle and pedestrian collisions in the amount of \$269,000 for the period of October 1, 2023 to September 30, 2024.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jennifer A. Louis, Chief of Police
 Subject: Revenue Grant: Cannabis Tax Fund Grant Program (CTFGP)

RECOMMENDATION

Adopt a Resolution authorizing the Chief of Police to accept the CTFGP grant and enter into the resultant grant agreement and any amendments, with the California Highway Patrol. This grant is for \$59,168.30 for the period of July 1, 2023 through June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

The total of this project will not exceed \$59,168.30. Grant revenues will be deposited into budget code 336-71-703-812-0000-000-000-432110 to offset expenditures. Appropriation of the expenditures is being included in the First Amendment to the Appropriations Ordinance. This grant will fund overtime, benefits, training costs, and reduce additional General Fund expenditures.

CURRENT SITUATION AND ITS EFFECTS

Securing CTFGP grant funding is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

Currently the Traffic Bureau at the Berkeley Police Department is staffed by one motor officer, one traffic data analyst, a Provisional Sergeant, and a Provisional Lieutenant. Motor officers' responsibilities include injury-collision investigations and traffic enforcement; however, resources often deplete rapidly due to ancillary duties and personnel shortages in the operations/patrol division. CTFGP funding builds upon our current traffic safety efforts by allowing patrol and motor officers opportunities to address traffic safety issues-most significantly impaired driving- in addition to and outside of their regularly scheduled duties. Additionally, the funds provide opportunities for leadership development and learning in traffic safety and DUI/impaired driving enforcement, and enhance the department's overall mission of public safety.

BACKGROUND

Office of Traffic Safety (OTS) rankings place the City of Berkeley number one for the past seven years in pedestrian and bicycle related injury collisions when compared to fifty-nine other cities with comparable populations. Each year hundreds of people are injured in traffic collisions that occur in the City of Berkeley. Berkeley maintains a high

ranking in total fatal and injury collisions, hit and run injury collisions, speed related collisions, nighttime collisions, and motorcycle involved collisions. With assistance from the 2024 CTFGP Grant, the department will continue our efforts to reduce the number of community members injured in collisions whether they choose to walk, drive, bike or ride a motorcycle in our city.

The CTFGP Grant and the City Council's Vision Zero Program have shared ideologies. BPD's participation directly supports two of three of Vision Zero's tenets. BPD's efforts directly support Public Awareness Education and Traffic Enforcement. Public Awareness through our social media, departmental messaging, and direct contact with the public (in the field and at community meetings) and data-driven enforcement of primary collision factor offenses in areas where they have the highest probability of occurring.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City of Berkeley continues to have one of the highest bicycle and pedestrian usage rates in the County of Alameda and, as a result, there are a large number of bicyclists and pedestrians sharing the roadway with motorists. This grant will support the City of Berkeley's efforts to promote more sustainable forms of transportation, reducing greenhouse gas emissions-with the goal of reducing traffic injuries and fatalities related to all modes of transportation.

RATIONALE FOR RECOMMENDATION

The Police Department requests this funding be approved to enhance our current mission of providing a safer environment for pedestrians, bicyclists, motorcyclists, and motorists on all City of Berkeley roadways and highways.

ALTERNATIVE ACTIONS CONSIDERED

The California Highway Patrol currently provides grant funding specific to traffic enforcement and related education. Not accepting this grant funding would require additional overtime expenditures from General Fund resources or could result in a decrease in the overall safety of the citizens of Berkeley.

CONTACT PERSON

Provisional Lieutenant Andrew Frankel, Police Traffic Bureau, (510) 981-5982

Attachments:

1: Resolution

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

REVENUE GRANT: CANNABIS TAX FUND GRANT PROGRAM GRANT (CTFGP)
FROM THE CALIFORNIA HIGHWAY PATROL TO FUND STRATEGIES TO REDUCE
THE NUMBER OF INJURIES AND DEATHS RELATED TO TRAFFIC COLLISIONS IN
THE CITY OF BERKELEY

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

WHEREAS, the California Highway Patrol (CHP) has made grant funding available to the Police Department to assist them in their mission of increasing traffic safety; and

WHEREAS, this grant will provide funding to support efforts to reduce injury and fatal collisions involving pedestrians, bicyclists, motorcyclists, and motorists on all City of Berkeley roadways and highways; and

WHEREAS, grant revenues will be deposited into budget code 336-71-703-812-0000-000-000-432110, in the One-time Grant Program Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Chief of Police is authorized to accept the CTFGP Grant and enter into the resultant grant agreement and any amendments, with the CHP to fund increased levels of impaired driving enforcement in the amount of \$59,168.30 for the period of July 1, 2023 to June 30, 2024.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: License Agreement – RM Ventures, LLC, d.b.a, In the Wood Grill & Bar for Nonexclusive Use of the Elmwood Parking Lot Pedestrian Paseo

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a ground license agreement with RM Ventures LLC d.b.a., In the Wood Grill and Bar (In the Wood Grill & Bar) for the nonexclusive use of a portion of the Elmwood Parking Lot Pedestrian Access Path (“Paseo”), a City-owned midblock pedestrian path connecting the City’s Elmwood Parking Lot to College Avenue in the Elmwood Neighborhood Shopping District, for an initial term of five (5) years and authorize the City Manager to execute a renewal of this license, under the same terms, after the termination of the initial term.

FISCAL IMPACTS OF RECOMMENDATION

This license agreement for nonexclusive use of 557 square feet anticipates total revenue of \$8,871 for the initial five (5) year term. The initial monthly price per square foot is \$0.25 with an annual adjustment of 3% beginning the second year after the Commencement Date of the lease. The tenant is also required to maintain the entire width and length of the Paseo, including the pedestrian path, clean and free of trash on a daily basis. Rent will be deposited into the Off-Street Parking Fund for Surface Parking Lot Revenue.

CURRENT SITUATION AND ITS EFFECTS

Prospective licensee, In the Wood Grill & Bar, a restaurant located at 2930 College Avenue currently uses a portion of the Elmwood Parking Lot Paseo, a midblock paved pedestrian path connecting the City’s Elmwood Parking Lot to College Avenue in the Elmwood Neighborhood Shopping District, to serve food and drinks including beer and wine. Owners of In the Wood Grill and Bar recently applied and had approved a Planning Use Permit to add license for service of distilled spirits, in addition to beer and wine at the restaurant and outdoor dining area. Approval of this license will correct a prior incorrect determination that the area is public right of way, ensure tenant has sufficient liability insurance coverage for the nonexclusive use of the property, and

ensure conformance with an existing easement requiring a pedestrian access path at all times.

BACKGROUND

In 2022, RM Ventures applied for a Planning Use Permit to add license for service of distilled spirits at In the Wood Grill and Bar, a restaurant with outdoor dining area. During the application review process, City staff determined that previous approvals for the outdoor dining area incorrectly categorized the area as public right of way and issued approval for the use with a sidewalk café permit. Sidewalk café permits are only for public right of way.

The area is the Elmwood Parking Lot Paseo and is private property owned by the City of Berkeley. It consists of a portion of two parcels (APNs 052-156800700 and 052-156800601) that combined with six other parcels are the City's Elmwood Parking Lot. The portion of interest is a midblock, paved passageway between the parking lot and College Avenue. The Planning Use Permit (ZP2022-0139) to add a license for distilled spirits included Outdoor Dining Conditions and was approved February 23, 2023 and the outdoor dining area is shown in Exhibit A (Premises). With input from the City Attorney's Office it was determined that a land lease granting nonexclusive use of the Paseo to RM Ventures, LLC is the solution that ensures appropriate liability protections and a fair rent is collected by the City.

If approved, the restaurant's use of the area is nonexclusive because during nonoperational hours In the Wood Grill and Bar will remove all tables and chairs in the outdoor dining area and store them in a 60 square foot area at the west end of the Paseo. To ensure conformance with the existing easement agreement, the potential licensee and Public Works will work together to clearly mark the limits of the patio dining area to ensure no encroachment into the six-foot wide public access path at all times. This ensures adjacent business owners and operators, their customers, City maintenance staff, and the general public will have a generous access path at all times as required by the easement. The storage area and pedestrian path are shown in Exhibit A to License Agreement (Premises).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

The Elmwood Parking Lot Paseo is not public right of way. Approval of this license will correct a prior incorrect determination that the area is public right of way, ensure tenant has sufficient liability insurance coverage for the nonexclusive use of the property, and

ensure conformance with an existing easement requiring a pedestrian access path at all times.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dionne Early, Community Development Project Coordinator, Public Works Department,
(510) 981-6453

Attachments:

1: Resolution

Exhibit A: License Agreement

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

LICENSE AGREEMENT BETWEEN CITY OF BERKELEY AND RM VENTURES, LLC,
D.B.A., IN THE WOOD GRILL AND BAR

WHEREAS, the City owns six parcels upon which the Elmwood Parking Lot and Paseo, a midblock pedestrian pathway is located. The Paseo (located on APNs 052-156800700 and 052-156800601) connects visitors from the parking lot to College Avenue and back; and

WHEREAS, an easement established when the City purchased the properties guarantees access through the Paseo and throughout the parking lot for all property and business owners adjacent to the Lot; and

WHEREAS, the City previously, and incorrectly, issued a sidewalk café permit agreement for partial use of the Paseo for dining and flower sales and seeks to correct the matter with this License; and

WHEREAS, the City and Licensee, RM Ventures, LLC d.b.a., In the Wood Grill and Bar agreed to enter into this nonexclusive use land license agreement which replaces the previous sidewalk café permit and designates 497 square feet along the southern property line of 2930 College be used as an outdoor dining area, 60 square feet be used for storage of outdoor furniture during restaurant closures, and the remainder to be a minimum six-foot-wide pedestrian path maintained at all times; and

WHEREAS, the initial term of this License shall be for a five-year term beginning retroactively on March 1, 2023 with the City Manager authorized to execute renewals of this license after the initial term. The total revenue for the initial five-year term of the agreement will be \$8,871 which will be entered into Off-Street Parking Fund for Surface Parking Lot Revenue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to enter into a five-year lease agreement with RM Ventures, LLC d.b.a., In the Wood Grill and Bar for real property located on parcels designated sections of APNs 052-156800700 and 052-156800601, with the authority execute renewals of this License after the initial term. Such license shall be on substantially the terms set forth in Exhibit A.

Exhibits

A: License Agreement

LICENSE AGREEMENT

This LICENSE is entered into by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City") and RM Ventures, a limited liability corporation d.b.a, In the Wood Grill & Bar ("Licensee"), who agrees as follows:

1. LICENSE

- a. City hereby grants a license to Licensee, subject to all the terms and conditions herein, for the nonexclusive use of a portion of the City's property, a site that measures approximately 557 (five hundred fifty-seven) square feet located on portions of assessor parcel numbers (APN) 052-156800700 and 052-1568601, adjacent to the southern property line of 2930 College Avenue, Berkeley, California and further described in Exhibit A - Premises, attached hereto and made part of this License.
- b. This License is not a lease; Licensee does not by this License obtain an exclusive right, against the City or the public, to any part of the Property.
- c. This License is granted for the purpose of Licensee using 497 square feet of land for outdoor food and beverage service during In the Wood Grill & Bar's hours of operation and using an additional 60 square feet of space for storage of the outdoor dining furniture during hours of nonoperation as described in Exhibit B – Use of Premises, attached hereto and made a part of this License. If Licensee fails to use the Premises for such purposes, or to provide the services described herein, or uses the Premises for unauthorized purposes, City may, in its sole discretion, immediately terminate this License.
- d. Business may be conducted with the public on the licensed premises at any time on any day, provided that, to do business after 10:00 p.m. on any day Licensee shall have obtained any permit required by federal, state or local law. Licensee shall operate the outdoor dining area with sufficient staff to serve patrons and only during the hours of operation of the associated restaurant and in conformance with any and all permits required by federal, state, or local law.
- e. In addition to Licensee's agreement to abide by all other restrictions on Licensee's use, Licensee shall maintain at all times a minimum six-foot wide pedestrian path parallel to the outdoor dining and storage area to ensure a midblock pedestrian path to and from the Elmwood Parking Lot and College Avenue is continuously maintained in the Paseo, further described in Exhibit A and Exhibit B, attached hereto.
- f. Licensee acknowledges that this License does not convey an estate in land or a leasehold interest in the Premises and is not a lease.

2. TERM

- a. This License shall commence retroactively on March 1, 2023. The effective date of the resolution provides and shall be for a period of five (5) years and terminate February 29, 2028, as shown in Exhibit B – Term and Payment, attached hereto and made a part of this License. Either party may terminate this License for any reason with thirty (30) days prior written notice to the other party.

- b. Additionally, City Council authorizes the City Manager to amend and renew this License after the first five-year term under the same terms set forth in this agreement. Licensee must notify the Landlord in writing no more than one year and no less than six months prior to the termination of the Licenses initial term as shown in Exhibit C, attached hereto and made a part of this License.

3. LICENSE FEE

In consideration for the rights conveyed by this License, Licensee shall pay to City an initial fee of \$0.25 per square foot per year with an annual increase of 3.0 percent (3%) each year beginning year two. Payment for the first year, March 1, 2023 to February 28, 2024 in the amount of One thousand, six hundred seventy-one Dollars (\$1,671.00) is due immediately upon City Council approval of the License and receipt of a fully executed License. License Fee is due no later than March 1st of each year of the License. Licensee shall make payments to City in accordance with the provisions described in Exhibit C, attached hereto.

4. SECURITY DEPOSIT

City and Licensee acknowledge that there shall be no security deposit.

5. NOTICES

A written notice shall be deemed served upon mailing said notice to the other party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this License, all notices to the City shall be addressed to:

City of Berkeley
Public Works Real Property
1947 Center Street, 5th Floor, Suite 521
Berkeley, CA 94704

For purposes of this License, all notices to Licensee shall be addressed to below. Licensee shall promptly notify City of any change of address within two weeks of any such change.

RM Ventures, LLC – In the Wood Grill & Bar
2930 College Avenue
Berkeley, CA 94705

6. MAINTENANCE AND ALTERATIONS

- a. Licensee is responsible for ensuring that the Premises meet all applicable City of Berkeley codes and regulations during the term of this License, and that they are in good order, condition and repair and present no safety issues or hazards.
- a. Licensee shall, to the City's satisfaction, keep and maintain the Premises and Licensee's equipment, furniture, and any other personal property of Licensee in good order, condition and repair. Licensee shall keep the Premises and the property immediately adjacent to the Premises reasonably free and clean of all debris and trash that is generated by Licensee or Licensee's customers.

- b. Licensee shall not construct any facilities or improvements, permanently install any equipment, or make any alterations to the Premises without the City's prior written consent, which consent shall be within the sole discretion of City to grant or withhold. Upon termination of this License, Licensee shall at its own expense remove all of its equipment and shall surrender the Premises to City in the same condition as at the commencement of this License, subject to reasonable wear and tear.
- c. Licensee shall keep any public and/or common areas adjacent to the Premises free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee's operations or use of the Premises. This includes Licensee's employees, contractors, and customers, garbage cans, and any other impacts of the Licensee's business.

7. ACCESS AND ENTRY TO THE PREMISES BY OTHERS

- g. City, its agents, employees, and representatives, have the right to inspect the Premises at any time, provided such entry does not cause unreasonable interference with Licensee's activities.
- h. City at all times shall have the right and privilege of making such changes in and to the Premises or adjacent areas owned by City which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities.
- i. Nothing contained herein shall be deemed to create any liability to the City for any personal injury, or any damage to any furniture, equipment, or other property of Licensee, or its employees or others, unless solely caused by the gross negligence or willful misconduct of City, its agents, servants, or employees. Licensee is solely responsible for the security of the Premises, and for the safety of those using the Premises.
- j. City reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Licensee's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Licensee shall be given reasonable notice before commencement of any work on the Premises.

9. TAXES, ASSESSMENTS, AND OTHER CHARGES

Licensee shall pay all applicable personal property taxes lawfully levied on account of personal property owned by Licensee on the Premises, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the Premises. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

11. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal to Licensee. Notwithstanding references to assignees and/or sub licensees elsewhere in this License, if any, Licensee may not assign or sublicense this

License in whole or in part, and any attempt to assign or sublicense this License shall terminate it.

12. INDEMNIFICATION

Licensee, for itself and its successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including without limitation actions for personal injury or death or property damage arising out of or caused by Licensee's operations under this License, or the performance of this License by Licensee or its officers, employees, partners, directors, agents, invitees, or guests.

13. INSURANCE

- k. Licensee at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$2,000,000 and property damage limits of not less than \$200,000 insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use of the Premises. All such insurance shall insure performance by Licensee of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.
- l. If the insurance referred to above is written on a Claims Made Form, then following termination of this License, coverage shall survive for a period of not less than five years. Coverage shall also provide for retroactive date of placement coinciding with the effective date of this License.
- m. Licensee at its cost shall maintain on all its personal property, Licensee's improvements, and alterations, in on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Licensee for the replacement of personal property or the restoration of Licensee's improvements or alterations.
- n. If Licensee employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel; terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the City; provide for a waiver of any right of subrogation against City to the extent permitted by law; and be approved as to form and sufficiency by the City's Risk Manager.
- o. Licensee shall forward all insurance documents to:

City of Berkeley
Public Works Real Property
194 7 Center Street, 5th Floor, Suite 521
Berkeley, CA 94704

14. RISK OF LOSS

Licensee bears all risk of loss under this License.

15. CONFORMITY WITH LAW

- p. Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health regulations, and all applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal, hazardous materials, and water and air quality. All activities conducted by Licensee on the Premises must be in accordance with these laws, ordinances, codes and regulations. Licensee shall defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation by Licensee, or its officers, Employees, partners, directors, agents, invitees, or guests, of any laws, ordinances, codes or regulations.
- q. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this License, Licensee shall immediately notify the City's Risk Manager by telephone at 510.981.6998. If any accident occurs in connection with this License, Licensee shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Licensee's liability insurance carrier; and 3) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.
- r. If a release of hazardous materials or hazardous waste occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office, in addition to complying with all other obligations imposed by law, ordinance, code or regulation. Licensee shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

16. MATERIAL SAFETY DATA SHEETS

- a. To comply with the City's Hazard Communication Program, Licensee agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Licensee intends to use in the performance of work under this License in any City facility. "Hazardous substances" are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 et seq.). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City's Risk Manager before Licensee may use that product.
- b. City will inform Licensee about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

17. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees shall be, and are, an independent Licensee and not an agent or employee of the City. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security withholding taxes and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees

18. CITY NON-DISCRIMINATION ORDINANCE

Licensee hereby agrees to comply with the provisions of the Berkeley Municipal Code (B.M.C.) Chapter 13.26 as amended from time to time. In the performance of this License, Licensee agrees as follows:

- a. Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- b. Licensee shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Licensee shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

19. CITY NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

- a. If Licensee provides any aid, service or benefit to others on the City's behalf, Licensee shall, in the provision of such aid; service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Licensee shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.
- b. If Licensee is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Licensee shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Licensee. All Licensees' activities must be in accordance with these laws, ordinances, codes and regulations and Licensee shall be solely responsible for complying therewith.

20. CONFLICT OF INTEREST PROHIBITED

- a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Licensee nor any employee, officer, director, partner or

member of Licensee, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this License.

- b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.
- c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

21. NUCLEAR FREE BERKELEY

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

22. OPPRESSIVE STATES

- a. In accordance with Resolution No. 59,853-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this License to forego contractual relations to provide personal services to, the following entities:
 1. The governing regime in any Oppressive State.
 2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
 3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its License with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. For purposes of this License, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.
- c. Licensee's failure to comply with this section shall constitute a default of this License and City may terminate this License pursuant to Section 3. In the event that the City terminates Licensee due to a default under this provision, City may deem Licensee a non-responsible bidder for not more than five (5) years from the date this License is terminated.

23. BERKELEY LIVING WAGE ORDINANCE

- a. Licensee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Licensee employs six (6) or more part-time, full-time or

stipend employees, and generates \$350,000 or more in annual gross receipts, Licensee will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

- b. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to Berkeley's Living Wage Ordinance (LWO). If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the licensed premises. These records shall include the total number of hours worked, the number of hours spent providing service on the licensed property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the license. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default.
- c. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee enters with regard to the subject premises. Sublicensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the licensed property.
- d. If Licensee fails to comply with the requirements of this the LWO and this license, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- e. Licensee's failure to comply with this Section shall constitute default of the license, upon which City may terminate this license.

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

24. SANCTUARY CITY CONTRACTING

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

- a. "Data Broker" means either of the following:
 - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; or

- ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. “Extreme Vetting” means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include the City’s computer-network health and performance tools.

25. BERKELEY EQUAL BENEFITS ORDINANCE

- a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this license, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.
- b. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default.
- c. If Licensee fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
- d. Licensee’s failure to comply with this Section shall constitute default of the license, upon which City may terminate this license.
- e. In addition, at City’s sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Licensee’s failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee’s breach.

26. RECYCLED PAPER FOR WRITTEN REPORTS

If Licensee is required by this License to prepare a written report or study, Licensee shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this License, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Licensee shall use white paper. Written reports or studies prepared under this License shall be printed on both sides of the page whenever practical.

27. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor’s Office may conduct an audit of Licensee’s financial, performance and compliance records maintained in connection with the operations and services performed under this License. In the event of such audit,

Licensee agrees to provide the City Auditor with reasonable access to Licensee's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Licensee an opportunity to discuss and respond to any findings before a final audit report is filed.

28. SETOFF AGAINST DEBTS

Licensee agrees that City may deduct from any payments due to Licensee under this License any monies that Licensee owes City under any ordinance, License or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

29. GOVERNING LAW

This License shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this License shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this License shall be in Alameda County, California.

30. AMENDMENTS

The terms and conditions of this License or any attachments hereto shall not be altered or otherwise modified except by a written amendment to this License executed by City and Licensee.

31. SEVERABILITY

If any part of this License or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this License which can be given effect without the invalid provision or application, and to this end the provisions of this License are declared to be severable.

32. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this License or a waiver of any other default of Licensee.

33. ASSIGNMENT

Licensee may not assign this License without the prior written consent of the City, except that Licensee may assign its right to any money due or to become due hereunder.

34. SURRENDER OF PROPERTY, REMOVAL OR PERSONAL PROPERTY

At the termination of this License, Licensee shall: 1) give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Licensee during the term of fire and the elements excepted; and 2) remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Licensee during the term of this License.

35. EFFECT ON SUCCESSORS AND ASSIGNS

This License shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

36. PESTICIDES

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

37. SIGNS

Licensee shall not install or letter any signs on the Premises without the prior written consent of City. All signs on the Premises shall conform to the provisions of B.M.C. Chapter 20.04 and the Marina design guidelines for signs.

38. REVIEW OF AGREEMENT BY COUNSEL; FAMILIARITY WITH CONTENTS AND EFFECTS

Licensee and City each represent that in entering into this Agreement, it has relied upon the legal advice of its attorneys, if it so chooses. Licensee further represents that the terms of this Agreement. have been completely read by it, and that these terms are fully understood and voluntarily accepted by it, and if applicable, its attorneys.

39. ENTIRE AGREEMENT

- a. The terms and conditions of this License, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this License. This License shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee. No other agreement, statement, or promise relating to the subject matter of this License shall be valid or binding except by a written amendment to this License.
- b. If any conflicts arise between the terms and conditions of this License and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this License shall control.

40. CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST

The City's Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. §18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the License period and upon termination of the Licensee's service.

41. SECTION HEADINGS

The sections and other headings of this License are for convenience of reference only and shall be disregarded in the interpretation of this License.

42. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Licensee has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Licensee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Licensee shall pay all

state and federal income taxes and any other taxes due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY OF BERKELEY

Richard Tapp, on behalf of RM Ventures,
LLC

By: _____
City Manager

By: _____
Richard Tapp, Managing Member
Berkeley Business
License No.: BL-008950
Taxpayer ID No.: _____

Exhibit A

Premises

568

The Berry-Bangs Tract Map No. 3 < Bk. 13 Pg. 78 >

Scale: - 1" = 40'

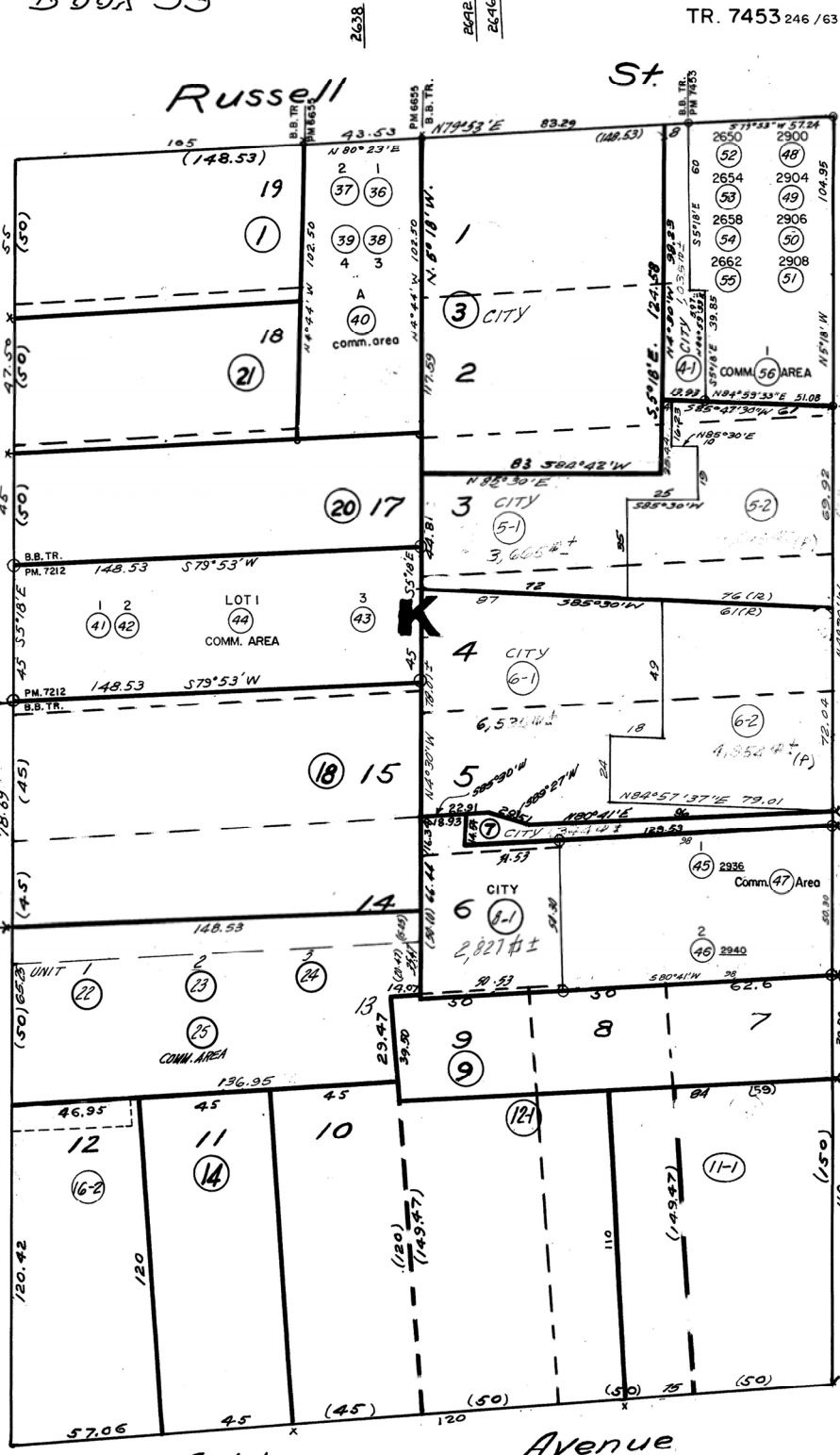
BOOK 53

TR. 5130 140/95 P.M. 7212 234/43
P.M. 6655 223/95 P.M. 7160 236/88
TR. 7453 246 /63

3-17-84 B.C.S.
6-26-86 B.C.S.
9-02-88 U.C.B.
1-13-89 P.B.
3-9-00 P.B.
11-3-00 P.B.

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Avenue
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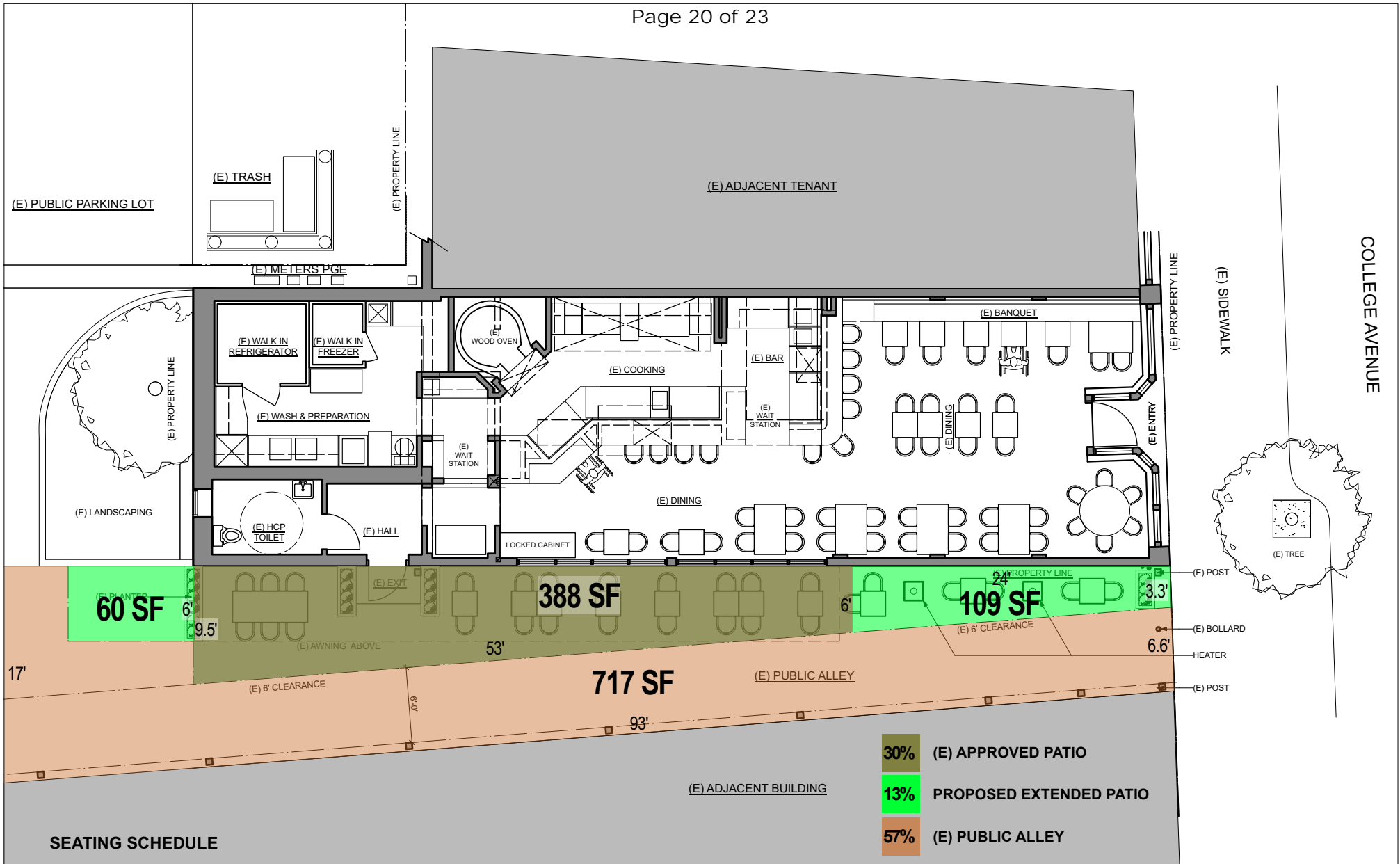
Avenue

2627

2629
2635

2637

1573



SITE PLAN
EXTERIOR SEATS PLAN WITH AREAS



Richard Tapp Associates
Architecture • Planning • Interior Design
2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
(510) 701-8277 - rtapparchitect@aol.com



TENANT IMPROVEMENTS
2930 COLLEGE AVE.
BERKELEY, CA



01/11/23

Exhibit B

Use of Premises

In addition to the terms and condition set forth in the License, Licensee shall use the Premises described on Exhibit A attached in conformity with the following:

a. Licensee agrees and understands the premises is licensed in its “AS IS” condition and that use of the premises is nonexclusive.

b. Licensee will use the premises for the purpose of outdoor dining including service of beer, wine, and spirits as detailed in approved Use Permit #ZP2022-0139 for the restaurant located at 2930 College Avenue and storage of furniture used for that outdoor dining area and agrees to continuously and uninterruptedly occupy and use the entire licensed premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Licensee shall not use nor permit the use of the whole or any part of the premises for any other purpose without the Landlord's prior written consent.

c. Business may be conducted with the public on the licensed premises at any time on any day, provided that, to do business after 10:00 p.m. on any day Licensee shall have obtained any permit required by federal, state or local law. Licensee shall operate the outdoor dining area with sufficient staff to serve patrons and only during the hours of operation of the associated restaurant and in conformance with any and all permits required by federal, state, or local law. Licensee shall serve beer, wine, and spirits in conformance with City of Berkeley Use Permit #ZP2022-0139 for a Type 47 ABC license.

d. In addition to Licensee's agreement to abide by all other restrictions on Licensee's use, Licensee shall maintain at all times a minimum six-foot wide pedestrian path parallel to the outdoor dining and storage area to ensure a midblock pedestrian path to and from the Elmwood Parking Lot and College Avenue is continuously maintained in the Paseo. Licensee agrees that any violation of this use restriction shall constitute a default by Licensee under the license, and that Landlord's notice to Lessee of this specific use restriction shall not be deemed a waiver by Landlord of any other use restriction imposed on the Licensee for the use of the demised premises.

Exhibit C

Term and Payment

1. The License Fee described in Paragraph 3.a of the License shall be paid in advance every year on or before March 1st and pro-rated for any partial month. Payments must be received no later than five (5) calendar days from the start of each year. Any payment received after this time period will be assessed a ten percent (10%) late penalty.
2. Payments shall be made payable to the "City of Berkeley" and paid in person or by mail to the

City of Berkeley
 Public Works Real Property
 1947 Center Street, 5th Floor, Suite 521
 Berkeley, CA 94704

3. Please include the following account number in the notes section of checks, money orders, or other payments made to the City of Berkeley: 627-54-622-6665-3004-000-000-462110-
4. Failure of Licensee to make full payments on time is grounds for termination of this License by the City.

PAYMENT SCHEDULE FOR ELMWOOD PASEO OUTDOOR DINNING & DRINKING SPACE						
	YEAR	2023-2024	2024-2025	2025-2026	2026-2027	2027-2028
MARCH	1	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
APRIL	2	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
MAY	3	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
JUNE	4	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
JULY	5	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
AUGUST	6	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
SEPTEMBER	7	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
OCTOBER	8	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
NOVEMBER	9	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
DECEMBER	10	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
JANUARY	11	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
FEBRUARY	12	\$ 139.25	\$ 143.43	\$ 147.73	\$ 152.16	\$ 156.73
ANNUAL TOTAL:		\$ 1,671.00	\$ 1,721.13	\$ 1,772.76	\$ 1,825.95	\$ 1,880.73
				FIVE YEAR TOTAL: \$ 8,871.57		

PREMISES AREA (SQFT):		557
MONTHLY RATE PER SQFT:	\$	0.25
INITIAL MONTHLY RENT:	\$	139.25
ANNUAL INCREASE:		3.00%
LEASE START DATE:		March 1, 2023
INITIAL TERM:		60 MONTHS
INITIAL TERM TERMINATION DATE:		February 29, 2028
NOTIFY LANDLORD FOR RENEWAL BY		September 1, 2027



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Public Works
Subject: Contract No. 32200073 Amendment: Toole Design Group for Engineering Design and Construction Support Services for the Southside Complete Streets Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200073 with Toole Design Group for engineering design and construction support services for the Southside Complete Streets Project, increasing the contract by \$508,602, for a total amount not to exceed \$1,790,213, and extending the term of the contract from December 31, 2023 to June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the additional scope of work in the amount of \$508,602 for this amendment are available in the FY 2024 budget for Fund 134, Alameda County Measure BB - Local Streets & Roads pending the first Amendment to the Annual Appropriations Ordinance.

Current contract amount	\$ 1,281,611
<u>Contract amendment</u>	<u>\$ 508,602</u>
Total revised not-to-exceed amount	\$ 1,790,213

The average cost associated with the development, routing, and approvals of a consent calendar item such as this is approximately \$3,200. The average cost for an action or work session item is approximately \$6,200.

CURRENT SITUATION AND ITS EFFECTS

The contract amendment will expand the scope of services with Toole Design Group (Toole) to include additional services during the design and construction phases of the Southside Complete Streets Project (Project).

The City contracted with Toole to perform planning and engineering design services for a scope of work that was based key elements derived from the City of Berkeley's Pedestrian and Bicycle Plans and the City's Transit-First Policy. Toole and City staff conducted extensive outreach efforts with the public, outside agencies, and City

departments which resulted in a substantially updated and expanded understanding of the needs and expectations of both public agency stakeholders and the Berkeley community. This process culminated in a conceptual design that was approved by City Council on February 22, 2022, requiring significantly higher level of design effort than originally envisioned. Consequently, City staff negotiated with Toole to develop a scope and fee for additional design and construction support services to augment the current contract, commensurate with the actual scope of the Project.

The final conceptual design resulted in the following additional work, which focused on improvements to safety, accessibility, optimization, and sustainable design: project management (including numerous meetings to discuss and coordinate additional design components) and changes to design documents, including:

- a. traffic signal modifications at four additional locations and a new signalized intersection at Bancroft Way/Barrow Way,
- b. preparation of exhibits to facilitate expedited decisions on curb space usage and paratransit loading/unloading locations,
- c. extensive pavement analysis and design for bus lanes and to accommodate the new generation of heavier electric buses,
- d. redesign of roadway layout features due to revised comments from crucial stakeholders,
- e. evaluating approximately 90 curb ramps for compliance with current standards and designing new curb ramps where needed,
- f. revised environmental clearance documents as a result of the changed Project scope, and
- g. coordination with Caltrans (the grant funding administrator) to expedite review of documents in order to meet grant funding deadlines.

The actual scope of the Project also necessitates an increase in Toole's estimated design-related services during the construction phase, which will likely involve review of contractor's technical submittals and requests for information; on-site meetings involving subsurface utility coordination, work around buried rail lines, and traffic signal phasing and coordination; and revisions to the plans and/or technical specifications as a result of unanticipated changes to the design such as unforeseen subsurface site conditions. Toole, as the design consultant and engineer of record, has the requisite knowledge and background to provide these services, which are necessary in order for the City to efficiently manage the construction and reduce the effects of construction on residents, local businesses, UC Berkeley, transit, pedestrians, bicyclists, and motorists.

The contract amendment will also extend the duration of this contract to conform with the anticipated completion of all construction and subsequent Project close-out activities in mid-2025.

The Southside Complete Streets Project is one of the Public Works Department's Top Projects for FY 2023, advancing the City's Strategic Plan Priorities to (1) provide state-

of-the art, well-maintained infrastructure, amenities, and facilities, (2) create a resilient, safe, connected, and prepared city, and (3) be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

In recent years, the Southside neighborhood has experienced continuing growth in both commercial activity and residential occupancy, with increased walking, biking, transit use, ride-hailing, and freight and small package delivery. The Southside Complete Streets Project aims to meet these challenges by taking the visions laid out in City plans and other documents and coupling them with a community- and data-driven approach to design transportation improvements.

The goals of the Southside Complete Streets Project are:

- (1) Ensure safety for all street users consistent with the City's Vision Zero policy, which relies in large part on the City's Pedestrian and Bicycle plans;
- (2) Improve transit reliability consistent with the City's Transit-First policy; and
- (3) Support the economic and cultural vitality of Berkeley's Southside neighborhood consistent with the Economic Development goals of the City's Southside Plan.

Several previous City Council actions are relevant to this report:

On June 27, 2017, City Council authorized the filing of an application and subsequent acceptance of funds for the Southside Complete Streets Project. In 2018, the City received an \$8,335,000 Federal-aid grant from Alameda County Transportation Commission (Alameda CTC) and the California Department of Transportation (Caltrans) for transportation improvements in Berkeley's Southside neighborhood. Of this grant, \$1 million is allocated for preliminary engineering (planning, conceptual design, and public engagement); environmental compliance; plans, specifications and estimates (detailed engineering design and preparation of construction documents); and construction bid and engineering support. The remaining \$7,335,000 of the grant is for construction of transportation improvements.

On January 26, 2021, City Council authorized the City Manager to execute a contract with Toole for planning, design, and engineering of the Project. The contract was subsequently executed on August 2, 2021. Planning and community outreach efforts immediately began in earnest, culminating in recommended conceptual design options that were approved by Council on February 22, 2022; on that same date, City Council directed the City Manager to direct staff to proceed with detailed engineering design of the Project.

Detailed design documents were prepared by Toole and City staff, and Caltrans (as the grant funding administrator) reviewed and approved these documents in February 2023.

The Project advertisement and bid period ensued, and bids were received by construction contractors in May 2023.

On June 27, 2023, City Council took the following actions: (a) approve plans and specifications for the Southside Complete Streets Project (“Project”); (b) accept the bid of Bay Cities Paving & Grading, Inc. (Bay Cities), the lowest responsive and responsible bidder; and (c) authorize the City Manager to execute a contract with Bay Cities for construction of the Project, in an amount not to exceed \$12,973,925, which included a contingency for unforeseen circumstances.

The construction contract with Bay Cities has since been executed, and construction of the project has recently begun. On-site construction of the Project is anticipated to be complete in late 2024 and subsequent grant funding close-out is anticipated to extend into mid-2025.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Installation of protected bikeways and improved pedestrian crossings is anticipated to increase walking and biking, which is consistent with the 2009 Berkeley Climate Action Policy that calls for expanding and improving Berkeley’s bicycle and pedestrian infrastructure. Installation of transit-only lanes is anticipated to improve bus reliability and decrease travel times, making on-street transit a more attractive mode of transportation. The 2009 Berkeley Climate Action Plan sets targets of reducing transportation emissions 33% below year 2000 levels by 2020, and 80% below year 2000 levels by 2050. The Plan further states that transportation modes such as public transit, walking, and bicycling must become the primary means of fulfilling the City’s mobility needs in order to meet those targets.

RATIONALE FOR RECOMMENDATION

In order to design and construct the Project in accordance with the Council-approved conceptual design, which was developed with significant input from the community, an amendment to Toole’s contract is required. Successful completion of the Project requires contracted design and construction support services, as the City does not possess the necessary background information or specific technical expertise.

ALTERNATIVE ACTIONS CONSIDERED

If City Council chooses not to take the proposed actions at this time and instead defer the item to a future Council agenda, construction of the Project would likely be delayed and could result in increased costs to the Project.

CONTACT PERSON

Hamid Mostowfi, Acting Transportation Manager, Public Works Department 510-981-6403

Kenneth Jung, Supervising Civil Engineer, Public Works Department 510-981-7028

Eric Anderson, Principal Planner, Public Works Department 510-981-7062

Contract No. 32200073 Amendment: Toole Design Group for Engineering Design CONSENT CALENDAR
and Construction Support Services for the Southside Complete Streets Project September 19, 2023

Attachments:

1: Resolution

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

CONTRACT NO. 32200073 AMENDMENT:
TOOLE DESIGN GROUP FOR ENGINEERING DESIGN AND CONSTRUCTION
SUPPORT SERVICES FOR THE SOUTHSIDE COMPLETE STREETS PROJECT

WHEREAS, on January 26, 2021 via Resolution No. 69,708-N.S., City Council authorized the City Manager to enter into a contract with Toole Design Group for planning, design, and engineering of the Southside Complete Streets Project for an amount not to exceed \$1,281,611; and

WHEREAS, the City Manager executed Contract No. 32200073 with Toole Design Group for an amount not to exceed \$1,281,611 for the period August 2, 2021 through December 31, 2023; and

WHEREAS, on June 27, 2017 via Resolution No. 68,061-N.S., City Council authorized the filing of an application (and subsequent acceptance of funds) to the Metropolitan Transportation Commission for funding for the Southside Complete Streets Project, which includes federal funding; and

WHEREAS, in 2018, the City received an \$8,335,000 Federal-aid grant from Alameda County Transportation Commission and the California Department of Transportation for the Southside Complete Streets Project, which includes \$1 million for preliminary engineering, environmental compliance; detailed engineering design, and design-related construction support services, and \$7,335,000 for construction work; and

WHEREAS, the contract with Toole Design Group was based on an assumed Project scope with key elements derived from the Berkeley Pedestrian Plan, Berkeley Bicycle Plan, and the Berkeley Transit-First Policy; and

WHEREAS, City staff and Toole Design Group conducted an extensive community outreach effort in which input was received from various stakeholders including nearby businesses, residents, UC Berkeley, transit agencies, and various City departments, and conceptual design options were prepared that incorporated comments into the Project as additional scope items; and

WHEREAS, on February 22, 2022 via Resolution No. 70,241-N.S., City Council approved selected conceptual options for the Southside Complete Streets Project and authorized the City Manager direct staff proceed with the detailed engineering design; and

WHEREAS, on June 27, 2023 via Resolution No. 70,919-N.S., City Council approved plans and specifications for the Southside Complete Streets Project, accepted the lowest responsive and responsible bid for the construction, and authorized the City Manager to execute a contract with said bidder; and

September 19, 2023

WHEREAS, the Southside Complete Streets Project is one of the Public Works Department's Top Projects for FY 2023; and

WHEREAS, Toole Design Group, as the design consultant and engineer of record, has the requisite knowledge and background to provide the design services for the aforementioned additional scope items plus corresponding additional design-related services during the construction phase, which are necessary in order for the City to efficiently manage the project; and

WHEREAS, the construction and subsequent project close-out period is anticipated to be complete in mid-2025; and

WHEREAS, funding of \$508,602 is available in the FY 2024 budget from the Alameda County Measure BB - Local Streets & Roads Fund (Fund 134) pending approval via the first Amendment to the Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32200073 with Toole Design Group for engineering design and construction support services for the Southside Complete Streets Project, increasing the contract by \$508,602, for a total amount not to exceed \$1,790,213, and extending the term of the contract from December 31, 2023 to June 30, 2025.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Agreement with Goldsmiths for Strawberry Creek Culvert Repair

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a Cost Sharing Agreement and Release with Steven and Cathy Goldsmith for repair of a section of Strawberry Creek Culvert. The culvert was reported to have failed on or about October 24, 2021 and the extents of the failure is alleged to include area in both City right-of-way and private property under the Goldsmiths' home. Per the agreement, the City would expend an amount not to exceed \$75,000 toward repair of the creek culvert in exchange for a release of claims relating to the October 24, 2021 culvert failure.

FISCAL IMPACTS OF RECOMMENDATION

Per the proposed cost sharing agreement, the City's expenditure is not to exceed \$75,000 for repair of the culvert. This funding is available in Fiscal year (FY) 2024 in the Capital Improvement Fund (501).

CURRENT SITUATION AND ITS EFFECTS

On or about October 24, 2021, a segment of Strawberry Creek culvert was reported to have failed causing damage to property located at 1749 Allston Way ("Allston Property"). Steven and Cathy Goldsmith ("Goldsmiths"), owners of the Allston Property, performed initial repairs to the culvert to secure the Allston Property. The Goldsmiths intend to perform additional repairs to repair the creek culvert. These repairs are estimated to cost approximately \$125,000, plus additional fees for permits, material testing, and third-party inspections.

The full scope of the culvert failure repair includes a section of culvert within the City right-of-way. Staff recommends that City enter into a cost sharing agreement with the Goldsmiths and expend a payment not to exceed the amount of \$75,000 toward the repair of the portion of the culvert within the right-of-way. As a condition of the agreement, the Goldsmiths will release the City from future claims arising from the October, 24, 2021, culvert failure. Additional considerations of the agreement are outlined in the attached Cost Sharing Agreement and Release. The City Attorney's Office has reviewed the proposed agreement and approved it as to form.

Repair of the creek culvert supports the Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities, and of creating a resilient, safe, connected, and prepared City.

BACKGROUND

Strawberry Creek Watershed begins on the western slope of the Berkeley Hills with a series of springs and tributaries which converge and flow through the University of California, Berkeley campus. The confluence of the creek enters a culvert at Oxford Street at the edge of campus. Downstream of the campus, the watershed is highly urbanized and the creek is mostly confined to culverts. The City owns and maintains only those sections of Strawberry Creek culvert which run through City right-of-way or City-owned properties.

ENVIRONMENTAL SUSTAINABILITY

Collaborating with the Goldsmiths on the repair of the creek culvert supports sustainable practices outlined by the City in its 2009 Climate Action Plan by eliminating greenhouse gas emissions associated from City performing a separate creek culvert repair project for the portion of the culvert located within the City right-of-way.

RATIONALE FOR RECOMMENDATION

The cost sharing and release agreement allows City to provide funding for repair of a City owned creek culvert as part of a private creek culvert project. The agreement eliminates duplication of efforts associated with the design, permitting, and construction of separate City and private projects, conserving staff, financial, and material resources. The agreement protects the City's legal interests by obtaining a release for potential claims relating to the October 24, 2021 culvert failure.

ALTERNATIVE ACTIONS CONSIDERED

Perform the creek culvert repair in City right-of-way as a separate City project. This approach would require additional staff resources and cost, and would potentially delay completion of the repairs for the City-owned portion of the creek culvert.

CONTACT PERSON

Ron Nevels, Interim City Engineer/Manager of Engineering, Department of Public Works, 981-6439

Srinivas Muktevi, Supervising Civil Engineer, Department of Public Works, 981-6402

Ricardo Salcedo, Associate Civil Engineer, Department of Public Works, 981-6407

Attachments:

1: Resolution

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

COST SHARING AND RELEASE AGREEMENT WITH GOLDSMITHS FOR
STRAWBERRY CREEK CULVERT REPAIR

WHEREAS, on or about October 24, 2021, a segment of Strawberry Creek culvert was reported to have failed causing damage to property located at 1749 Allston Way (“Allston Property”). Steven and Cathy Goldsmith (“Goldsmiths”), owners of the Allston Property, at their own expense performed initial repairs to the culvert to secure their property; and

WHEREAS, the Goldsmiths intend to perform additional repairs to the creek culvert and these repairs are estimated to cost approximately \$125,000, plus additional fees for permits, material testing, and third-party inspections; and

WHEREAS, the Goldsmiths proposed creek culvert repair extends beyond the Allston Property limits and into City right-of-way; and

WHEREAS, City staff recommends that the City enter into a cost sharing agreement (Agreement) with the Goldsmiths for repair of the creek culvert, to address the adjacent portion of City owned culvert; and

WHEREAS, the Agreement would allow the Goldsmiths to include repair of City owned infrastructure as part of their project and would eliminate duplication of efforts associated with the design, permitting, and construction of a separate City project; and

WHEREAS, the Agreement includes a release of the Goldsmiths’ potential claims against the City relating to the October 24, 2021 culver failure; and

WHEREAS, the agreed upon City contribution is not to exceed Seventy-Five Thousand Dollars (\$75,000) and funding is available in Fiscal Year (FY) 2024 in the Capital Improvement Fund (501).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute the Agreement by and Between the City of Berkeley and Steven and Cathy Goldsmith for repair of the Strawberry Creek Culvert failure.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works Department

Subject: Amendment to the Agreement for Maintenance of State Highways in the City of Berkeley between the California Department of Transportation and the City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to the Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley. The amendment will address three new traffic signals: 1) a new pedestrian hybrid beacon (PHB) at San Pablo Avenue and Virginia Street 2) a new PHB at San Pablo Avenue and Hearst Street, and 3) a new rectangular rapid flashing beacon (RRFB) at Ashby Avenue and California Street.

FISCAL IMPACTS OF RECOMMENDATION

This amendment would modify the City's existing maintenance agreement with Caltrans to include two new PHBs at the intersections of San Pablo/Virginia and San Pablo/Hearst and a new RRFB at Ashby/California. Under this amendment there would be no change to the current maximum annual authorized amount that Caltrans reimburses the City for maintenance of State Highway 13 (Tunnel Road and Ashby Avenue) and 123 (San Pablo Avenue).

Due to a persistently high vacancy rate and other pressing priorities, negotiations with Caltrans to update annual maximum reimbursement amount to align with the City's costs of providing maintenance services of State-owned right-of-way has been on hold.

CURRENT SITUATION AND ITS EFFECTS

Maintaining State highways within the City is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

Caltrans recently completed construction of pedestrian safety improvements along San Pablo Corridor. As part of these improvements two new PHBs have been installed along San Pablo Avenue, one at Virginia Street and the other at Hearst Street, in addition to a RRFB at Ashby Avenue and California Street. The new signals will provide for a safer crossing of pedestrians and bicycles at these three intersections.

The new traffic signals are within the State's right of way. Caltrans requires that the existing maintenance agreement be amended to include the improvements prior to turning control and maintenance of these signals to the City.

BACKGROUND

The City's current maintenance agreement with Caltrans was executed on December 1, 1988. City Council authorized execution of this Agreement on September 6, 1988, under Resolution No. 54,423-N.S. This Agreement replaced the previous Agreement from July 1, 1973, which was authorized by Council under Resolution No. 40,114-N.S.

Maintenance, as defined by Caltrans, is the preservation and keeping of right-of-way, and each type of roadway structure and component in safe and usable condition to which it had been improved or constructed, but does not include reconstruction or other major improvement. Under the current maintenance Agreement, the City is responsible for performing maintenance work and the State will reimburse the City for the actual cost of specified work up to a maximum annual expenditure level.

The subject amendment to the maintenance Agreement complies with the City's strategic plan to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Modifying the maintenance agreement to include three new traffic signals along the San Pablo Avenue corridor and Ashby Avenue corridor is not anticipated to have any negative environmental or climate impacts.

RATIONALE FOR RECOMMENDATION

Because these new Caltrans installed signals will become part of the State Highway which the City will maintain, the City of Berkeley is required to amend the existing maintenance agreement with Caltrans to extend the maintenance coverage to include these new signals.

ALTERNATIVE ACTIONS CONSIDERED

There is no alternative that would allow City of Berkeley to maintain and make necessary adjustments to these traffic signals. It is a Caltrans requirement that the 1988 maintenance agreement be modified before turning over maintenance of a traffic signal to the City.

CONTACT PERSON

Hamid Mostowfi, Acting Transportation Manager, Public Works Department
(510) 981-6403

Amendment to the Agreement for Maintenance of State Highways in the City of Berkeley between the California Department of Transportation and the City of Berkeley

CONSENT CALENDAR
September 19, 2023

Attachments:
1: Resolution

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

AMENDMENT TO THE AGREEMENT FOR MAINTENANCE OF STATE HIGHWAYS
IN THE CITY BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION
AND CITY OF BERKELEY

WHEREAS, the California Department of Transportation (Caltrans) recently completed construction of pedestrian safety improvements as part of their San Pablo Corridor safety improvement project; and

WHEREAS, as part of these improvements two new pedestrian hybrid beacons and one rectangular rapid flashing beacon have been installed along San Pablo Avenue, and Ashby Avenue; and

WHEREAS, the new signals will provide for a safer crossing of pedestrians and bicycles at these two intersections; and

WHEREAS, Caltrans requires the existing 1988 Maintenance Agreement for maintenance of the State highways within the City be amended to include traffic signal improvements at San Pablo/Virginia, San Pablo/Hearst, and at Ashby Avenue /California Street as a precondition to turn over the maintenance and control of the signals to City of Berkeley; and

WHEREAS, the proposed amendments would not change the current maximum annual authorized amount that Caltrans reimburses the City for maintenance of State highways within the City; and

WHEREAS, the City Council authorized execution of the current Citywide maintenance Agreement between the City and Caltrans on September 6, 1988, under Resolution No. 54,423-N.S., and amended it on November 16, 2021 with Resolution 70,108-N.S; and

WHEREAS, City staff and Caltrans are negotiating the terms of an upcoming revision to the Citywide maintenance Agreement, which will replace the current Agreement and the subject amendment by (1) updating the improvements that have been implemented in the State right of way since the Agreement was executed and (2) correspondingly updating the maximum annual reimbursement amount that the City would receive from Caltrans for said maintenance work.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute an amendment to the Agreement between the City and Caltrans originally executed on September 6, 1988 under Resolution No. 54,423-N.S., and as amended on November 16, 2021 with Resolution 70,108-N.S, for maintenance of the State highways within the City of Berkeley to include traffic signal improvements at

San Pablo/Virginia, San Pablo/Hearst, and at Ashby Avenue/California. A record signature copy of said amendment will be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Department of Public Works
Subject: Contract No. 9977C Amendment: Portable Computer Systems dba PCS Mobile for Parking Permit and Citation Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9977C with Portable Computer Systems dba PCS Mobile, increasing the contract amount by \$1,650,000 for a total amount not-to-exceed of \$3,700,000 and extending the contract term through June 30, 2029.

FISCAL IMPACTS OF RECOMMENDATION

Funding of \$1,650,000 is subject to appropriation in FY 2024-FY 2029 in the Parking Meter Fund.

Current Contract Amount	\$2,050,000
Amended Contract Amount	\$1,650,000
Total NTE	\$3,700,000

The average cost associated with the development, routing, and approvals of a consent calendar item such as this is approximately \$3,200. The average cost for an action or work session item is approximately \$6,200.

CURRENT SITUATION AND ITS EFFECTS

The City currently uses Automated License Plate Reader (ALPR) systems for issuance of parking citations, with the license plate reading capabilities used to conduct time limit enforcement and verify permits in Residential Preferential Parking (RPP) areas.

The contract with PCS Mobile was last amended in April 2022 via Resolution 70,323-N.S., increasing the contract not to exceed amount to \$2,050,000 and extending the contract term. The contract is currently set to expire on June 30, 2024.

While the ALPR units are operated by Parking Enforcement staff, the contract is managed by the Transportation Division's Parking Services Unit. The City has been using ALPR systems for parking enforcement since 2015, and with the introduction of digital license plate based residential permits, the City is now reliant on ALPR for important baseline programs. By November 2023, all 22 systems operated by the City will have reached this tool's end of useful life. This increases the risk of system failure

and makes ongoing maintenance by PCS Mobile challenging as replacement parts are increasingly difficult to find.

Due to a vacancy rate above 20% in the Transportation Division and funding challenges, it remains infeasible to issue a new request for proposals (RFP) for ALPR equipment and support at this time. Additionally, City staff are satisfied with the quality of customer service and support provided by PCS Mobile, and are familiar with the equipment after years of use. The budget increase includes one-time costs for a full replacement of the obsolete equipment, funding for extended warranties, and funding for yearly costs associated with daily operations, including preventative maintenance, support services, and cellular network connectivity fees. Amending the contract with PCS Mobile for an extension of five (5) years would ensure that existing parking permit and enforcement processes continue to run without a gap in service.

BACKGROUND

Effective management of Berkeley's public parking resources improves access to local businesses and reduces traffic congestion and safety hazards caused by drivers as they search for parking. In particular, ALPR technology enables Parking Enforcement Officers (PEOs) to cover more ground faster, allowing for more efficient patrols. In addition, ALPR is now the foundation of the City's digital parking permit management system: license plates now function as annual permits, allowing faster yearly renewals and eliminating the need for the City to purchase and distribute physical bumper decals.

On January 27, 2015, Council authorized Contract No. 9977 with PCS Mobile to install and maintain five Genetec ALPR systems as part of the goBerkeley parking management pilot program. The contract with PCS Mobile was first amended in December 2017 via Resolution 68,085-N.S, to fund the purchase of fifteen (15) additional ALPR systems, bringing the City's total to twenty (20) systems, as well as yearly costs associated with daily operations, including preventative maintenance, support services, and cellular network connectivity fees through June 30, 2022. On May 14, 2019 via Resolution No. 68,877-N.S., Council authorized the purchase of fifteen (15) new Westward Industries "GO-4" parking enforcement vehicles. These new vehicles replaced older GO-4s that were already outfitted with ALPR systems. Removing ALPR systems from the old vehicles and reinstalling them onto the new GO-4s incurred costs beyond what was originally budgeted. The May 2020 contract amendment provided funding to replenish the contract budget so operations could run smoothly through the duration of the contract. Finally, on April 26, 2022 Council authorized an amendment to the contract via Resolution No. 70,323-N.S. extending the term and adding budget to allow for operations to continue while staff could conduct a procurement process for ALPR equipment and services. Unfortunately, due to persistent funding and staff capacity constraints, such a procurement was infeasible.

The use of ALPR equipment is guided by the Berkeley Police Department's Policy #1302, Surveillance Use Policy for Automated License Plate Readers.

The contract with Portable Computer Systems dba PCS Mobile addresses a Strategic Plan Priority, advancing our goal to create a resilient, safe, connected, and prepared city.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Effective parking enforcement increases compliance with parking rates and time limits, which are used to improve parking availability. Reducing greenhouse gas emissions produced by vehicular traffic is one of the City's 2009 Climate Action Plan goals.

RATIONALE FOR RECOMMENDATION

ALPR is integral to current parking enforcement operations and residential permit management. In addition, Parking Enforcement Officers (PEOs) find the technology easy to use and effective at increasing enforcement capacity. This in turn increases compliance with existing parking management regulations, and reinforces Council-supported programs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Hamid Mostowfi, Acting Transportation Manager, 510-981-6403
Noah Budnick, Senior Management Analyst, 510-981-7069

Attachments:

1: Resolution

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

CONTRACT NO. 9977C AMENDMENT: PORTABLE COMPUTER SYSTEMS DBA
PCS MOBILE TO AUGMENT BUDGET AND EXTEND CONTRACT TERM TO
MAINTAIN PARKING PERMIT AND ENFORCEMENT SERVICES

WHEREAS, the City of Berkeley currently uses Automated License Plate Recognition (ALPR) systems to conduct parking enforcement operations; and

WHEREAS, the City amended the contract on April 26, 2022 through Resolution No. 70,323-N.S., increasing the contract not to exceed amount to \$2,050,000 and extending its term through June 30, 2024; and

WHEREAS, the City's parking permit and enforcement system is fully reliant on ALPR equipment, and all 22 existing systems will have reached equipment End of Life by November 2023, making them susceptible to failure and difficult to maintain; and

WHEREAS, the City does not have adequate staff or funding capacity to complete a new equipment solicitation process before the contract expiration; and

WHEREAS, PCS Mobile provides satisfactory customer service and support for the City's 22 ALPR systems, and the equipment is familiar to Parking Enforcement staff; and

WHEREAS, the contract amendment will provide funding for full equipment replacement, extended warranties, and yearly support costs for a contract term extension of five (5) years; and

WHEREAS, funding of \$1,650,000 for this contract amendment is available from Parking Meter Fund budgets in FY 2024 - FY 2029.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 9977C with PCS Mobile, increasing the contract not to exceed amount to \$3,700,000 and extending the contract term through June 30, 2029.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Public Works
 Subject: Contract No. 32000078 and Contract No. 32000093 Amendments DC Electric Group, Inc. for On-Call Electrical Services

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager or designee to amend the contract, increasing the amounts as outlined below, and extending the contracts through June 30, 2026:

1. Increasing Contract No. 32000078 with DC Electric Group, Inc. for the Facilities Electrical Division for on-call electrical services in the amount of \$300,000 for a total contract amount not to exceed \$475,000.
2. Increasing Contract No. 32000093 with DC Electric Group, Inc. for the Transportation Division for on-call electrical services for traffic calming devices in the amount of \$100,000 for a total contract amount not to exceed \$600,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY2024 baseline budget as follows:

Contract No. 32000078

Street Light Assessment District Fund 142	\$150,000
Measure BB – Local Streets and Road Fund 134	\$150,000

Contract No. 32000093

State Transportation Tax Fund 127	\$50,000
Measure BB – Local Streets and Road Fund 134	\$50,000

Additional funding will be appropriated as part of the Annual Appropriations Ordinance #1 and in future fiscal years as needed. This is an on-call contract and costs will be incurred when services are performed.

The average cost associated with the development, routing, and approvals of a consent calendar item such as this is approximately \$3,200. The average cost for an action or work session item is approximately \$6,200.

CURRENT SITUATION AND ITS EFFECTS

Public Works' Electrical Unit supports the City's electrical needs and occasionally requires additional outside support or expertise. DC Electric Group, Inc. (DC Electric) provides emergency repairs for damaged street light poles, traffic signals and pedestrian signals, and assists with repairing/replacing Marina pier lights, electrical wiring, and electrical component installation as needed for City renovations and upgrades.

Public Works has been utilizing the service of DC Electric at an increased capacity over the last 6 months to correct a back log of damaged street lights and traffic signals which has resulted in a need for increased contract capacity. There are still several intersections and street lights that require additional work beyond the capacity of City Electricians and there will be additional knocked down equipment throughout the contract year due to unforeseen events.

In addition, the City is responsible for ensuring maintenance of electronic traffic calming devices, including rectangular rapid flashing beacons (RRFBs), pedestrian crossing flashing beacons, and speed feedback signs, and must ensure their operation for pedestrian, bicyclist, and driver safety.

These contract amendments support the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

On November 3, 2016, Public Works issued a Request for Proposals, Specification No. 16-11076-C for electrical on-call services for the Public Works Facilities Electrical Division focusing on Traffic Signal, Pedestrian Signal and Street Light work. Four proposals were submitted and two vendors were selected to ensure the availability of these services in the event of an emergency. Both DC Electric and Colombia were selected and are contracted with the City.

Additionally, a Request for Proposal (RFP) was issued on June 26, 2019, and four contractors responded to the RFP on July 18, 2019, meeting all requirements of the proposal for On-Call Electronic Traffic Calming Devices Maintenance. Resolution No. 69,086-N.S. authorized the City Manager to execute a contract and any amendments with DC Electric Group, Inc. in an amount not to exceed \$250,000 to repair, replace, maintain, and install electronic traffic calming devices for the period of October 16, 2019 to June 30, 2024 with an option for up to three one-year extensions. Contract no.

32000093 was executed on November 4, 2019 for DC Electric Group, Inc. to maintain existing traffic calming devices and to install new devices as authorized by the City.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This contract amendment is consistent with the City's efforts to improve efficiency of movement of people and vehicles throughout the City's roadway network. Traffic calming devices are expected to make the City of Berkeley a more pedestrian, bicycle, and transit friendly community, thus working to reduce greenhouse gases and pollutants that impact air quality.

RATIONALE FOR RECOMMENDATION

DC Electric continues to provide outstanding service to the City of Berkeley and are needed to supplement Public Works' in-house Electrical Unit to keep up with the growing demand for traffic calming devices, signal modifications and repair of knocked down street lights and traffic signals.

ALTERNATIVE ACTIONS CONSIDERED

None. The City does not have adequate resources to provide the required repairs, replacement and maintenance in a timely and cost-effective manner.

CONTACT PERSON

Joy Brown, Operations Manager, Public Works, 510-981-6629
Hamid Mostowfi, Acting Transportation Manager, Public Works, 510-981-6403

Attachments:

- 1: Resolution – Contract No. 32000078
- 2: Resolution – Contract No. 32000093

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

CONTRACT NO. 32000078 AMENDMENT DC ELECTRIC FOR ON-CALL
ELECTRICAL SERVICES

WHEREAS, the City periodically requires emergency and non-emergency on-call electric services for repair, maintenance, replacement and installation of various electrical equipment in City facilities, and for traffic signals, street lights and other infrastructure at various locations; and

WHEREAS, the City does not have sufficient resources to provide the required repairs, replacement and maintenance in a timely or cost-effective manner; and

WHEREAS, the City issued a Request for Proposal (RFP) Specification No. 16-11076-C for on-call electrical services on November 3, 2016, four contractors responded to the RFP on December 8, 2016, and two contractors met all requirements and specifications of the proposal; and

WHEREAS, on July 26, 2022 City Council authorized the City Manager to execute a contract amendment to increase the contract by \$100,000 for a new not to exceed amount of \$100,000 and extend the contract through June 30, 2025; and

WHEREAS, staff reviewed and evaluated all proposals submitted and contracted with DC Electric Group, Inc. and Columbia Electric, Inc.; and

WHEREAS, this is an on-call contract and no costs will be incurred until applicable emergencies or City projects emerge; and

WHEREAS funding is available in the Street Light Assessment District Fund 142 and Measure BB – Local Streets and Road Fund 134.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000078 with DC Electric Group, Inc., increasing the current contract amount by \$300,000 for a total not to exceed \$475,000 and extending the contract through June 30, 2026.

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

CONTRACT NO. 32000093 AMENDMENT: DC ELECTRIC GROUP, INC. FOR ON-CALL ELECTRICAL SERVICES FOR TRAFFIC CALMING DEVICES

WHEREAS, the City must periodically maintain existing electronic traffic calming devices to ensure that they are in a good operating condition and install new devices for pedestrian, bicyclist, and motorist safety; and

WHEREAS, the City does not have internal recourses or technical expertise to provide the required repair, replacement, maintenance, and installation in a timely or cost-effective manner; and

WHEREAS, an invitation for a Request for Proposal (RFP) was advertised on June 26, 2019, and based on the selection criteria established in the RFP the highest scoring and selected contractor was DC Electric Group, Inc.; and

WHEREAS, Resolution No. 69,086-N.S. authorized the City Manager to execute a contract and any amendments with DC Electric Group, Inc. in an amount not to exceed \$250,000 to repair, replace, maintain, and install electronic traffic calming devices for the period of October 16, 2019 to June 30, 2024; and

WHEREAS, DC Electric Group, Inc. was retained under contract no. 32000093 for On-Call Electrical Services for Traffic Calming Devices Maintenance; and

WHEREAS, due to the increased need for new electronic traffic calming devices and signal modifications, an additional \$100,000 in contract capacity is necessary to construct improvements in an efficient manner; and

WHEREAS, funding for the additional \$100,000 will be identified and expended only for the actual services that are required. Therefore, funding will be subject to appropriation in the specific fiscal year that the services are needed.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000093 with DC Electric Group, Inc. to increase the current contract by \$100,000 for a total not to exceed amount of \$600,000 and extend the contract through June 30, 2026.



Office of the City Manager

CONSENT CALENDAR
September 19, 2023

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Liam Garland, Director, Department of Public Works
Subject: Contract: Turnstone Data Inc. for Parking Data Analytics Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a three-year contract with an option for two one-year extensions, that require no additional funding, with Turnstone Data Inc., to provide parking data analysis and visualization services in an amount not to exceed \$375,000 for the period from January 1, 2024 through December 31, 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funding is subject to appropriation in the FY 2024, FY 2025, FY2026 budgets from the Parking Meter Fund 631. Funding will be appropriated in FY 2027 and FY 2028 budgets if the contract is extended.

FY 2024	\$75,000
FY 2025	\$75,000
FY 2026	\$75,000
Total Base Contract	\$225,000
FY 2027 (Option Yr 1).....	\$75,000
FY 2028 (Option Yr 2).....	\$75,000
Total Max Contract	\$375,000

The average cost associated with developing, routing, and approving a staff report for a consent calendar item such as this one is approximately \$3,200. The average cost for an action or work session item is approximately \$6,200.

CURRENT SITUATION AND ITS EFFECTS

The City currently manages parking at over 4,000 on-street metered spaces and three off-street garages using demand-responsive pricing under the goBerkeley program. Staff periodically analyze parking occupancy rates and adjust prices up or down to achieve the optimum occupancy rate of 65-85%, roughly equivalent to 1-2 open spaces per block.

Since the outset of the program in 2013, staff have primarily relied on manual data collection (i.e., counting cars) to understand parking behavior and make program adjustments. With goBerkeley now citywide, the City needs a more efficient way to view and analyze parking activity to make informed decisions about parking prices and/or time limits in multiple different commercial districts.¹ Over the past several years staff have experimented with using license plate readers for parking data collection, but despite some successful results, the analysis process has proven to be time-consuming and does not realize significant cost savings over manual data collection.²

With more and more cities choosing to manage their parking supplies using demand-responsive pricing, a market has emerged for Parking Data Analytics Services. (“Data analytics” describes the process of analyzing data to identify trends and meaningful findings.) Staff identified the need for a web-based system that would analyze on-street and off-street parking data from the City’s existing third-party payment systems³ to generate intuitive maps, graphs, and tables of parking occupancy, length of stay, revenue, and other key metrics over multiple time periods. This system would introduce a new way for City staff to review the entire parking system performance in one convenient location, and information would be easily exportable for public reporting.

On March 1, 2023, the City released Request for Proposals (RFP) Specification No. 23-11578-C for Parking Data Analytics Services. Seven proposals were reviewed and assessed, and Turnstone received the highest overall score based on ability to meet all the City’s specifications and value for the service.

Due to recent departures in the Transportation Division, implementing the Parking Data Analytics System is not expected to occur until new parking services staff are hired. City Council authorization of this contract award is vital to allowing implementation to occur as soon as possible, given these known constraints.

Implementing a Parking Data Analytics System is a Strategic Plan Priority Project, advancing our goals to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; and
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

¹ January 26, 2021 Council Meeting, Item #15: Amend BMC Chapter 14.52 Authorizing goBerkeley Parking Program at All Parking Meters, <https://bit.ly/3oTDUVw>

² Parking data from license plate readers may also be incorporated into the Parking Data Analytics System to improve accuracy of occupancy reporting, in accordance the City’s revised Surveillance Use Policy for Automated License Plate Readers. See Berkeley Police Department Policy Manual Policy #1302, pp. 908-915. <https://bit.ly/3X19r4A>

³ I.e., non-identifiable transaction data from IPS parking meters, ParkMobile pay-by-phone, and SKIDATA parking garage equipment.

BACKGROUND

The City uses parking meters to manage parking demand, particularly in commercial areas where parking availability and turnover are critical for visitor access and convenience. The goBerkeley program consists of a suite of strategies and initiatives designed to improve economic vitality and reduce greenhouse gas emissions. The program features improved parking availability that improves pedestrian and bicyclist safety by reducing the likelihood of incidents of distracted driving as drivers search for parking. Clearer signage and longer on-street parking time limits also provide better customer service.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

The goBerkeley parking program improves the City's ability to manage its public parking resources, reducing traffic congestion and vehicle emissions as drivers are anticipated to spend less time searching for available parking spaces. The Parking Data Analytics System will allow staff to more comprehensively understand how the City's paid parking system is being used, and more quickly identify where changes need to be made. Demand-responsive parking pricing is a proven tool that will help the City meet its established Climate Action Plan goals, including reducing transportation emissions 80% below 2000 levels by 2050.⁴

RATIONALE FOR RECOMMENDATION

After careful consideration, City staff determined Turnstone would successfully meet the City's full set of specifications for the parking data analytics service, offering multiple ways to visualize, interact with, and export parking occupancy data. Turnstone currently provides similar services in Seattle, Boston, and Denver, which, while larger in size, have similar parking systems to Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

If Council chooses not to authorize this contract, City staff would not have the ability to view the entire paid parking system performance in a convenient location, and would continue to rely on existing methods of collecting and/or analyzing parking revenue and occupancy data, such as manual data collection efforts which take considerable time and resources.

CONTACT PERSON

Hamid Mostowfi, Acting Transportation Manager, 510-981-6403
Noah Budnick, Senior Management Analyst, 510-981-7069

Attachments:

1: Resolution

⁴ November 3, 2015 Council Worksession: <http://bit.ly/111IYVV>

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

CONTRACT: TURNSTONE DATA INC., FOR PARKING DATA ANALYTICS SERVICES

WHEREAS, the City of Berkeley uses demand-responsive pricing to manage over 4,000 on-street metered spaces and three public parking garages under the goBerkeley program; and

WHEREAS, staff primarily rely on manual data collection to understand parking behavior and inform price and/or time limit adjustments in commercial districts across the City, which is costly and time-consuming; and

WHEREAS, City staff identified a need for a system that would analyze data from the City's existing parking payment providers and produce intuitive maps, graphs, and tables of parking performance across the entire paid parking system; and

WHEREAS, in March 2023, the City released Request for Proposals (RFP) Specification No. 23-11578-C for Parking Data Analytics Services, received seven proposals, and these were reviewed according to the RFP's scoring criteria; and

WHEREAS, Turnstone Data Inc. received the highest overall score based on ability to meet all the City's specifications and value for the service.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract for an amount not to exceed \$375,000, and optional two-year extensions, with Turnstone Data Inc. for Parking Data Analytics Services for the period from January 1, 2024 through December 31, 2026. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the Mayor

CONSENT CALENDAR
September 19, 2023

To: Members of the City Council

From: Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor),
Councilmember Hahn (Co-Sponsor)

Subject: Budget Referral: Berkeley Food Network to address increased demand

RECOMMENDATION

Refer \$200,000 to the November 2023 AAO #1 process to address the increased number of people experiencing food insecurity in Berkeley including people in danger of eviction due to the COVID-19 eviction moratorium expiration and rent debt due to inflation and rental increases. The proposed funding source is FY 2023-2024 Measure P tax receipts.

BACKGROUND

The Berkeley Food Network (BFN) has become the hub organization in the City of Berkeley addressing food insecurity serving 6,500 people per week through its programs, up from 1,600 per week in February 2020 at the onset of the COVID-19 pandemic. Over 3,000 people per week are served through Direct Programs including the onsite pantry, 14 mobile pantries, home delivery and grocery bagging program through Head Start at BUSD. An additional 3,500 people are currently fed through 29 partner agencies with an additional 6 partners in the queue. Since starting food distribution at the West Berkeley Family Wellness Center in April 2023 the demand at that location has increased 6 fold. In the span of just one month April - May 2023 there was a 28% increase in visits to the pantry and a 60% increase in new pantry member registrations.

Funding for this program will support the many low-income households that remain in massive debt that has accrued over the course of the pandemic and have lost their Cal-Fresh benefits. As the Statewide, County and Berkeley's eviction moratorium have ended, the Eviction Defense Center has been referring clients to the pantry in order to offset food costs and prevent evictions which has been a factor in the significant increase in pantry demand.

The purpose of this \$200,000 request is to provide stop-gap funding to BFN while it recruits a new Executive Director and ramps up grant applications and fund raising.

FINANCIAL IMPLICATIONS

Total allocation of \$200,000 from Measure P tax receipts. Over 350 homeless

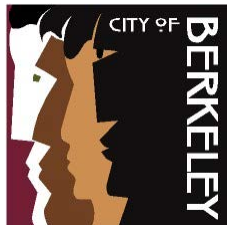
(approximately 1/3 of the Berkeley homeless population) are direct recipients of the pantry and BFN provides food to Dorothy Day House and Insight Housing (formerly Berkeley Food and Housing Project) for their daily meals

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100



Office of the City Manager

PUBLIC HEARING
September 19, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Supplemental Material: Revised Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development

In addition to the staff report and ordinance that were included in the July 25, 2023 City Council meeting agenda packet, staff are submitting supplemental material for City Council's consideration:

1. A revised recommended draft ordinance (Attachment 1);
2. Four policy alternatives related to: New Construction ADUs within the front setback; Building separation; Time limit for accessory structure conversions; and Neighbor Noticing Procedure (Attachment 2); and
3. A table outlining the sources of proposed ADU ordinance amendments (Attachment 3).

Revisions to the Recommended Draft Ordinance

Staff propose revisions to the recommended ADU ordinance, and are providing additional reference materials, which are based on further discussions with City Councilmembers, Building and Safety Division staff, and Fire Department staff, as well as additional staff analysis. Staff have also added General and Specific Findings (Sections 1 and 2) to the adoptive ordinance to demonstrate the rationale for making these revisions to the zoning ordinance, elaborate upon the City's lack of adequate public transit, and to reinforce the City's concern of fire and safety hazards, particularly within the Hillside Overlay. The revisions are highlighted in the revised recommended draft ordinance in grey (Attachment 1).

1. *Building Separation Measurement.* Staff revised the definition of building separation measurement to include ADUs and clarify that the measurement applies between a main building or ADU and the closest neighboring building.

2. *Building Height, Maximum, Detached, New Construction.* Staff revised the measurement for the maximum height of detached, new construction ADUs to match state law. SB 897 permits lots within a 0.5 mile of a major transit stop or high-quality transit corridor¹ to build up to 18 feet, with an additional 2 feet to align with the existing roof pitch of the primary dwelling. It also permits lots outside of a 0.5 mile radius of a major transit stop or high-quality transit corridor to go up to 16 feet for single family dwellings, or single-story duplexes or multi-family dwellings, and up to 18 feet for multistory duplexes or multi-family dwellings.
3. *Building Separation for Detached ADU, Minimum.* Staff revised the building separation distance from 3 ft. to 5 ft. after conferring further with the Building and Safety Division and the Fire Department.
4. *Accessory Building or Accessory Structure Conversion.* Staff revised the language in Berkeley Municipal Code (BMC) 23.306.030(A)(3) to clarify that a conversion of an existing, legally established accessory building or accessory structure is allowed provided that the converted ADU maintains the same location and dimensions and meets fire and safety standards, consistent with Government Code (GOV) 65852.2(a)(D)(vii). Staff also removed the minimum 3-year time limit based on when the structure was created, consistent with HCD guidance.²
5. *Front Setback, New Construction.* Staff revised the language in BMC 23.306.030(A)(4). This language was originally added to be compliant with AB 2221, which adds front setbacks to the list of development standards that may not preclude the construction of at least an 800 square foot ADU.³ Staff have revised the language to clarify that ADUs may not occupy front setbacks, except in the case that the front setback requirements precludes an 800 square foot ADU.
6. *Attached ADU.* Staff added BMC 23.306.030(A)(5) to establish a clear distinction between attached and detached for the purposes of ADUs, given that attached ADUs

¹ [PRC 21155\(b\)](#): For the purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

² HCD ADU Handbook, July 2022. <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf> pg. 21

³ [GOV 65852.2\(c\)\(2\)\(C\)](#): "Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards."

are now permitted a maximum height of 25 feet per SB 897. ADUs are now considered attached if sharing a common wall with a primary dwelling.

7. *ADU Noticing*. Staff revised the language for *Noticing* procedures in BMC 23.306.040(B), removing the term “Neighbor” from the header and changing the term “tenants” to “occupants.” These changes have been made to better reflect the intent of the proposed subsection: to provide a courtesy notice to all non-owner occupants of the subject property. Staff are unable to obtain tenant names or contact information from the Rent Board’s Rent Registry and rely on unit and occupant data from the County tax assessor records).
8. *Minimum Parking Required in the Hillside Overlay*. Staff revised the requirements to use the Public Resource Code (PRC) Section 21155 definition of a major public transit or high-quality transit corridor, instead of subdivision (d)(1)⁴ and (j)(11)⁵ of Government Code Section 65852.2, as proposed in the July 25th recommended draft ordinance. This change relies on a different interpretation of the definition of “public transit” in Government Code 65852.2, supported by the use of the phrase “including, but not limited to,” which may allow for use of the PRC definition in the parking context, in addition to the height context. Staff are unclear whether or not HCD would support this interpretation.

Various bus service lines throughout Berkeley that qualify as “public transit” per subdivision (d)(1) and (j)(11) of Government Code Section 65852.2 have limitations that should be considered, including no weekend service and 30 minute headways. The broader GOV 65852.2 definition exempts almost all of the HO from providing one off-street parking space per ADU (Figure 1). The PRC definition would require a significant portion of the HO to provide one off-street parking space per ADU (Figure 2).

Policy Alternatives

Staff prepared additional policy alternatives for standards and procedures where the City has discretion from state law. The policy alternatives are listed in Attachment 2. Staff have also prepared a table (Attachment 3) comparing the recommended ordinance revisions (July 2023 vs. September 2023) to their source(s)—state law, HCD guidance, HCD October 2022 letter, Planning Commission, and Planning staff.

⁴ [GOV 65852.2\(d\)](#): Notwithstanding any other law, and whether or not the local agency has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), all of the following shall apply: (1) The local agency shall not impose any parking standards for an accessory dwelling unit in any of the following instances: (A) Where the accessory dwelling unit is located within one-half mile walking distance of public transit.

⁵ [GOV 65852.2\(j\)\(11\)](#) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

1. *Policy Alternative 1: New Construction ADUs within the front setback.* The first policy alternative proposes adding additional prescriptive standards to ensure that ADUs that require area in the front setback are sited as far from the front lot line as possible. This would both allow for as minimal encroachment possible into the front of the lot; however, it also has the potential to obscure more of the primary dwelling unit as applicants attempt to maximize space in the front setback in accordance with these additional prescriptive standards.
2. *Policy Alternative 2: Building Separation.* The second policy alternative proposes adding an additional building separation standard for Detached ADUs within the Hillside Overlay to Table 23.306-2. This standard, which would increase the building separation required in the Hillside Overlay only from 5 ft. to 8 ft., matches the existing required minimum building separation between buildings on adjacent parcels and is intended to address fire safety concerns. It also would effectively limit the allowable area where ADUs are permitted on a property and could potentially push ADUs closer to front, side, or rear lot lines.
3. *Policy Alternative 3: Converted ADUs – Time Limits.* The third policy alternative proposes maintaining the existing provision that a legally established accessory building or structure can be converted to an ADU only after three years has elapsed. Staff removed the minimum time limit in the recommended draft ordinance, consistent with HCD guidance, because the conversion of a legally established building or structure is ultimately allowed. However, state law is unclear on this issue and HCD’s interpretation is not determinative.
4. *Policy Alternative 4: Neighbor Noticing.* The fourth policy alternative proposes keeping the neighbor noticing procedures as-is, with the exception of removing owner(s) of the subject property from the list of required noticing recipients. The recommended draft ordinance reflects the Planning Commission’s recommendation to only notice “tenants” of the subject property. The Planning Commission made this recommendation to address neighbor expectation, which is explained in page 10 of the staff report published as part of the July 25, 2023 City Council Agenda packet.

Figure 1: Areas within 1/2 mile of "Public Transit"

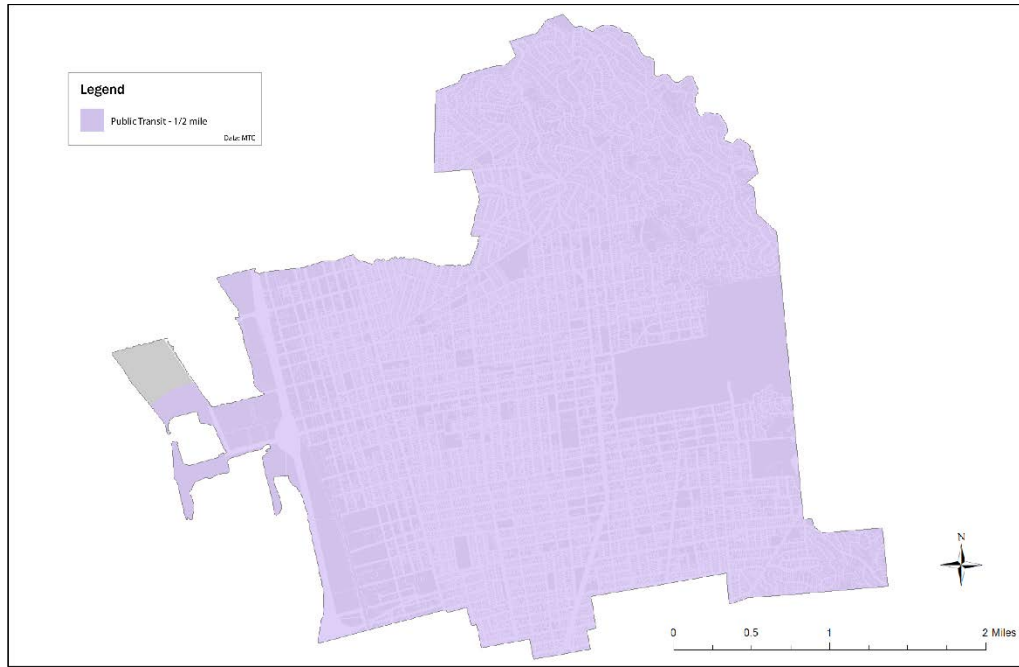
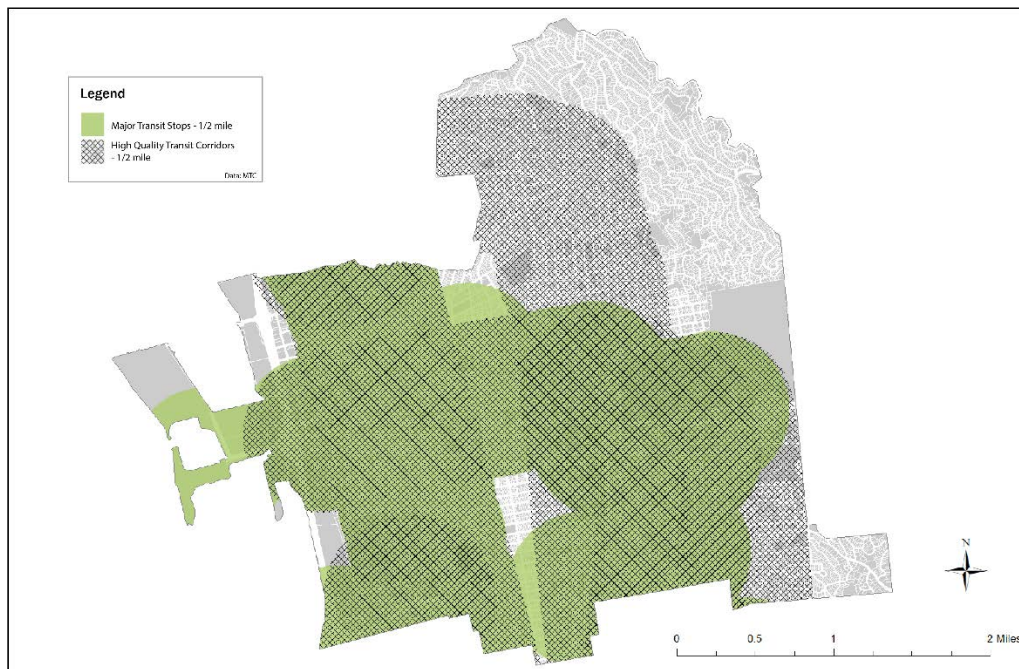


Figure 2: Areas within 1/2 mile of "Major Transit Stops" and "High Quality Transit Corridors"



ORDINANCE NO. -N.S.

REPEAL OF THE WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99), AND AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. General Findings

- A. California Government Code Sections 65852.1, 65852.2 and 65852.22 provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use.
 - 1. California Government Code Section 65852.2(d)(1)(A) and (j)(11) finds that a local agency shall not impose any parking standards for an accessory dwelling unit where the accessory dwelling unit is located within one half-mile walking distance of public transit.
 - 2. California Government Code Section 65852.2(c)(2)(D)(ii) uses the proximity of parcels to major transit stops and high quality transit corridors as defined in Section 21155 of the California Public Resources Code.
- B. Accessory dwelling units are statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).
- C. Policy H-18 of the City of Berkeley's 2023-2031 Housing Element encourages the addition of accessory dwelling units on properties with single-family and multi-unit homes.

On May 3, 2023, the Planning Commission held a public hearing to consider proposed amendments to Title 23 relating to ADUs and unanimously recommended staff's proposal with three modifications, which were incorporated with modifications into the proposed amendments: (1) Regulating bay window and balcony projections using setback requirements; (2) Revising Neighbor Noticing requirements to subject property tenants; (3) Permitting ADUs to reach maximum allowable height without requiring an Administrative Use Permit.

Section 2. Specific Findings

- A. On October 17, 2022, the City received a letter from the State Department of Housing and Community Development (HCD) stating that the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") do not comply with Government Code Section 65852.2.

1. HCD found a discrepancy between the definition of “Efficiency Kitchen” contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a “Junior Accessory Dwelling Unit.”
 2. Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU and Junior ADU development impacts on traffic flow and public safety when the City adopted limitations on ADU and Junior ADU development in the Hillside Overlay zoning district.
- B. Berkeley’s Hillside Overlay is comprised of Berkeley’s Very-High Fire Hazard Severity Zones and Wildland-Urban Interface (WUI) Fire Areas. The Hillside Overlay has unique conditions, including limited transit access, and hazards, including wildfires, earthquakes, and landslides, that put residents of the Hillside Overlay at greater risk:
1. The Hayward Fault bisects the Hillside Overlay, traversing the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired).
 2. A majority of streets in the Hillside Overlay are less than 26 feet in width, and include conditions such as steep slopes, sharp curves and acute-angled corners. These factors compromise the emergency access egress and accessibility for emergency responders.

The majority of transit within the Hillside Overlay does not meet the definition of major transit stops and high quality transit corridors as defined in Section 21155. Bus service (Line 65) runs at 30-minute headways and does not offer weekend service. By applying the broader California Government Code Section 65852.2(d)(1)(A) and (j)(11) for minimum parking requirements, and increasing density and intensity in the Hillside Overlay, exacerbates the hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake, necessitating reasonable limitations that reduce exposure to hazardous conditions.
 3. The 2014 Working Group on California Earthquake Probabilities calculated that there is a 33-percent likelihood of a large (magnitude 6.7 or greater) earthquake occurring on the Hayward Fault within three decades. On March 9, 2015, a report published by the U.S. Geological Survey found that the Bay Area has a 72% chance of having at least a magnitude 6.7 earthquake in the same time period.

4. On December 10, 2019, the City adopted a Hazard Mitigation Plan that identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events.
5. On June 10, 2021, a study published by UC Berkeley researchers concluded that continued development in the WUI will make California's supply of housing more vulnerable, undermine state efforts to curb carbon emissions, further degrade the state's wildland habitats, and create fiscal challenges for state and local governments in the event of post-disaster recovery. Furthermore, the insurance impacts of continued development in high-risk areas of the WUI threaten to impose high costs on homeowners and destabilize the insurance industry.
6. On August 10, 2021, a study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated with 1.7 vehicles, evacuation time would increase to three hours and 782 vehicles would be exposed to immediate fire danger.

Section 3. That Berkeley Municipal Code Chapter 12.99 is hereby repealed.

Section 4. That Berkeley Municipal Code 23.106.020(B) is amended to read:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 5. That Berkeley Municipal Code 23.106.030(D) is amended to read:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.

4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - (a) Located at or near street level;
 - (b) Accessible to the general public; and
 - (c) Are not designed or used as sales, display, storage, service, or production areas.

6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 6. That Berkeley Municipal Code 23.106.080(A) is amended to read:

A. *Measurement.* Building separation is measured as the distance between the surface of a main building or ADU's outer wall and the outer wall surface of the closest neighboring main building.

Section 7. That Berkeley Municipal Code 23.106.090(A)(1) through (3) is amended to read:

A. *Average Building Height.*

1. Average Building Height: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See [Figure 23.106-4: Average Building Height.](#)

~~2. Figure 23.106-4: Average Building Height.~~

~~2. Dormers are not included in the average building height calculation.~~

~~3. Attached accessory dwelling units are not included in the average building height calculation.~~

Section 8. That Berkeley Municipal Code 23.306 is amended to read:

Sections:

23.306.010– Purposes

23.306.020– Applicability and Definitions

23.306.030– Development Standards Permit Procedures

23.306.040– Permit Procedures Development Standards

~~23.306.050– Deed Restrictions~~

~~23.306.060— Neighbor Noticing~~

~~23.306.070— Rooftop Decks and Balconies~~

23.306.010 Purposes.

~~The purposes of this Chapter are to~~ This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

- A. Implement California Government Code Section 65852.1, 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- ~~F. Reduce potential impacts of new development in Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."~~

23.306.020 Applicability and Definitions.

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- ~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety-Residential).~~
- ~~B. Number of ADUs and JADUs Permitted Per Lot. See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. Except as expressly modified by~~

Chapter ~~12.99~~, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.

C. Density Exemption. ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.

TABLE 23.306-1—ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT

<u>Use, Primary</u>	<u>ADU and Junior ADU, Maximum Per Lot</u>
<u>Single Family Dwelling, one unit on lot</u>	<u>1 ADU and 1 Junior ADU, both are permitted</u>
<u>Single Family Dwelling, more than one unit on lot</u>	<u>1 ADU</u>
<u>Duplex or Multi-Family Dwelling</u>	<u>2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot</u>
<u>Group Living Accommodation</u>	<u>1 ADU</u>

- ~~1. Lot with one Single Family Dwelling: One ADU and/or one JADU.~~
- ~~2. Lot with more than one Single Family Dwelling: One ADU.~~
- ~~3. Lot with a Duplex or Multiple-Family Dwelling, either:

 - ~~(a) Up to two detached ADUs; or~~
 - ~~(b) At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.~~~~
- ~~4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU~~

23.306.030 Permit Procedures.

- ~~A. Zoning Certificate.~~ An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.
- ~~1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.~~

- 2. ~~Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).~~
- 3. ~~Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.~~

23.306.0340 Development Standards.

A. *Basic Standards.* See Table 23.306-21: ADU ~~and JADU~~ Development Standards.

TABLE 23.306-21. ADU ~~AND JADU~~ DEVELOPMENT STANDARDS

Basic Standards		Supplemental Standards
Gross Floor Area, Maximum		23.306.030(A)(1);
<u>Studio or 1 bedroom</u>	850 sq. ft.	23.306.030(A)(2);
<u>2+ bedrooms</u>	1,000 sq. ft.	23.306.030(A)(3)
Building Height, Maximum		
<u>Conversion</u>	<u>Same as existing structure</u>	23.306.030(A)(1); 23.306.030(A)(3)
<u>Detached, New Construction</u>	<u>See Table 23.306-3</u>	
<u>Attached, New Construction</u>	<u>25 ft.</u>	23.306.030(A)(5); 23.306.030(A)(7)
Lot Line Setbacks, Minimum		
<u>Front of Interior Lot</u>	<u>Same as underlying district</u>	23.306.030(A)(3);
<u>Front of Through Lot</u>	<u>Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer</u>	23.306.030(A)(4); 23.306.030(A)(6)
<u>Rear</u>	<u>4 ft.</u>	
<u>Interior Side</u>	<u>4 ft.</u>	
<u>Street Side</u>	<u>4 ft.</u>	
<u>Building Separation for Detached ADU, Minimum</u>	<u>5 ft.</u>	
<u>Required Off-Street Parking Spaces</u>	<u>See 23.322.030– Required Parking Spaces</u>	

TABLE 23.306-3. ADU BUILDING HEIGHT – DETACHED NEW CONSTRUCTION

Lot Consists of Existing Or Proposed:	Within 0.5 mile of a major transit stop or a high quality transit corridor [1]	Not within 0.5 mile of a major transit stop or a high quality transit corridor [1]
<u>Single-Family Dwelling(s), one or more unit on a lot, one or more stories</u>	<u>18 ft., with additional 2 ft. if needed to align roof pitch of ADU with the existing roof</u>	<u>16 ft.</u>

Duplex or Multi-Family Dwelling, single-story	pitch of the primary dwelling(s)	16 ft.
Duplex or Multi-Family Dwelling, multistory		18 ft.
<p>Note:</p> <p>[1] Major transit stop or a high-quality transit corridor as defined in Public Resources Code Section 21155.</p>		

1. Existing Building Conversion. An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2. ADU Development Standards is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
2. Duplex or Multi-Family Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
3. Accessory Building or Accessory Structure Conversion. An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.
4. Front Setback, New Construction. An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.
5. Attached ADU. An ADU shall be considered attached if sharing a common wall with a primary dwelling.
6. Detached ADU Setback Exceptions. If there is a lesser setback allowed in 23.304.060-Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.
- 4-7. Attached ADU, New Construction Height. Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate.

	ADU ¹	JADU
Maximum Size Outside of HOD ²		500-sf
Studio or 1 bedroom	850-sf	N/A

	ADU¹	JADU
2+ bedrooms	1000-sf	
Maximum Size Within HOD	800-sf	500-sf
Maximum Height Outside of HOD	20 ft.	N/A
Maximum Height Within HOD	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft ³	
Side Setback	4 ft ³	
Required Off-Street Parking Outside of HOD	None ⁴	
Required Off-Street Parking Within HOD	The lesser of 1 space per bedroom or ADU ^{5, 6}	None ⁶

[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.

[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.

[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.

[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).

[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.

[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.

B. Junior ADUs.

1. Basic Standards. A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.
2. Shared Sanitation Facility. If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. Junior ADU Floor Area. The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

~~B.~~ Projections.

C.

~~Except as limited by Paragraph B.2 of this Section, architectural features (Outside of the Hillside Overlay.~~

1. ~~Attached ADU.~~ Chimneys, ~~w~~Water ~~h~~Heater ~~e~~Enclosures, ~~f~~Flues, ~~h~~Heating and ~~c~~Cooling ~~e~~Equipment, ~~e~~Eaves, ~~c~~Cornices, ~~c~~Canopies, ~~a~~Awnings, ~~bay windows, and balconies~~) may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.
2. Within the Hillside Overlay. No projections shall be allowed within ~~athe~~ required setback ~~on lots that are within the Hillside Overlay District.~~

~~G.D.~~ Rooftop Decks within the Hillside Overlay. Roofs on ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space.

23.306.0450 Permit Procedures ~~Deed Restrictions.~~

- A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.
 1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).
 2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to all occupants of owners and tenants of the subject, adjacent, confronting and abutting properties the subject property, excepting the property owner(s), within ten working days of submission of the building permit application to the Planning DepartmentCity.
2. Content of Notice. Notice shall provide the address of the project and include allowable hours of construction, a link to the City's ADU webpage identifying permit and construction resources, and contact information for a Rent Board Housing Counselor.
- 4-3. Mailing Fees. The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail the notices.

D.C. Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.0450(D) ADUs Developed by a Qualified Nonprofit Developer ~~B~~ are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a Junior ADU, the Junior ADU, or the Single Family Dwelling in which the Junior ADU is located, shall be owner-occupied.

E.D. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the mMain bBuilding to a "qualified buyer," as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;

3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

~~23.306.060—Neighbor Noticing.~~

- ~~A. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.~~
- ~~B. *Content of Notice.* Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.~~
- ~~C. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.~~

~~23.306.070—Rooftop Decks and Balconies.~~

- ~~A. Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.~~

Section 9. That Berkeley Municipal Code 23.322.020(C) is amended to read:

C. Changes of Use.

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.

2. *Manufacturing and R-SMU Districts.*

(a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:

- i. The structure is expanded to include new floor area; and/or
- ii. The use is changed to one with a numerical parking standard greater than the district minimum.

(b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050~~(-A)(-2)~~ (Change of Use).

(c) As used in this section, the “district minimum” parking requirement is:

- iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
- iv. 1 space per 1,000 square feet of floor area in the R-SMU district.

3. *All Other Residential Districts.* In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

D. *Location Exemption.* Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 10. That the section named; Residential Uses; in Berkeley Municipal Code Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	<p><u>Junior ADU: None required</u> <u>ADU outside of Hillside Overlay: None required</u> <u>ADU within Hillside Overlay: 1 per ADU unless the parcel is located within 0.5 mile of a major transit stop or a high-quality transit corridor as defined in Public Resources Code Section 21155. See Chapter 23.306</u></p>

Land Use	Number of Required Off-street Parking Spaces
Dwellings, including Group Living Accommodations	<p><u>R-3, R-4, and R-5 Districts (1-9 units):</u> If located on a roadway less than 26 <u>feet.</u> in width in the Hillside Overlay: 1 per unit.</p> <p><u>R-3, R-4, and R-5 District (10 or more units):</u> If located on a roadway less than 26 <u>feet.</u> in width in the Hillside Overlay: 1 per 1,000 sq. ft. of gross floor area</p> <p><u>All Other Districts:</u> If located on a roadway less than 26 <u>feet.</u> in width in the Hillside Overlay: 1 per unit</p> <p><u>All Other Locations:</u> None required</p>
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	<p><u>If located on a roadway less than 26 feet.</u> in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</p> <p><u>All Other Locations:</u> None required.</p>
Rental of Rooms	<p><u>If located on a roadway less than 26 feet.</u> in width in the Hillside Overlay: 1 per each two roomers</p> <p><u>All Other Locations:</u> None required</p>

Section 11. That Berkeley Municipal Code Table 23.322-2 is amended to read:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306 None required
Dwellings, including Group Living Accommodations	<p><u>If located on a roadway less than 26 feet.</u> in width in the Hillside Overlay: 1 per unit</p> <p><u>All Other Locations:</u> None required</p>
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
Non-Residential Uses	
All non-residential uses except uses listed below	<p><u>C-DMU District:</u> 1.5 per 1,000 sq. ft.</p> <p><u>All Other Commercial Districts:</u> 2 per 1,000 sq. ft.</p>

Land Use	Required Parking Spaces
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 300 sq. ft.
Hotels, Tourist	<u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Motels, Tourist	<u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Manufacturing	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Wholesale Trade	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
<u>Notes:</u> [1] Spaces must be on the same lot as building it serves	

Section 12. That the section named; Residential Uses; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306 <u>None required</u>
Dwellings	None required
Group Living Accommodation	None required

Section 13. That Berkeley Municipal Code 23.322.080 is amended to read:

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley's Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

B. Dimensional Standards. Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

C. Access Orientation in Non-Residential Districts. Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

D. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.

~~*D.E. Placement--Residential Districts.*~~

1. Side Setback Areas.

- (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.

- (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
 - (c) The space must be screened as required by 23.322.080.HG (Screening).
 - (d) The location of the space shall minimize impact on usable open space.
2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:
- (a) The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
 - (b) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
3. *Multifamily Buildings.*
- (a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
 - (b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
 - (c) The Zoning Officer may approve an AUP to grant an exception to this requirement.

E.F. *Placement--Non-Residential Districts.*

- 1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.
- 2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
- 3. *C-W District.*
 - (a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
 - (b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
 - (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:

- i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
- ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
- iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
- iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

G. Placement--ADU.

- 1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or
- 2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

F.H. Grade Change. This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

- 1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
- 2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

DIFFERENCE IN ELEVATION	MINIMUM SETBACK
Parking space lower than finished grade	
3 to 5 ft	4 ft.
Less than 3 ft	No min. setback
Parking space higher than finished grade	6 ft.

G.I. Screening.

- 1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

DISTRICTS	WHEN REQUIRED	REQUIRED SCREENING FEATURE	SCREENING FEATURE HEIGHT
All Residential Districts	2 or more parking spaces, or any parking space partly or entirely within a required rear setback area	Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways	4 ft. min and 6 ft. max.
All Commercial and Manufacturing Districts	2 or more parking spaces	Wall, fence, or evergreen shrubbery hedge in a landscape strip	Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max.

- In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

H.J. *Landscape Buffers.*

- All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

DISTRICT/NUMBER OF SPACES	MINIMUM WIDTH OF LANDSCAPE STRIP	
	AREAS ADJACENT TO SIDE OR REAR LOT LINES	AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE
Residential Districts		
1-3 spaces	2 ft.	2 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Commercial and Manufacturing Districts		
1 space	None required	None required
2-3 spaces	2 ft.	3 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Note:		
[1] Calculated as average width along the full length of landscape strip.		

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

~~J.K.~~ *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

~~J.L.~~ *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

~~K.M.~~ *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

~~L.N.~~ *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

~~M.~~ *Residential Parking Lots in Non-Residential Districts.* ~~Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.~~

~~N.O.~~ *Carports.* A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 14. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read:

C. *Accessory Dwelling Units.* The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. *New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.*
2. *New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.*

Section 15. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read:

4. Accessory Dwelling Unit (ADU). An attached or detached secondary dwelling unit that is located on the samea lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation in a zoning district where residential uses are permitted and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Junior Accessory Dwelling Unit (Junior ADU). A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen with a working refrigerator. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.

~~(a) with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:~~

~~(b)(a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.~~

Section 16. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read:

8. *Addition, Residential.* The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:

(a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;

- (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
- (c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
- (d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
- (d)(e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 17. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read:

9. *Addition, Major Residential.*

- (a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
 - i. Additions that are entirely subsumed within previously existing floor area; and
 - ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.
- (b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
- (c) Any new floor area, except as exempted under (9)(a), shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 18. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read:

- 1. Efficiency Kitchen. A ~~kitchen that includes a sink, a~~ cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 19. That Berkeley Municipal Code 23.502.020(J) is amended to read:

J. "J" Terms.

~~Junior Accessory Dwelling Unit (JADU). A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single Family Dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

Section 20. That Berkeley Municipal Code 23.502.020(N)(1) is amended to read:

N. "N" Terms.

1. *New Construction.* Construction of a new main building or accessory dwelling unit.

Section 18. Severability.

If any provision or clause of this Ordinance or any application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this Ordinance. To this end the provisions and applications of this Ordinance are severable, and the Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each provision or clause without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 19.

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

ADU POLICY ALTERNATIVES

Policy Alternative 1. Additional prescriptive standards for New Construction ADUs within the front setback (*Section 8 of the Recommended Draft Ordinance*)

4. Front Setback, New Construction. An ADU shall ~~not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet.~~ comply with the same front setback that is required for the underlying district, unless the requirement would preclude an ADU of no more than 800 square feet on the parcel. Should an ADU require area—either partially or fully—within the front setback, both of the following shall apply:

- (a) The ADU shall be sited no farther from the main building than the minimum required building separation.
- (b) The ADU shall maintain a minimum 10-foot setback from the front lot line, unless such reduced setback would preclude an ADU of no more than 800 square feet on the parcel. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback from the front lot line would preclude an ADU of 800 square feet on the parcel, the ADU may be sited up to the front lot line.

Policy Alternative 2. Different building separation requirements for detached ADUs within versus outside of the Hillside Overlay (*Section 8 of the Recommended Draft Ordinance*)

TABLE 23.306-2. ADU DEVELOPMENT STANDARDS

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Gross Floor Area, Maximum		23.306.030(A)(1);
Studio or 1 bedroom	850 sq. ft.	23.306.030(A)(2);
2+ bedrooms	1,000 sq. ft.	23.306.030(A)(3)
Building Height, Maximum		
Conversion	Same as existing structure	23.306.030(A)(1); 23.306.030(A)(3)
Detached, New Construction	See Table 23.306-3	
Attached, New Construction	25 ft.	23.306.030(A)(5); 23.306.030(A)(7)
Lot Line Setbacks, Minimum		
Front of Interior Lot	Same as underlying district	23.306.030(A)(3);
Front of Through Lot	Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	23.306.030(A)(4); 23.306.030(A)(6)
Rear	4 ft.	
Interior Side	4 ft.	

Street Side	4 ft.	
Building Separation for Detached ADU, Minimum		
<u>In the Hillside Overlay</u>	<u>8 ft.</u>	
<u>All Other Locations</u> Building Separation for Detached ADU, Minimum	5 ft.	
Required Off-Street Parking Spaces	See 23.322.030– Required Parking Spaces	

Policy Alternative 3. Converted ADUs: Maintain time limit based on when the accessory building or structure was created (Section 8 of Recommended Draft Ordinance)

23.306.030 Development Standards.

3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from ~~an legally established~~ accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setback requirements is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

Policy Alternative 4. Keep Neighbor Noticing Procedures as-is except removing noticing to owner(s) of subject property (Section 8 of Recommended Draft Ordinance)

23.306.040 Permit Procedures

B. Neighbor Noticing.

1. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to tenants of the subject property, and all occupants~~owners and tenants~~ of the subject~~adjacent, confronting and abutting~~ properties, ~~y, excepting the property owner(s),~~ within ten working days of submission of the building permit to the Planning Department~~City~~.
2. *Content of Notice.* Notice shall provide the address of the project, ~~and include~~ allowable hours of construction, a link to the City’s ADU webpage, and

Key
 Black Text: Recommended Draft Ordinance dated September 19, 2023
Red Text: Policy Alternative

information for tenants of the subject property on how to contact identifying permit and construction resources, and contact information for a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.

3. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail ~~the~~ notices.

Key

Black Text: Recommended Draft Ordinance dated September 19, 2023

Red Text: Policy Alternative

Table 1. Current and Proposed ADU Ordinances and Source Comparison

Section/ Standard	Current ordinance (BMC Ch. 23.306)	July 2023 Recommended Ordinance	September 2023 Recommended Ordinance (Ordinance Section(s))	Source(s) for September 2023 Recommendation
Ch. 12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance	No more than one ADU or JADU shall be permitted per lot in the HOD.	Repeal and remove references	No change from July 2023. (Sections 3, 8)	HCD Letter dated October 17, 2022 (pg. 2)
Lot coverage and gross floor area calculations	Not specified.	Exempt up to 800 sf from lot coverage and gross floor area calculations associated with ADU	No change from July 2023. (Sections 4, 5, 16, 17)	State law. GOV 65852.2(c)(2)(C)
Building separation measurement definition	A. <i>Measurement.</i> Building separation is measured as the distance between the surface of a main building's outer wall and the outer wall surface of the closest neighboring main building.	Not included	Revised to include ADUs and changed "neighboring main building" to "neighboring building." (Section 6)	Staff recommendation based on Fire, Building and Safety.
ADU building height calculations	Not specified.	Specify that attached ADUs are not included in <u>average</u> building height calculations.	No change from July 2023. (Section 7)	Staff recommendation
Density exemption	Not specified.	Exclude ADUs and Junior ADUs from density established by the underlying zoning district	No change from July 2023. (Section 8)	State law. GOV 65852.2(a)(10)
Quantity of ADU–Single Family Dwellings	1 ADU <u>or</u> 1 Junior ADU	1 ADU <u>and</u> 1 Junior ADU citywide	No change from July 2023. (Section 8)	HCD Letter dated October 17, 2022 (pg. 3)
Quantity of ADU–Duplex or Multi-Family Dwellings	a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.	2 detached ADUs <u>and</u> at least 1 interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot.	No change from July 2023. (Section 8)	HCD ADU Handbook dated July 2022 (pg. 20)
Gross floor area, maximum	Outside of HOD: - Studio or 1-bed: 850 sf - 2+ bed: 1000 sf	Citywide: - Studio or 1-bed: 850 sf - 2+ bed: 1000 sf	No change from July 2023. (Section 8)	HCD Letter dated October 17, 2022 (pg. 2)

Section/ Standard	Current ordinance (BMC Ch. 23.306)	July 2023 Recommended Ordinance	September 2023 Recommended Ordinance (Ordinance Section(s))	Source(s) for September 2023 Recommendation
	<ul style="list-style-type: none"> - Junior ADU: 500 sf Within HOD: <ul style="list-style-type: none"> - ADU: 800 sf - Junior ADU: 500 sf 	<ul style="list-style-type: none"> - Junior ADU: 500 sf 		in combination with state law. GOV 65852.2(c)(2)(B); GOV 65852.22(i)(1)
Building height, maximum	Outside of HOD: 20 ft. Within HOD: 16 ft.	Citywide: Attached: 25 ft. Detached: 20 ft.	Revised to match state law. <i>See Tables 23.306-2 and 230.306-3. (Section 8)</i>	State law. GOV 65852.2(c)(2)(D)
Building separation for detached ADU, minimum	Not specified.	3-foot	5-foot (Section 8) <i>See Policy Alternative 2</i>	Staff recommendation based on Fire, Building and Safety
Accessory Building or Accessory Structure Conversion	<ul style="list-style-type: none"> - Must be legally established at least three years prior to submission of an ADU - Allowed to maintain nonconforming Maximum Height, Size, and/or Rear and Side Setback to the same dimensions of the existing Accessory Building or Accessory Structure - Existing side and rear setbacks meet fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. 	No change from current ordinance	Allowed to maintain non-conformity to the same location and dimensions of the existing legal nonconforming accessory building or accessory structure, without minimum time limits based on when the structure was created. (Section 8) <i>See Policy Alternative 3</i>	Location and dimensions - State law GOV 65852.2(a)(D)(vii) No limits based on when the structure was created - HCD ADU Handbook dated July 2022 (pg. 21)
Lot line setbacks, minimum	<i>Front:</i> Same as underlying zoning district <i>Rear:</i> 4 ft. <i>Side:</i> 4 ft. Exception: If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.	<i>Front (no change):</i> Same as underlying zoning district <i>Front of Through Lot:</i> Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer <i>Rear (no change):</i> 4 ft. <i>Interior side (no change):</i> 4 ft. <i>Street side:</i> 4 ft.	Added supplemental standard: (Section 8) (4) <i>Front Setback, New Construction.</i> An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. <i>See Policy Alternative 1</i>	Staff recommendation based on state law. GOV 65852.2(c)(2)(C)
Attached ADU, standard	Not specified.	Less than 3-foot building separation	Sharing common wall (Section 8) 5. <i>Attached ADU.</i> An ADU shall be considered attached if sharing a common wall with a primary dwelling.	Staff recommendation based on state law GOV 65852.2(c)(2)(D)(iv)

Section/ Standard	Current ordinance (BMC Ch. 23.306)	July 2023 Recommended Ordinance	September 2023 Recommended Ordinance (Ordinance Section(s))	Source(s) for September 2023 Recommendation
Attached ADU, New Construction Height	An ADU proposed as an addition with a maximum height exceeding 14 ft. requires an AUP.	Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate.	No change from July 2023. (Section 8)	State law GOV 65852.2(c)(2)(D)
Junior ADUs Shared Sanitation Facilities	Not specified.	If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.	No change from July 2023. (Section 8)	Staff recommendation based on state law GOV 65852.22(i)(1)
Projections	Architectural features may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback. Bay windows and balconies shall not project into a setback. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District.	Added bay windows and balconies may not project into a required rear ADU setback.	No change from July 2023. (Section 8)	Planning Commission recommendation, May 2023
Noticing, Scope	Mail to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.	Mail to all tenants of subject property, excluding property owner(s).	Revised Header to read "Noticing" instead of "Neighbor Noticing" and "tenant" to read "occupant" (Section 8) <i>See Policy Alternative 4</i>	Staff recommendation based on Planning Commission recommendation, May 2023, while addressing implementation concerns
Off-Street Parking requirement, minimum	JADU: None. Outside of HOD: None. Within HOD: The lesser of 1 space per bedroom or ADU. No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.	JADU: None Outside of HOD: None Within HOD: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2.	JADU: None Outside of HOD: None Within HOD: 1 per ADU unless the parcel is located with 0.5 mile of a major transit stop or a high-quality transit corridor as defined in Public Resource Code Section 21155. (Section 10)	State law GOV 65852.2(c)(2)(D)(ii); GOV 65852.2(d)(1), PUB. RES. 21155
Replacement Parking requirement	Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums	No change from current ordinance.	No change from July 2023. (Section 13)	State law GOV 65852.2(a)(1)(D)(xi)

Section/ Standard	Current ordinance (BMC Ch. 23.306)	July 2023 Recommended Ordinance	September 2023 Recommended Ordinance (Ordinance Section(s))	Source(s) for September 2023 Recommendation
	(BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).			
Parking Placement for ADUs	If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.	<ol style="list-style-type: none"> 1. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or 2. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback. 	No change from July 2023. (Section 13)	Staff recommendation based on state law GOV 65852.2(a)(1)(D)(xi)
Alterations of lawful nonconforming existing structures or buildings to ADUs	Not specified.	<p>The following alterations are permitted with a Zoning Certificate:</p> <ol style="list-style-type: none"> 1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback. 2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit. 	No change from July 2023. (Section 14)	Staff recommendation
"Junior ADU", definition	Requires a working refrigerator	Removes this requirement	No change from July 2023. (Section 15)	HCD Letter dated October 17, 2022 (pg. 1)
"Efficiency Kitchen", definition	Requires a sink	Removes this requirement	No change from July 2023. (Section 18)	HCD Letter dated October 17, 2022 (pg. 1)



Office of the City Manager

PUBLIC HEARING
September 19, 2023
(Continued from July 25, 2023)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning and Development
Subject: Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) and Repeal of Chapter 12.99 to Conform to State Law and Respond to Guidance from the California Department of Housing and Community Development

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 23, and repealing BMC Chapter 12.99, relating to Accessory Dwelling Units and Junior Accessory Dwelling Units.

SUMMARY

Staff have prepared amendments to Title 23 (Zoning) of the BMC in response to: (a) recent changes in state laws pertaining to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (Junior ADUs) that took effect on January 1, 2023, and (b) feedback from the California Department of Housing and Community Development (HCD) finding that the City of Berkeley's current ADU Ordinance does not comply with state law.

The proposed Zoning Ordinance amendments (Attachment 1) and the repeal of Chapter 12.99 (Wildfire Hazard Evacuation Risk Mitigation Ordinance) per HCD guidance will bring the City's ADU Ordinance into compliance with current state law and address concerns raised in HCD's letter to the City, dated October 17, 2022.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendments are intended to simplify the planning review process and facilitate the development of ADUs and Junior ADUs in accordance with state law. The proposed amendments may result in a modest decrease in staffing-related expenditures due to streamlined review.

CURRENT SITUATION AND ITS EFFECTS

A local ADU ordinance supports the City's Strategic Plan goal to create affordable housing and housing support services for our most vulnerable community members. Over the past five years, Berkeley has adopted four comprehensive ADU Ordinance amendments in order to maintain compliance with changing State ADU law. Between

2018 and 2022, the City issued 528 building permits for ADUs and Junior ADUs, and entitled an average of 78 ADU permits per year.

On October 17, 2022, the City received a letter from HCD (Attachment 2) stating that it had reviewed the City's current ADU Ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") and found that the Ordinances do not comply with Government Code Section 65852.2.

Efficiency Kitchen Definition

HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."

Wildfire Hazard Evacuation Risk Mitigation Ordinance

Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU and Junior ADU development impacts on traffic flow and public safety when the City adopted limitations on ADU and Junior ADU development in the Hillside Overlay zoning district.

HCD asserts that the traffic simulation study referenced in Chapter 12.99 is not specific to ADUs and Junior ADUs and therefore cannot be used to justify the restriction on the number of ADUs in the Hillside Overlay. Additionally, the traffic simulation study does not provide data on how many lots are likely to add ADUs and Junior ADUs, does not identify specific impacts new ADUs and Junior ADUs may have on evacuations, and does not account for the potential for ADUs and Junior ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay. Furthermore, HCD adds that even if the City adequately justified the restriction of ADUs and Junior ADUs, it may not justify restrictions on ADUs or Junior ADUs that fall under subdivision (e) of Government Code section 65852.2, because local development standards do not apply to ADUs created under that subdivision. Government code section 65852.2, subdivision (e) requires local agencies to ministerially approve building permit applications for the creation of ADUs and Junior ADUs within any residential or mixed-use zone, subject only to specific limitations.

Regarding BMC Section 12.99.030 – Total Number of Units Permitted, HCD asserts that the City's decision to limit the number of units allowed per lot in the Hillside Overlay to one ADU or one Junior ADU conflicts with Government Code Section 65852.2, subdivisions (e)(1)(A), (B), (C), and (D), which requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one ADU and one Junior ADU per lot. Lines (A) through (D) of subdivision (e) identify the following ADU categories:

- (A) One ADU and one Junior ADU within the proposed space of a single-family dwelling, or existing space of a single-family dwelling or accessory structure

- (B) One detached, new construction ADU
- (C) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space
- (D) Not more than two ADUs that are located on a lot that has an existing or proposed multifamily dwelling, but are detached from that multifamily dwelling

State Law Updates

In addition to HCD's letter, on January 1, 2023, the most recent round of state ADU regulations came into effect, impacting maximum height limits, prohibiting front setback standards that would preclude at least an 800 square foot ADU, and requiring internal connections between Junior ADUs and main dwelling units.

Staff recommend making the following amendments to Title 23 of the BMC:

1. Remove standards that provide a distinction between parcels within and outside of the Hillside Overlay, and apply non-Hillside Overlay ADU standards citywide where residential uses are permitted;
2. Bring the City's zoning code into compliance with current State ADU law, including SB 897, AB 2221, and AB 2097, and respond to HCD's letter; and
3. Clarify and/or correct minor technical edits associated with the related Ordinance sections, and edit for consistency with the existing BMC.

Public safety remains a significant concern regarding increasing density in the Hillside Overlay. To address these concerns, staff are working with the Fire Department to collect additional data on the health and safety impacts of increased development in the Hillside Overlay.

On March 14, 2023, the Fire Department was authorized by the City Manager to execute a contract with KLD Engineering, P.C., for Evacuation and Response Time Modeling from April 1, 2023 through June 30, 2024 as part of an effort to collect data and forecast the number of vehicles and people that may need to be evacuated during a wildfire or other emergency.¹ The study will also be analyzing how major evacuation routes will operate under emergency conditions, and whether there would be any public safety impacts resulting from projected development of new ADUs and Junior ADUs, including parking and additional vehicular travel in the Very High Fire Hazard Severity Zone.

In addition to this study, the City is in the process of updating the Local Hazard and Mitigation Plan and Disaster Preparedness and Safety Element, which will similarly provide an opportunity to collect data and engage community members.

Together, the data collected from the evacuation study as well as input received from community members could enable the City Council to make the findings to support the

¹ <https://berkeleyca.gov/sites/default/files/documents/2023-03-14%20Item%2004%20Contract%20KLD%20Engineering.pdf>

reinstitution of controls on ADU development in the Hillside Overlay. Staff plan to bring the Fire Department's study findings, as well as other research and community engagement findings, back to Planning Commission and City Council by Summer 2024.

Proposed Ordinance

The Ordinance recommended by the Planning Commission would amend Title 23 of the BMC as follows:

23.106 Rules of Measurement

Consistent with the provisions of Subdivision (c) in Government Code 65852.2, staff propose amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area associated with an existing or proposed ADU or Junior ADU from lot coverage and gross floor area calculations. Presently, once an ADU is built, it counts towards lot coverage and gross floor area, which can mean that even minor future additions to the main dwelling would require an Administrative Use Permit (AUP). By amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of ADU area, the regulation is consistent with state law, removes a barrier to development, and aligns with the State's goal of streamlining the development of ADUs.

In addition, staff propose amending 23.106.090(A) to exempt attached ADUs from inclusion in average building height calculations. This would allow for residences, in particular those on a slope, to add an attached ADU without technically increasing the average building height and thereby limiting the ability to make other structural changes in the future.

23.306 Accessory Dwelling Units (Organization)

The proposed Ordinance simplifies the ADU chapter by consolidating seven sections into four, maintaining consistency with other chapters of Title 23 (see Table 1).²

Table 1: Chapter 23.306 - Existing and Proposed Sections

Existing Sections	Proposed Sections
23.306.010– Purposes	23.306.010– Purpose
23.306.020– Applicability and Definitions	23.306.020– Applicability
23.306.030– Permit Procedures	23.306.030– Development Standards
23.306.040– Development Standards	23.306.040– Permit Procedures
23.306.050– Deed Restrictions	
23.306.060– Neighbor Noticing	
23.306.070– Rooftop Decks and Balconies	

The proposed Ordinance adds a reference to the latest California Government Code Section 65852.1 and removes subsection (f) which states that the purpose of the chapter is to reduce potential impacts of new development in the Very High Fire Hazard

² The proposed ordinance includes Deed Restrictions and Neighbor Noticing under Section 23.306.040 (Permit Procedures), and Rooftop Decks and Balconies under Section 23.396.030 (Development Standards).

Severity Zones (VHFHSZ), Wildland-Urban Interface Fire Areas, and Hillside Overlay. This complies with HCD’s finding that the current Ordinances do not meet the requirements of state law.

23.306.020 Accessory Dwelling Units (Applicability)

The proposed Ordinance removes subsection (b), which defines the Hillside Overlay for the purposes of the ADU chapter, and removes the reference to Chapter 12.99 to comply with HCD’s finding that the City does not sufficiently justify the creation of a separate set of regulations for the Hillside Overlay.

The proposed amendment includes a new subsection clarifying that ADUs and Junior ADUs do not count towards density calculations established by the underlying zoning districts. This is consistent with HCD guidance in the HCD ADU Handbook Update³.

Staff also propose amending the maximum number of units permitted on a lot with a duplex or multi-family dwelling to allow for two detached ADUs and at least one interior ADU (see Table 2). In 2022, HCD changed its interpretation regarding the total number of ADUs that "must" be allowed by local governments on any given parcel. Whereas in the 2020 ADU Handbook, HCD wrote that "local governments are not required to allow (A) and (B) together or (C) and (D) together," in the July 2022 ADU Handbook, HCD rewrote that "local governments must allow (A) and (B) together or (C) and (D) together." Although this change in HCD's interpretation is not supported by any corresponding change in state law, the proposed Ordinance is drafted to be consistent with HCD's new interpretation for lots with a duplex or multi-family dwelling.

Table 2: Existing and Proposed Maximum Density Standards on a Lot with a Duplex or Multi-Family Dwelling

Existing Maximum Density	Proposed Maximum Density
Either: a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.	Two detached ADUs <u>and</u> at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot

³ July 2022 HCD ADU Handbook. <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

23.306.030 Accessory Dwelling Units (Development Standards)

In response to HCD’s letter and to bring the development standards section into compliance with state law, staff propose removing standards that are specific to parcels located in the Hillside Overlay. Instead, the development standards will apply to ADUs and Junior ADUs citywide.

Staff also recommend a number of technical revisions to the development standards section, including removing Junior ADU standards from the development standards table and including all relevant information in subsection (B), and replacing footnotes from the development table with a subsection for supplemental standards.

Within subsection (C), staff propose technical edits to amend the provisions pertaining to building projections into yards to align with other sections of the code and in response to Planning Commission’s recommendation. This includes permitting bay windows and balconies to project two feet into the required setbacks so long as there remains at least a two-foot setback from front and side property lines, and does not permit bay windows and balconies to project into the required rear ADU setback, which is four feet. This would allow for ADUs to benefit from the same projection allowances as single-family homes of the same size, while still ensuring that the projections are a reasonable distance from the property lines.

In addition to these technical revisions, a number of the standards have been changed to match state law. Tables 3 and 4 provide the proposed development standards and the rationale informing the recommended changes. This table does not include all ADU development standards; it only includes the standards that are proposed to be amended.

Table 3: Proposed Revisions to ADU Development Standards & Rationale

Basic Standard	Proposed Standards	Rationale/Intent
Building Height, Maximum	Detached, New Construction – 20 ft.	Increase the maximum building height for Attached, New Construction from 20 ft. to 25 ft. to match state law (SB 897). The current 20 ft. maximum building height for Detached, New Construction already exceeds the 18 ft. and 2 ft. roof pitch accommodation required by state law.
	Attached, New Construction – 25 ft.	
Lot Line Setbacks, Minimum	Front of Interior Lot – Same as underlying district	Add a standard for front setbacks on through lots to ensure that there are standards for such parcels, consistent with existing regulations for accessory buildings.
	Front of Through Lot - Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	

Building Separation for Detached ADU, Minimum	3 ft.	Add a minimum building separation standard (in addition to below “Detached or Attached ADU” supplemental standard) for consistency with standards for Accessory Buildings.
Required Off-Street Parking Spaces	See 23.322.030 – Required Parking Spaces	Move to BMC 23.322 – Parking and Loading to be consistent with other parking standards.

Table 4: Proposed Revisions to ADU Development Supplemental Standards & Rationale

Supplemental Standard	Proposed Standards	Rationale/Intent
State Exemption ADU	No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot ADU.	Match state law.
Junior ADU Shared Sanitation Facility	If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single-family dwelling is required.	Match state law.
Junior ADU Floor Area	The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single-family dwelling.	Clarify the rules of measurement for gross floor area if a sanitation facility is shared.
Detached or Attached ADU	If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached.	Establish a Building Separation standard for Detached ADU, Minimum (see also “Building Separation for Detached ADU, Minimum” above).
Attached ADU, New Construction	Attached ADUs with height up to 25 feet are permitted with a Zoning Certificate.	Eliminate the requirement for AUP approval for ADUs to achieve maximum permitted height to conform with state law and in response to Planning Commission recommendation. (GOV 65852.2(c)(2)(D).

Figure 1 – Examples of Additions Over 14 ft. Containing Attached ADUs




23.306.040 Accessory Dwelling Units (Permit Procedures)

Currently it is required that notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission of a building permit to the Planning Department, and shall include

the project address, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor. The cost of materials, postage, and staff time is paid for by the applicant – currently a fixed fee of \$460.

Figure 2 – Existing ADU Notice (Front and Back)



Planning and Development Department
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

Post and Mail Date:
Month X, 2023

NOTICE OF APPLICATION: ACCESSORY DWELLING UNIT (ADU)

BP#B2023-XXXXX
Address

Applicant Contact Information
Applicant Full Name
Phone number
Email address

Permit information and status may be viewed online:
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

«Next Record» «NAME1»
«NAME2»
«ADDRESS1» «ADDRESS2»

NOTICE OF APPLICATION: Accessory Dwelling Unit (ADU)

The City received an application to construct an accessory dwelling unit(s) at the property listed on the front of this postcard. Zoning review and approval of the application will be based on the objective criteria found in State law and local regulations, including Chapters 23.306 and 12.99 of the Berkeley Municipal Code (BMC).

For questions about the design and construction of the proposed ADU, please contact the applicant listed on the front of this application notice.

Construction noise is only allowed between 7:00 a.m. – 7:00 p.m. on weekdays, and 9:00 a.m. – 8:00 p.m. on weekends and legal holidays. (BMC 13.40.070). For complaints about construction noise, please contact Environmental Health at envhealth@cityofberkeley.info, or (510) 981-5310.

Tenants of the subject property may contact a Rent Board Counselor by email at rent@cityofberkeley.info, or at (510) 981-RENT (510-981-7368).

Additional information about ADUs is available online at: <https://berkeleyca.gov/ADU> or by contacting the Land Use Planning Division at planning@cityofberkeley.info or (510) 981-7400.

The requirement for neighbor noticing presents a number of challenges for applicants and members of the public. ADU permits are building permits, and plans associated with building permit applications are protected under copyright law, and cannot be printed out or shared online with members of the public (unlike plans associated with zoning permits). For neighbors interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public cannot appeal a conforming proposed ADU. The noticing procedure can create an expectation that there is a discretionary review process involved, and there is not.

In order to address these concerns, Planning Commission recommended amendments to the neighbor noticing requirements as follows:

1. **Require mailing a notice to tenants of the subject property only.** The Planning Commission recommended amending the Ordinance to provide notice only to tenants of the subject property. Staff propose requiring project applicants to attest to whether any tenants live on site as part of the project application. The presence of tenants would trigger the mailing of a notice to tenants of the subject property.
2. **Increase clarity of the notice.** The Planning Commission recommended more clearly indicating the non-discretionary nature of the permit and noting that permit and construction information and resources can be found on the City's ADU webpage.

23.322.020 Parking and Loading (Applicability)

Staff propose amending BMC Tables 23.322-1, 23.322-2, and 23.322-4 to relocate off-street parking standards for ADUs in Residential, Commercial, and Manufacturing Districts into the Parking and Loading chapter of the BMC (previously specified in Chapter 23.306). Required parking for ADUs within the Hillside Overlay remains one parking space per ADU unless it is located within 0.5 miles of a transit stop as defined in Government Code Section 65852.2⁴ or otherwise satisfies subdivision (d) of the same section.

23.322.080 Parking Layout and Design (Placement)

Staff propose the creation of a new subsection (G) in BMC 23.322.080 to provide guidance on parking placement for ADUs, and includes the following parking placement exceptions:

⁴ "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65852.2&lawCode=GOV

- a. On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU, is allowed in any configuration on the lot, including within the front yard setback; or
- b. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

Currently, parking flexibility only applies to replacement parking for main dwelling units and new parking provided for an ADU. To account for ADU projects seeking to provide new parking spaces for both the main dwelling and the ADU, staff propose allowing for the same flexibility in lot configuration for the main dwelling unit's proposed new parking space as is allowed for the ADU's parking space. Encouraging off-street parking in the Hillside Overlay can partially mitigate safety and evacuation access concerns.

23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

In the current zoning code, minor alterations of nonconforming structures within required setbacks, such as for windows and doors, require an AUP. To reduce the administrative costs associated with providing new openings for ADUs, staff propose allowing by right openings to lawful nonconforming existing structures or buildings that are proposed to be converted to an ADU. Staff proposes to add BMC 23.324.060(C) to include the following standards:

C. Accessory Dwelling Units. The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

23.502.020 Defined Terms

Junior ADU. Staff propose relocating the definition for "Junior Accessory Dwelling Unit" within the definition of "Accessory Dwelling Unit" and striking out the reference to a working refrigerator in response to HCD's findings.

Addition, Major Residential. Staff propose amending the definition for "Addition, Major Residential" to add a subsection that exempts the floor area associated with an existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet. This would eliminate the requirement for an AUP to add an ADU or Junior ADU to a house, thus matching the State's intent of streamlining the processing of ADU development.

Efficiency Kitchen. Staff propose amending the definition of an “Efficiency Kitchen” by removing the requirement for a sink to match the State’s definition and in response to HCD’s findings.⁵ Note that while kitchen sinks are required in dwelling units, Junior ADUs are not required to have a sink because they do not meet the definition of a “dwelling unit” in California Building Code Section 202.⁶

New Construction. Staff propose amending the definition of “New Construction” to include ADUs, in addition to new main buildings.

BACKGROUND

On May 3, 2023, the Planning Commission held a public hearing to consider proposed amendments to Title 23 developed by staff (**Attachment 3**). Following public comment and a discussion, the Planning Commission unanimously recommended staff’s proposal with three modifications, which were incorporated into the proposed amendments as follows:

1. **Regulating bay window and balcony projections using setback requirements.** The Commission recommended a technical edit to permit bay windows and balconies on all ADUs outside the Hillside Overlay, with projections measured by setback distance from the property line. Staff previously recommended separate standards for attached versus detached ADUs, with attached ADUs permitted to project two feet into the required setbacks as long as there remains at least a two-foot setback from property lines. In this recommendation, detached ADUs were not permitted to have projections. However, the Commission found that the goal of allowing for more flexibility with projections while also limiting proximity of a dwelling unit to the property line could be achieved more simply by regulating projections for *all* ADUs using property setbacks.
2. **Revising Neighbor Noticing requirements for clarity and efficiency.** The Commission recommended revising the neighbor noticing requirement so that public notices for ADUs link to the City’s ADU webpage and identify additional permit and construction information, and only need to go to tenants on the subject property. Staff amended the noticing requirements accordingly. Staff plan to further revise the existing ADU notice to clearly communicate the non-discretionary nature of the permit, in accordance with the Commission’s recommendations.
3. **Removing the AUP requirement for attached ADUs proposed as additions to streamline ADU building permit applications.** Planning Commission recommended allowing for attached ADUs to reach maximum allowable height

⁵ The only other reference to an “efficiency kitchen” in the Berkeley Municipal Code pertains to the definition of a Junior ADU.

⁶ California Building Code Section 202, <https://codes.iccsafe.org/content/CARC2022P1/chapter-2-definitions>.

without requiring an AUP to match the State's goal of streamlining the ADU development process.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

ADUs are generally low impact infill development that have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near various community amenities, the university campus, transit services and employment opportunities.

Environmental Determination. The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h), the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments to Title 23 relating to ADUs are required to ensure that the Zoning Ordinance conforms to all applicable state laws and addresses HCD's letter to the City, dated October 17, 2022.

ALTERNATIVE ACTIONS CONSIDERED

The Planning Commission considered a range of amendments and recommended modifications in response to feedback and deliberations, as discussed above.

CONTACT PERSON

Zoe Covello, Assistant Planner, Planning and Development Department, 510-981-7418
Grace Wu, Principal Planner, Planning and Development Department, 510-981-7484

Attachments:

- 1: Zoning Ordinance
- 2: HCD's Letter, dated October 17, 2022
- 3: Staff Report from May 3, 2023 Planning Commission Meeting
- 4: Notice of Public Hearing

ORDINANCE NO. -N.S.

REPEAL OF THE WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99), AND AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. That Berkeley Municipal Code Chapter 12.99 is hereby repealed.

Section 2. That Berkeley Municipal Code 23.106.020(B) is amended to read as follows:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 3. That Berkeley Municipal Code 23.106.030(D) is amended to read as follows:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.
4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
 - (a) Located at or near street level;
 - (b) Accessible to the general public; and

(c) Are not designed or used as sales, display, storage, service, or production areas.

6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 4. That Berkeley Municipal Code 23.106.090(A)(1) through (3) is amended to read as follows:

A. *Average Building Height.*

1. Average Building Height: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See [Figure 23.106-4: Average Building Height.](#)

~~2. Figure 23.106-4: Average Building Height.~~

2. Dormers are not included in the average building height calculation.

3. Attached accessory dwelling units are not included in the average building height calculation.

Section 5. That Berkeley Municipal Code 23.306 is amended to read as follows:

Sections:

~~23.306.010– Purposes~~

~~23.306.020– Applicability and Definitions~~

~~23.306.030– Development Standards Permit Procedures~~

~~23.306.040– Permit Procedures Development Standards~~

~~23.306.050– Deed Restrictions~~

~~23.306.060– Neighbor Noticing~~

~~23.306.070– Rooftop Decks and Balconies~~

23.306.010 Purposes.

~~The purposes of this Chapter are to~~ This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

A. Implement California Government Code Section 65852.1, 65852.2 and 65852.22.

B. Increase overall supply and range of housing options in Berkeley.

C. Expedite small-scale infill development.

- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.

~~F. Reduce potential impacts of new development in Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."~~

23.306.020 Applicability and Definitions.

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- ~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety-Residential).~~
- ~~B. Number of ADUs and JADUs Permitted Per Lot. See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. Except as expressly modified by Chapter [12.99](#), the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.~~
- ~~C. Density Exemption. ADUs and Junior ADUs [are not included in](#) the minimum or maximum density established by the underlying zoning district.~~

~~TABLE 23.306-1—ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT~~

Use, Primary	ADU and Junior ADU, Maximum Per Lot
Single Family Dwelling, one unit on lot	1 ADU and 1 Junior ADU, both are permitted
Single Family Dwelling, more than one unit on lot	1 ADU
Duplex or Multi-Family Dwelling	2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot

<u>Group Living Accommodation</u>	<u>1 ADU</u>
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- ~~1. Lot with one Single Family Dwelling: One ADU and/or one JADU.~~
- ~~2. Lot with more than one Single Family Dwelling: One ADU.~~
- ~~3. Lot with a Duplex or Multiple-Family Dwelling, either:

 - ~~(a) Up to two detached ADUs; or~~
 - ~~(b) At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.~~~~
- ~~4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU~~

23.306.030 Permit Procedures.

- ~~A. *Zoning Certificate.* An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.~~
- ~~1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.~~
 - ~~2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).~~
 - ~~3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.~~

23.306.0340 Development Standards.

- A. *Basic Standards.* See Table 23.306-21: ADU ~~and JADU~~ Development Standards.

TABLE 23.306-21. ADU ~~AND JADU~~ DEVELOPMENT STANDARDS

<u>BASIC STANDARDS</u>	<u>SUPPLEMENTAL STANDARDS</u>
Gross Floor Area, Maximum	23.306.030(A)(1);

<u>Studio or 1 bedroom</u>	<u>850 sq. ft.</u>	<u>23.306.030(A)(2);</u>
<u>2+ bedrooms</u>	<u>1,000 sq. ft.</u>	<u>23.306.030(A)(3);</u> <u>23.306.030(A)(4)</u>
<u>Building Height, Maximum</u>		
<u>Conversion</u>	<u>Same as existing structure</u>	<u>23.306.030(A)(2);</u> <u>23.306.030(A)(4)</u>
<u>Detached, New Construction</u>	<u>20 ft.</u>	<u>23.306.030(A)(5)</u>
<u>Attached, New Construction</u>	<u>25 ft.</u>	<u>23.306.030(A)(5);</u> <u>23.306.030(A)(7)</u>
<u>Lot Line Setbacks, Minimum</u>		
<u>Front of Interior Lot</u>	<u>Same as underlying district</u>	<u>23.306.030(A)(1)</u>
<u>Front of Through Lot</u>	<u>Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer</u>	<u>23.306.030(A)(6)</u>
<u>Rear</u>	<u>4 ft.</u>	
<u>Interior Side</u>	<u>4 ft.</u>	
<u>Street Side</u>	<u>4 ft.</u>	
<u>Building Separation for Detached ADU, Minimum</u>	<u>3 ft.</u>	<u>23.306.030(A)(5)</u>
<u>Required Off-Street Parking Spaces</u>	<u>See 23.322.030– Required Parking Spaces</u>	

1. State Exemption ADU. No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit.
2. Existing Building Conversion. An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2. ADU Development Standards is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
3. Duplex or Multi-Family Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
4. Accessory Building or Accessory Structure Conversion. An ADU converted from an accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setback requirements is allowed to maintain non-conformity to the same dimensions of the existing accessory building or accessory structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory

building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.

5. Detached or Attached ADU. Detached ADUs shall maintain a minimum 3-foot separation from other buildings on the lot. If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached for the purposes of applying the development standards in Table 23.306-2 ADU Development Standards.

6. Detached ADU Setback Exceptions. If there is a lesser setback allowed in 23.304.060-Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.

4.7. Attached ADU, New Construction Height. Attached ADUs with height greater than 14 ft. and up to 25 ft. allowed with a Zoning Certificate.

	ADU¹	JADU
Maximum Size Outside of HOD ²		500 sf
Studio or 1 bedroom	850 sf	N/A
2+ bedrooms	1000 sf	
Maximum Size Within HOD	800 sf	500 sf
Maximum Height Outside of HOD	20 ft.	N/A
Maximum Height Within HOD	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft ³	
Side Setback	4 ft ³	
Required Off-Street Parking Outside of HOD	None ⁴	
Required Off-Street Parking Within HOD	The lesser of 1 space per bedroom or ADU ^{5, 6}	None ⁶

[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.

[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a

~~physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.~~

~~[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.~~

~~[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).~~

~~[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.~~

~~[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.~~

B. Junior ADUs.

1. Basic Standards. A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.
2. Shared Sanitation Facility. If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. Junior ADU Floor Area. The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

B. Projections.

C.

~~Except as limited by Paragraph B.2 of this Section, architectural features (Outside of the Hillside Overlay.~~

1. Attached ADU. Chimneys, wWater hHeater eEnclosures, fFlues, hHeating and cCooling eEquipment, eEaves, cCornices, cCanopies, aAwnings, bay windows, and balconies) may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.
2. Within the Hillside Overlay. No projections shall be allowed within atthe required setback ~~on lots that are within the Hillside Overlay District.~~

G.D. Rooftop Decks within the Hillside Overlay. Roofs on detached ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space.

23.306.0450 Permit Procedures Deed Restrictions.

A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 65852.2(e)(1).
3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. Neighbor Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to ~~tenants- of owners and tenants of the subject, adjacent, confronting and abutting properties~~ the subject property within ten working days of submission of the building permit to the Planning Department City.
2. Content of Notice. Notice shall provide the address of the project and include allowable hours of construction, a link to the City's ADU webpage identifying permit and construction resources, and contact information for a Rent Board Housing Counselor.
- 4.3. Mailing Fees. The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail the notices.

D.C. Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.0450(D) ADUs Developed by a Qualified Nonprofit Developer ~~B~~ are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and

4. If the property includes a Junior ADU, the Junior ADU, or the Single Family Dwelling in which the Junior ADU is located, shall be owner-occupied.

~~E.D.~~ *ADUs Developed by a Qualified Nonprofit Developer.* An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the mMain bBuilding to a "qualified buyer," as such terms are defined in subdivision (b) of Section [65852.26](#) of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

~~9. 23.306.060 Neighbor Noticing.~~

~~10. Scope and Timing of Notice. Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.~~

~~11. Content of Notice. Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.~~

~~12. Mailing Fees. The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.~~

~~13. 23.306.070 Rooftop Decks and Balconies.~~

~~14. Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.~~

Section 6. That Berkeley Municipal Code 23.322.020(C) is amended to read as follows:

C. *Changes of Use.*

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. *Manufacturing and R-SMU Districts.*
 - (a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
 - i. The structure is expanded to include new floor area; and/or
 - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
 - (b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050~~(-A)~~~~(-2)~~ (Change of Use).
 - (c) As used in this section, the “district minimum” parking requirement is:
 - iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
 - iv. 1 space per 1,000 square feet of floor area in the R-SMU district.
3. *All Other Residential Districts.* In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

Section 7. That the section named; Residential Uses; in Berkeley Municipal Code Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	<u>Junior ADU: None required</u> <u>ADU outside of Hillside Overlay: None required</u> <u>ADU within Hillside Overlay: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2. See Chapter 23.306</u>
Dwellings, including Group Living Accommodations	<u>R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.</u> <u>R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq. ft. of gross floor area</u> <u>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</u> <u>All Other Locations: None required</u>
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	<u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</u> <u>All Other Locations: None required.</u>
Rental of Rooms	<u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers</u> <u>All Other Locations: None required</u>

Section 8. That Berkeley Municipal Code Table 23.322-2 is amended to read as follows:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306 <u>None required</u>
Dwellings, including Group Living Accommodations	<u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</u> <u>All Other Locations: None required</u>
Hotel, Residential	None required
Mixed-Use Residential	None required

Land Use	Required Parking Spaces
(residential use only)	
Senior Congregate Housing	None required
Non-Residential Uses	
All non-residential uses except uses listed below	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 300 sq. ft.
Hotels, Tourist	<u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Motels, Tourist	<u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Manufacturing	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Wholesale Trade	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
<u>Notes:</u> [1] Spaces must be on the same lot as building it serves	

Section 9. That the section named; Residential Uses; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306 None required
Dwellings	None required
Group Living Accommodation	None required

Section 10. That Berkeley Municipal Code 23.322.080 is amended to read as follows:

23.322.080– Parking Layout and Design

A. Traffic Engineering Requirements.

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley's Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

B. Dimensional Standards. Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

C. Access Orientation in Non-Residential Districts. Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

D. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.

D.E. Placement--Residential Districts.

1. *Side Setback Areas.*

- (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.
- (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
- (c) The space must be screened as required by 23.322.080.HG (Screening).
- (d) The location of the space shall minimize impact on usable open space.

2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:

- (a) The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
- (b) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

3. *Multifamily Buildings.*

- (a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
- (b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
- (c) The Zoning Officer may approve an AUP to grant an exception to this requirement.

E.F. *Placement--Non-Residential Districts.*

- 1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.
- 2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
- 3. *C-W District.*
 - (a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
 - (b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If

the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.

- (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
 - i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
 - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
 - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
 - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

G. Placement--ADU.

(a) On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or

(b) Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

F.H. Grade Change. This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

DIFFERENCE IN ELEVATION	MINIMUM SETBACK
Parking space lower than finished grade	
3 to 5 ft	4 ft.
Less than 3 ft	No min. setback
Parking space higher than finished grade	6 ft.

G.I. Screening.

1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

DISTRICTS	WHEN REQUIRED	REQUIRED SCREENING FEATURE	SCREENING FEATURE HEIGHT
All Residential Districts	2 or more parking spaces, or any parking space partly or entirely within a required rear setback area	Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways	4 ft. min and 6 ft. max.
All Commercial and Manufacturing Districts	2 or more parking spaces	Wall, fence, or evergreen shrubbery hedge in a landscape strip	Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max.

2. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

H.J. Landscape Buffers.

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

DISTRICT/NUMBER OF SPACES	MINIMUM WIDTH OF LANDSCAPE STRIP	
	AREAS ADJACENT TO SIDE OR REAR LOT LINES	AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE
Residential Districts		
1-3 spaces	2 ft.	2 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Commercial and Manufacturing Districts		
1 space	None required	None required

2-3 spaces	2 ft.	3 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Note: [1] Calculated as average width along the full length of landscape strip.		

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

H.K. *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

J.L. *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

K.M. *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

L.N. *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

~~M. *Residential Parking Lots in Non-Residential Districts.* Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.~~

N.O. *Carports.* A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 11. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read as follows:

C. *Accessory Dwelling Units.* The following alterations of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. New windows, doors, or other openings to a portion of a building or structure within a minimum required setback.
2. New windows, doors, or other openings to a portion of a building or structure exceeding the height limit.

Section 12. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read as follows:

4. Accessory Dwelling Unit (ADU). An attached or detached secondary dwelling unit that is located on the samea lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation in a zoning district where residential uses are permitted and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Junior Accessory Dwelling Unit (Junior ADU). A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A Junior ADU must include a separate exterior entrance and, at minimum, an efficiency kitchen with a working refrigerator. A Junior ADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.

(a) with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

(b)(a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

Section 13. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read as follows:

8. *Addition, Residential.* The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional

residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:

- (a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
- (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
- (c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
- (d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
- ~~(d)~~(e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 14. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read as follows:

9. *Addition, Major Residential.*

- (a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
 - i. Additions that are entirely subsumed within previously existing floor area; and
 - ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.
- (b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
- (c) Any new floor area, except as exempted under (9)(a). shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 15. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read as follows:

1. *Efficiency Kitchen.* A ~~kitchen that includes a sink, a~~ cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 16. That Berkeley Municipal Code 23.502.020(J) is amended to read as follows:

J. "J" Terms.

~~*Junior Accessory Dwelling Unit (JADU).* A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single Family Dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

Section 17. That Berkeley Municipal Code 23.502.020(N)(1) is amended to read as follows:

N. "N" Terms.

1. *New Construction.* Construction of a new main building or accessory dwelling unit.

Section 18. Severability.

If any provision or clause of this Ordinance or any application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this Ordinance. To this end the provisions and applications of this Ordinance are severable, and the Council of the City of Berkeley hereby declares that it would have passed this Ordinance and each provision or clause without regard to whether any other portion of this Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 19. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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October 17, 2022

Jordan Klein, Director
Planning and Development Department
1947 Center Street, 3rd Floor
City of Berkeley, CA 94704

Dear Jordan Klein:

RE: Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2)

Thank you for submitting the City of Berkeley's (City) accessory dwelling unit (ADU) Ordinance Nos. 7,797-N.S. and 7,799-N.S. (collectively, Ordinances), both adopted on February 8, 2022, to the California Department of Housing and Community Development (HCD). The Ordinances were received on February 23, 2022. HCD has reviewed the Ordinances and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinances do not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than November 17, 2022.

The Ordinances address many statutory requirements; however, HCD finds that the Ordinances do not comply with State ADU Law in the following respects:

Ordinance No. 7,797-N.S.

- Section 23.502.020.E.1 and J.1 – *Efficiency Kitchen* – The Ordinance defines efficiency kitchen as including a sink and having a working refrigerator. However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed and statute does not specify any type of appliances, thereby creating more options to satisfy the appliance requirement. Efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food preparation counter and storage cabinets that are in reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B).) The City must remove the sink requirement as well as the reference to a working refrigerator to comply with existing statute.

Jordan Klein, Director
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Ordinance No. 7,799-N.S.

- Section 12.99 – *Wildfire Hazard Evacuation Risk Mitigation Ordinance* – To restrict ADUs and Junior Accessory Dwelling Units (JADUs) in the Hillside Overlay District, the Ordinance relies on a local agency’s ability to designate areas where ADUs may be permitted based on the impact on traffic flow and public safety per Government Code 65852.2, subdivision (a)(1)(A). The Ordinance provides general information regarding the Hillside Overlay District and its topography and location within Berkeley’s Very High Fire Hazard Severity Zone (VHFHSZ). In addition, the Ordinance refers to a study published by UC Berkeley, and upon further communication by HCD with the City on March 4, 2022, the City provided information regarding a traffic simulation study (*Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California, Wong, 2021*) conducted within the Hillside Overlay District.

However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the City has not adequately demonstrated that new ADUs will actually impact public safety in the VHFHSZ. The traffic simulation study is not specific to ADUs and JADUs, and therefore its information and conclusions do not adequately justify the restriction of ADUs in the Hillside Overlay District per Government Code 65852.2, subdivision (a)(1)(A). Specifically, the City relies on the study, which looks at total vehicular use, to conclude that additional ADUs will create an evacuation hazard. This study, however, does not provide data on how many lots are likely to add ADUs or what specific impact new ADUs might have on evacuations. Moreover, the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs.

Furthermore, even if the City would provide adequate justification for this restriction on ADUs under this subdivision, the City may not justify such a restriction on ADUs that fall under subdivision (e), as local development standards (such as an area restriction based on VHFHSZ designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

In summary, the City must remove these restrictions and permit applications pursuant to Government Code 65852.2, subdivisions (a) and (e).

Jordan Klein, Director

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- Section 12.99.030 – *Total Number of Units Permitted* – The Ordinance limits the number of units allowed per lot in the Hillside Overlay District to one ADU or JADU. However, this limitation conflicts with the Government Code section 65852.2, subdivisions (e)(1)(A) and (B), requirement to allow for both an ADU and JADU on a lot with a proposed or existing single-family dwelling, should certain conditions be met. In addition, this limitation conflicts with Government Code section 65852.2, subdivisions (e)(1)(C) and (D), for lots with existing multifamily structures. The City must amend this prohibition to explicitly permit applications per Government Code 65852.2, subdivision (e).

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinances to comply with State ADU Law or adopt the Ordinances without changes. Should the City choose to adopt the Ordinances without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinances comply with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinances into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinances into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinances and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 916-776-7541 or at mike.vangorder@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: May 3, 2023

TO: Members of the Planning Commission

FROM: Zoe Covello, Assistant Planner
Grace Wu, Principal Planner

SUBJECT: Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) to Conform to Current State Law and Guidance from the California Department of Housing and Community Development

RECOMMENDATION

Planning Commission is asked to hold a public hearing, receive and provide comment on the proposed Zoning Ordinance amendments pertaining to Accessory Dwelling Units and Junior Accessory Dwelling Units, and make a recommendation for consideration by the City Council.

SUMMARY

City staff have prepared amendments to Title 23 (Zoning Ordinance) of the Berkeley Municipal Code (BMC) in response to: (a) recent changes in State laws pertaining to Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) that took effect on January 1, 2023, and (b) feedback from the California Department of Housing and Community Development (HCD) finding that the City of Berkeley's current ADU ordinance does not comply with State law.

These amendments will serve to bring the City's ADU ordinance into compliance with current State law and HCD guidance.

This report provides:

1. Background on Berkeley's existing ADU ordinance and fire safety concerns;
2. A summary of new State ADU Law;
3. A summary of HCD's finding of noncompliance and staff's proposed response for addressing the issues raised; and
4. Proposed Zoning Ordinance amendments and rationale.

BACKGROUND

ADU Regulations in the City of Berkeley

The City of Berkeley's current ADU Ordinance was amended in accordance with the State of California law (Government Code Sections 65852.2¹ and 65852.22²) and took effect on March 17, 2022. The primary ordinance regulating ADU development in the City is Berkeley Municipal Code (BMC), Chapter 23.306: Accessory Dwelling Units. This chapter allows ADUs on properties located in a zoning district that permits residential use, and provides development standards based on the location of the property. The ordinance currently includes separate development standards for properties that are located in certain zoning districts within the Hillside Overlay [R-1(H), R-2(H), R-2A(H)] and the ES-R district.

In addition to Chapter 23.306, the City adopted Chapter 12.99: Wildfire Hazard Evacuation Risk Mitigation Ordinance, which serves to *"permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas"* in accordance with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."³

Chapter 12.99 was adopted in response to a short-term Council referral in January 2021. The referral provided direction to amend the local ADU zoning ordinance and Berkeley's Fire Code, requesting that a set of ordinance amendments and implementation programs be evaluated and recommended to Council to address emergency access and egress. The referral also requested parking and objective development standards to address the constraints presented by the high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.

In response to the January 2021 referral, Planning and Development Department staff proposed revisions to development standards to limit allowable ADU size and increase front yard setbacks in the City's Very High Fire Hazard Severity Zone, which encompasses a significant portion of the Hillside Overlay.

On April 7, 2021, the Planning Commission held a public hearing and recommended staff's proposed amendments to City Council, adding that the maximum height for ADUs be increased from 16 feet to 18 feet. City Council adopted Chapter 23.306 (Accessory Dwelling Unit Ordinance) as submitted by the City Manager with amendments from

¹ Government Code Section 65852.2,
<https://leginfo.ca.gov/faces/selectFromMultiples.xhtml?lawCode=GOV§ionNum=65852.2>

² Government Code Section 65852.22,
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65852.22

³ Prior to adopting Chapters 23.306 and 12.99, the City had previously prohibited the construction of ADUs in the ES-R district (Zone 3) and on any lot with frontage on a roadway of less than 26 feet width in the Hillside Overlay, subject to discretionary review. After the ADU ordinance adopted in December 2019 expired on December 4, 2020, the City had been operating without any local provisions for ADUs; all ADUs in residential districts were regulated only by State law, allowing their development without regard to street width or parking.

Councilmember Kesarwani.⁴ City Council further amended the ordinance with regards to the three-year rolling date for ADU conversions and the addition of balconies to prohibited projections.

On October 26, 2021, City Council referred to the City Manager a request to develop a set of public safety regulations that address public safety issues stemming from new development in fire-prone areas. Those safety regulations resulted in the adoption of Chapter 12.99 (Wildfire Hazard Evacuation Risk Mitigation Ordinance) on January 25, 2022.

2022 State ADU Law Updates - SB 897, AB 2221, and AB 2097

Three new State ADU laws took effect January 1, 2023, codified in Government Code section 65852.2 pertaining to ADUs, necessitating an update to the City of Berkeley's ADU ordinance. These new State ADU laws relate to:

1. **Maximum height limits.** SB 897⁵ increases ADU height standards for both attached and detached ADUs in the following circumstances:
 - o An attached ADU on a lot in any permissible zoning district shall have a height limitation no less than 25 feet.
 - o A detached ADU that is located either on a lot in any permissible zoning district that is within a 0.5 mile of a major transit stop or high-quality transit corridor as defined in Public Resources Code (PRC) Section 21155 or on a lot with an existing or proposed duplex or multi-family, multi-story (two or more stories) building shall have a height limitation of no less than 18 feet. An additional two feet (totaling 20 feet maximum height) is allowed for a detached ADU on a lot in any permissible zoning district that is within 0.5 miles of a transit stop or high-quality transit corridor as defined in PRC Section 21155 to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
2. **Prohibiting development standards that preclude 800 square foot ADUs.** Under AB 2221⁶, local agencies are prohibited from establishing lot coverage, floor area ratio, open space, or minimum lot size standards that would physically preclude construction of an 800 square foot ADU, including a minimum front setback.
3. **Required connections between a Junior ADU and the main dwelling unit.** SB 897 requires both a separate entrance to the Junior ADU from the main entrance to the structure and an interior connection to the main living area of the

⁴ Councilmember Kesarwani's amendments included protection for non-habitable space in multi-family buildings, clarified rules that apply to Accessory Structures being converted into ADUs, clarified owner occupancy requirements for JADUs, and modified noticing requirements for tenants and neighbors. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-01-18%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

⁵ Senate Bill 897, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB897.

⁶ Assembly Bill 2221, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2221.

single family dwelling if a Junior ADU shares sanitation facilities with the primary dwelling unit.

- 4. Changes to off-street parking related to ADUs.** While parking may be provided voluntarily, per AB 2097⁷ no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. Note, the existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit.⁸

The proposed revisions to the zoning ordinance reflect these changes, which can be found in the Discussion section below.

2022 Letter from HCD Requesting Amendments to the City's ADU Ordinance

On October 17, 2022, the City received a letter from HCD stating that they had reviewed the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") and found that the Ordinances do not comply with Government Code Section 65852.2 (see **Attachment 4**).

Efficiency Kitchen Definition

HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."

Wildfire Hazard Evacuation Risk Mitigation Ordinance

Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU development impacts on traffic flow and public safety when the City adopted limitations on the quantity and size of ADU development in the Hillside Overlay.

HCD asserts that the traffic simulation study referenced in Chapter 12.99 is not specific to ADUs and Junior ADUs and therefore cannot be used to justify the restriction on the number of ADUs in the Hillside Overlay. Additionally, the traffic simulation study does not provide data on how many lots are likely to add ADUs, does not identify specific impacts new ADUs may have on evacuations, and does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay. Furthermore, HCD adds that even if the City adequately justified the restriction of ADUs under this subdivision, it may not justify restrictions on ADUs that fall under subdivision (e) because local development standards do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

⁷ Assembly Bill 2097, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2097.

⁸ GOV 65852.2(j)(11) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

Government code section 65852.2, subdivision (e) requires local agencies to ministerially approve building permit applications for the creation of ADUs within a residential or mixed-use zone.

Regarding Section 12.99.030 – *Total Number of Units Permitted*, HCD asserts that the City’s decision to limit the number of units allowed per lot in the Hillside Overlay to one ADU *or* one Junior ADU conflicts with Government Code Section 65852.2, subdivisions (e)(1)(A), (B), (C), and (D), which requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one ADU *and* one Junior ADU per lot.

DISCUSSION

To conform to State ADU law and respond to HCD’s letter, staff recommend amendments to Title 23 of the BMC that achieve the following purposes:

1. Remove standards that provide a distinction between parcels within and outside of the Hillside Overlay, and apply non-Hillside Overlay ADU standards citywide where residential uses are permitted⁹;
2. Bring the City’s zoning code into compliance with current State ADU law and guidance, including SB 897, AB 2221, and AB 2097; and
3. Clarify and/or correct minor technical edits associated with the related ordinance sections, and edit for consistency with existing BMC style guidelines.

23.106 Rules of Measurement

Consistent with the State Exemption ADU provisions of Subdivision (c) in Government Code 65852.2, staff propose amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area associated with an existing or proposed ADU or Junior ADU from lot coverage and gross floor area calculations. Presently, once an ADU is built, it counts towards lot coverage, which can mean that even minor future additions would require a Use Permit. By amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area, the regulation is consistent with State law, removes a barrier to development, and aligns with the State’s goal of incentivizing the development of ADUs.

23.306 Accessory Dwelling Units (Organization)

The proposed ordinance simplifies the ADU Chapter by consolidating seven sections into four, maintaining consistency with other Chapters of Title 23 (**see Table 1**).

⁹ Staff will also recommend to City Council to repeal BMC Section 12.99. However, as this public hearing is only pertaining to Title 23 of the BMC, this action is not up for discussion this evening.

Table 1: Chapter 23.306 - Existing and Proposed Sections

Existing Sections	Proposed Sections
23.306.010– Purposes	23.306.010– Purpose
23.306.020– Applicability and Definitions	23.306.020– Applicability
23.306.030– Permit Procedures	23.306.030– Development Standards
23.306.040– Development Standards	23.306.040– Permit Procedures
23.306.050– Deed Restrictions	
23.306.060– Neighbor Noticing	
23.306.070– Rooftop Decks and Balconies	

23.306.010 Accessory Dwelling Units (Purpose)

The proposed ordinance adds a reference to the latest California Government Code Section 65852.1 and removes subsection (f) which states that the purpose of the chapter is to reduce potential impacts of new development in the Very High Fire Hazard Severity Zones (VHFHSZ), Wildland-Urban Interface Fire Areas, and Hillside Overlay. This allows for compliance with HCD’s finding that the current ordinances do not meet the exceptions included in State law that allow for the creation of a separate set of regulations in the Hillside Overlay.

23.306.020 Accessory Dwelling Units (Applicability)

The proposed ordinance removes subsection (b), which defines the Hillside Overlay for the purposes of this chapter, and removes the reference to Chapter 12.99, to comply with HCD’s finding that the City does not sufficiently justify the creation of a separate set of regulations in the Hillside Overlay.

The proposed amendment includes a new subsection clarifying that ADUs and Junior ADUs do not count towards density calculations established by the underlying zoning districts. This is consistent with HCD guidance in the HCD ADU Handbook Update.¹⁰

Staff also propose amending the maximum number of units permitted on a lot with a duplex or multi-family dwelling to allow for two detached ADUs *and* at least one interior ADU (**see Table 2**). In 2022 HCD changed its interpretation regarding the total number of ADUs that "must" be allowed by local governments on any given parcel. Whereas in the 2020 ADU Handbook, HCD wrote that "local governments are not required to allow (a) and (b) together or (c) and (d) together," in the 2022 ADU Handbook HCD rewrote that "local governments must allow (a) and (b) together or (c) and (d) together." Although this change in HCD's interpretation is not supported by any corresponding change in state law, the proposed ordinance is drafted to be consistent with HCD's new interpretation.

¹⁰ HCD Accessory Dwelling Unit Handbook, <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

Table 2: Existing and Proposed Maximum Density Standards on a Lot with a Duplex or Multi-Family Dwelling

Existing Maximum Density	Proposed Maximum Density
Either: a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.	Two detached ADUs <u>and</u> at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot

23.306.030 Accessory Dwelling Units (Development Standards)

In response to HCD’s letter and to bring the development standards section into compliance with State law, staff propose removing standards that are specific to parcels located in the Hillside Overlay. Instead, the development standards apply to ADUs and Junior ADUs citywide.

Staff also recommend a number of technical revisions to the development standards section, including: removing Junior ADU standards from the development standards table and including all relevant information in subsection (B), as well as replacing footnotes from the development table with a subsection for supplemental standards.

Within subsection (C), staff propose technical edits to amend the provisions related to projections to align with other sections of the code, including permitting bay windows and balconies on attached ADUs outside of the Hillside Overlay as long as there remains at least a two-foot setback from property lines, as the code allows for non-ADUs of the same placement and size to have both. However, because detached ADUs are permitted to be built much closer to the property line than primary dwelling units (and attached ADUs), staff propose continuing to prohibit the projections of bay windows and balconies into setbacks for those types of ADUs citywide.

In addition to these technical revisions, a number of the standards have been changed to match State law. **Table 3** provides the proposed development standards and the rationale informing the recommended changes. This table does not include all ADU development standards; it only includes the standards that are proposed to be amended.

Table 3: Proposed Revisions to ADU Development Standards & Rationale

Basic Standard	Proposed Standards	Rationale/Intent
Building Height, Maximum	Detached, New Construction – 20 ft.	The maximum building height for Attached, New Construction has been increased from 20 ft. to 25 ft. to match State law (SB 897). The current maximum building height for Detached New Construction already exceeds the 18 ft. required by State law.
	Attached, New Construction – 25 ft.	
Lot Line Setbacks, Minimum	Front of Interior Lot – Same as underlying district	Staff propose adding a standard for front setbacks on through lots to ensure that there are standards for such parcels, consistent with existing regulations for Accessory Buildings.
	Front of Through Lot - Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	
Building Separation for Detached ADU, Minimum	3 ft.	To conform with Building Code's definition of attached versus detached buildings, staff propose adding a minimum building separation standard (in addition to a Detached ADU supplemental standard – see below).
Required Off-Street Parking Spaces	See 23.322.030 – Required Parking Spaces	Move to BMC 23.322 – Parking and Loading to be consistent with other parking standards.
Supplemental Standard		
State Exemption ADU	No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit.	To match the State Law.
Junior ADU Shared Sanitation Facility	If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.	To match the State Law.
Junior ADU Floor Area	The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.	To clarify the rules of measurement for gross floor area if a sanitation facility is shared.
Detached or Attached ADU	If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached.	See the rationale/intent for establishing a Building Separation, Minimum (above).

- **AUP for Addition over 14 feet.** While this section does not regulate residential additions, staff note that attached ADUs proposed as residential additions over 14 feet would be required to receive AUP approval in order to reach their maximum allowable height (they can now go up to 25 feet – see Table 3).¹¹ Removing the AUP process would be in keeping with the State's intent to streamline the ADU development process and further remove barriers to

¹¹ Residential additions can go up to 14 ft., but require an AUP to go up to 28 ft.

development. The Planning Commission is asked to consider removing the AUP requirement for residential additions for attached ADUs.

23.306.040 Accessory Dwelling Units (Permit Procedures)

Under the current procedure, it is required that notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission of a building permit to the Planning Department, and shall include the project address, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor. The cost of materials, postage, and staff time is paid for by the applicant – currently a fixed fee of \$460.

The requirement for neighbor noticing presents a number of challenges for staff, applicants, and members of the public. ADU permits are building permits, and cannot be printed out or shared online with members of the public (unlike zoning permits). For neighbors interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public ultimately do not have a means of providing feedback on or appealing a proposed ADU. Staff have found there is often an expectation from public posting or receiving notice of a proposed ADU that there is a public review process involved, and there is not.

- **Neighbor Noticing.** While staff made no changes to Neighbor Noticing, with the exception of moving it to the Permit Procedures section, staff are asking Planning Commission to consider removing the Neighbor Noticing requirement.

23.322.020 Parking and Loading (Applicability)

Per AB 2097, no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. The City of Berkeley's existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit. To comply with AB 2097, staff recommend adding a location exemption for parking, which would state that "Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2." This change will also be brought as a part of the State Law Technical Edits ordinance amendments package, which is why it is shown in blue in **Attachment 1**.

Staff propose amending BMC Tables 23.322-1, 23.322-2, and 23.322-4 to specify off-street parking standards for ADUs in Residential, Commercial, and Manufacturing Districts (previously specified in Chapter 23.306). Staff also propose amending Table 23.322-1 to bring the residential off-street parking standards into compliance with State law by allowing for one parking space per ADU unless it is located within 0.5 miles of

public transit as defined in Section 21155 of the Public Resources Code or it satisfies the criteria defined in subdivision (d) of Government Code Section 65852.2.

BMC 23.322.080(E)(2) Other Setback Areas

This section, formerly referred as BMC 23.322.080(D)(2), is recommended to be amended to include the following standards:

- a. On a lot with an existing or proposed ADU, replacement of off-street parking for the main building or required off-street parking for an ADU, is allowed in any configuration on the lot, including within the front yard setback; or
- b. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

Currently, parking flexibility only applies to replacement parking for main dwelling units and new parking provided for an ADU. To account for ADU projects seeking to provide new parking spaces for both the main dwelling and the ADU, staff propose allowing for the same flexibility in lot configuration for the main dwelling unit's proposed new parking space as is allowed for the ADU's parking space. Encouraging off-street parking in the Hillside Overlay can mitigate safety and evacuation access concerns.

23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

Notably, in the current ADU ordinance, minor alterations in nonconforming setbacks, such as for windows and doors, as well as minor excavations, require an AUP. To reduce the amount of process, time, and money for staff and applicants seeking to make minor alterations to their ADUs, staff propose allowing "by-right" alterations to nonconforming existing structures or buildings that are proposed to be converted to an ADU. Staff proposes to add BMC 23.324.060(C) to include the following standards:

C. Accessory Dwelling Units. The following additions or enlargements of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. Alterations of a portion of a building or structure (including windows and other openings) within a minimum required setback.
2. Alterations of a portion of a building or structure (including windows and other openings) exceeding the height limit.

23.502.020 Defined Terms

Junior ADU. Staff proposes relocating the definition for "Junior Accessory Dwelling Unit" within the definition of "Accessory Dwelling Unit" and striking out the reference to a working refrigerator in response to HCD's findings.

Addition, Major Residential. The definition for “Addition, Major Residential” is recommended to be amended to add a subsection that exempts the floor area associated with an existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet, from qualifying. This would eliminate the requirement for an AUP to add an ADU or Junior ADU to a house, thus matching the State’s intent of streamlining the processing of ADU development locally.

Efficiency Kitchen. The proposed ordinance amends the definition of an “Efficiency Kitchen” by removing the requirement for a sink in response to HCD’s findings.

ENVIRONMENTAL REVIEW

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).

NEXT STEPS

Staff recommend that Planning Commission adopt the proposed revisions. The next step will be to advance these proposed revisions – as well as repeal of Chapter 12.99 – to City Council.

Public safety remains a significant concern regarding increasing density in the Hillside Overlay. As stated in California Government Code Section 51175, the Legislature has found that wildfires pose a serious threat to the preservation of the public peace, health and safety. The legislature has determined that it is necessary that all levels of government work to implement preventive measures to ensure the preservation of the public peace, health, and safety.

Due to these state- and locally-recognized safety concerns, staff are working with the Fire Department to collect additional data on the health and safety impacts of increased development in the Hillside Overlay. On March 14, 2022, the Fire Department was authorized by the City Manager to execute a contract with KLD Engineering, P.C., for Evacuation and Response Time Modeling from April 1, 2023 through June 30, 2024 as part of an effort to collect data and forecast the number of vehicles and people that may need to be evacuated during a wildfire or other emergency.¹² The study will also be analyzing how major evacuation routes will operate under emergency conditions, and whether there would be any public safety impacts resulting from projected development of new ADUs, Junior ADUs, and their associated extra vehicles in the Very High Fire Hazard Severity Zone.

In addition to this study, the City is in the process of updating the Disaster and Safety Plan, which will similarly provide an opportunity to collect data and engage community

¹² Revised Agenda, Berkeley City Council Meeting, March 14, 2023. Item 4: Contract: KLD Engineering, P.C. for Evacuation and Response Time Modeling From: City Manager. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2023-03-14%20REVISED%20Agenda%20Packet%20-%20Council%20%28WEB%29.pdf>

members, which could inform the making of findings to support the reinstatement of provisions or other controls on ADU production in the hills.

Staff plan to bring the Fire Department's study findings, as well as other potential research and community engagement findings, back to Planning Commission and City Council by summer 2024.

ATTACHMENTS

1. Draft Amended Ordinance
2. Ordinance No. 7,797-N.S. (Chapter 23.306), dated January 18, 2022.
3. Ordinance No. 7,799-N.S. (Chapter 12.99), dated January 25, 2022.
4. Letter from HCD - Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2), dated October 17, 2022.
5. Public Hearing Notice

NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL

Adoption of Zoning Ordinance Amendments to Title 23 and Repeal of Chapter 12.99 of the Berkeley Municipal Code to bring the Accessory Dwelling Unit (ADU) Ordinance into Compliance with State Law & Guidance

The Department of Planning and Development is proposing Zoning Ordinance Amendments to Title 23 and the repeal of Chapter 12.99 of the Berkeley Municipal Code to respond to recent changes in Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) State laws that took effect on January 1, 2023 and a letter from the California Department of Housing and Community Development (HCD) requiring the City of Berkeley take action to bring its Ordinance into compliance with State ADU Law. The amendments would modify the following sections: BMC Chapter 12.99 and Sections 23.106 (Rules of Measurement), 23.306 (Accessory Dwelling Unit (ADU) Ordinance), 23.322 (Parking and Loading), 23.324.060 (Exemptions to Nonconforming Uses, Structures, and Buildings), and 23.502.020 (Defined Terms) relating to ADUs. The proposed amendments also include conforming technical edits to the BMC (for example, renumbering of tables and figures).

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h), the adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.

The hearing will be held on **Tuesday, July 25, 2023 at 6:00 PM.** in the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at www.berkeleyca.gov as of **July 13, 2023.** **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Zoe Covello, Assistant Planner, at 510-981-7418.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov 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@berkeleyca.gov for further information.

Published: July 14, 2023 – The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 13, 2023.

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Mark Numainville, City Clerk



Internal



Office of the Mayor

ACTION CALENDAR  
September 19, 2023

To: Honorable Members of the City Council

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

Subject: Authorizing the City Attorney to Submit an Amicus Brief in Support of the UC Regents in *Make UC a Good Neighbor v. Regents of University of California*

RECOMMENDATION

Adopt a Resolution Authorizing the City Attorney to submit an amicus brief in support of the University of California Regents' in *Make UC a Good Neighbor v. The Regents of University of California*, currently before the California State Supreme Court on appeal.

BACKGROUND

In 2021, *Make UC a Good Neighbor* filed a lawsuit against the Regents of University of California, arguing that the Environmental Impact Report (EIR) for the University's planned development at People's Park and its 2021 Long Range Development Plan violates the California Environmental Quality Act (CEQA). In August 2022, the Alameda County Superior Court ruled that construction could proceed, and that the proposed development does not violate CEQA. However, construction was placed on pause, and shortly following an appeal by the plaintiff, the State Court of Appeals issued a stay order pausing construction.

On February 24, 2023, the California Court of Appeals in the First District issued a ruling that effectively halted the proposed project at People's Park by noting that student residents generate negative external impacts due to noise, and that these impacts must be mitigated by the University. Such noise is argued to have the potential to disrupt neighboring residential areas, despite the fact that such concerns are already addressed through the City of Berkeley's Noise Ordinance and UC Berkeley's Residential Code of Conduct. In addition, the decision ruled that the University did not conduct a thorough review of alternative sites in addition to People's Park for the planned housing project. Shortly after the ruling, the University announced its intent to appeal the decision to the California Supreme Court. The ruling received widespread condemnation, including from the Governor and Lieutenant Governor.

On March 21, 2023, the Berkeley City Council authorized the City Attorney to file an amicus curiae letter in support of UC's petition for review in the California State Supreme Court, a copy of the filed amicus letter is attached. The University appealed the decision

to the Supreme Court in April, and the court granted review shortly thereafter. The case is currently pending before the State Supreme Court for adjudication.

On August 28, 2023, the California State Legislature approved Assembly Bill (AB) 1307, which amends the Public Resources Code to clarify that the noise generated by the occupants or guests of a housing project is not a significant impact required to be studied under CEQA. The bill also provides that an EIR need not consider alternatives to the project if specific conditions are met. Senate amendments provide that a public university need not study alternative locations for a residential or mixed-use project if it is on a site of no more than 5 acres and surrounded by urban uses and the project has been evaluated in a recent EIR for the campus long-range development plan. The bill is now on Governor Newsom's desk for signature. If signed, the bill would take effect immediately.

Despite the passage of AB 1307 which amended CEQA to clarify two key findings in the case, the issue still needs to be adjudicated in the Supreme Court before construction of the People's Park housing project can commence.

The Supreme Court must apply the new statute to this case and determine that the EIR for the project met legal requirements. The trial court determined that the EIR was legally adequate, and the city's contention is that the EIR meets legal requirements and adequately studies and mitigates any impacts.

Resolution of this case is critical to advance an important project providing over 1,000 beds of needed student housing and 125 units of permanent supportive housing. The City has committed \$14.5 million in housing funds to support the construction of the 125 unit supportive housing project at People's Park. It is in the city's interest to intervene in this case and file an amicus brief in support of UC's position.

#### *Rationale for recommendation*

The construction of this development is essential to reducing strain on our housing market and providing needed housing for our unhoused residents. The City has partnered with the University to ensure that its development of the People's Park site serves the interests of students, of the Berkeley community, and especially of unhoused residents. The University's development plans for the site will provide over 1,000 units of urgently needed housing for students and over 100 units of permanent supportive housing for unhoused residents.

A portion of the planned development on People's Park will be set aside for the construction of a permanent supportive housing development that will end homelessness for dozens of unhoused residents by providing over 100 units of badly needed permanent supportive housing (PSH). The City has already committed \$14.5 million<sup>1</sup> to the construction of this planned permanent supportive housing. Permanent supportive

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<sup>1</sup> [2021 Housing Trust Fund Request for Proposals Funding Reservations](#)

Internal

Authorizing Amicus Brief in Support of the UC Regents

ACTION CALENDAR

September 19, 2023

housing has been proven to end homelessness by combining wraparound services with stable, permanent housing for unhoused people.<sup>2</sup>

In addition to committing funding to the permanent supportive housing project that will be built on-site, the City is working in partnership with the University to provide temporary housing at the former Rodeway Inn for unhoused residents who previously resided at People's Park.

The City has committed millions of dollars to providing housing to the unhoused residents who previously resided at People's Park — both by committing to fund the permanent supportive housing development the University is planning on-site and by partnering with the University to make the Rodeway Inn available as temporary housing and, now, potentially as permanent supportive housing.

In addition to the impact this decision has on the People's Park project, this new interpretation of CEQA concluding that the noise impacts of the residents of a housing project must be studied and mitigated has the potential to delay or derail the construction of student housing off-campus in the city's jurisdiction. The City is currently developing new zoning in the Southside area immediately adjacent to the UC Berkeley campus. This decision could enable parties who oppose student housing, affordable housing or any kind of residential or commercial development to delay projects arguing that noisy occupants are an environmental impact.

#### FINANCIAL IMPLICATIONS

This resolution has no direct financial implications. However, further delay of the University's development project at People's Park may cause the City to incur costs to continue temporarily housing unhoused residents, in addition to additional staff time.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Councilmember Rigel Robinson 510-981-7170

#### Attachments:

1: Resolution

2: April 20, 2023 Amicus Curiae Letter in Support of Petition for Review in Make UC a Good Neighbor et al. v. The Regents of the University of California (Resources for Community Development)

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<sup>2</sup> [Permanent Supportive Housing - National Alliance to End Homelessness](#)

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

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE AN AMICUS BRIEF IN SUPPORT OF THE UC REGENTS PETITION FOR REVIEW IN *MAKE UC A GOOD NEIGHBOR V. THE REGENTS OF UNIVERSITY OF CALIFORNIA*

WHEREAS, students are an essential part of the community of the City of Berkeley; and

WHEREAS, the City of Berkeley has committed \$14.5 million to the construction of permanent supportive housing units to provide essential permanent housing to unhoused community members in the University's planned housing development at People's Park; and

WHEREAS, The University of California has demonstrated through a thorough environmental impact report its commitment to identifying and mitigating any impacts caused by the housing development at People's Park; and

WHEREAS, the February 23, 2023 decision by the Court of Appeals of the State of California states that the Regents of University of California ought to have considered alternative sites in their CEQA analysis; and

WHEREAS, the February 23, 2023 decision also interprets student noise to be an admissible negative impact under the California Environmental Quality Act; and

WHEREAS, on March 21, 2023, the Berkeley City Council authorized the City Attorney to file a letter in support of the UC Regents' petition for review in the California Supreme Court. The city's amicus letter was filed on April 20, 2023; and

WHEREAS, the California State Supreme Court granted review of the case in April and it is pending hearing in the court; and

WHEREAS, the court concluded that the noise impacts of the residents of a housing project must be studied and mitigated has the potential to delay or derail the construction of student housing off-campus in the city's jurisdiction; and

WHEREAS, the City is currently developing new zoning in the Southside area immediately adjacent to the UC Berkeley campus; and

WHEREAS, this decision could enable parties who oppose certain student housing, affordable housing or residential or commercial developments to delay projects arguing that noisy occupants are an environmental impact; and



WHEREAS, on August 28, 2023, the California Legislature gave final passage to Assembly Bill 1307 (Wicks) which amends the Public Resources Code to clarify that the noise generated by occupants or guests of a residential housing project is not an impact under CEQA. The bill also clarifies that if a university has studied a residential project in an EIR for a long-range development plan, analysis of additional project locations is not needed; and

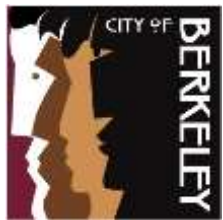
WHEREAS, the bill is currently on Governor Newsom's desk for signature. If adopted, it would take effect immediately; and

WHEREAS, Given the adoption of AB 1307, the Supreme Court must apply the new law to this case, if the bill is signed by the Governor. The Court must also find that the project EIR is legally adequate; and

WHEREAS, the City's contention is that the project EIR is legally adequate and is the result of several years of public input including written comments by the City and verbal comments by the City Council; and

WHEREAS, given the critical shortage of student housing and affordable housing, it is in the City's interest to intervene in this case in support of the UC Regents in order to ensure that the People's Park housing project can proceed to construction.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Attorney is hereby authorized to submit an amicus brief in support of the UC Regents in the Supreme Court of the State of California in *Make UC a Good Neighbor v. The Regents of University of California*.



Office of the City Attorney

April 20, 2023

Chief Justice Patricia Guerrero and  
Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: Supreme Court Case No. S279242: Amicus Curiae Letter in Support of Petition for Review in *Make UC a Good Neighbor et al. v. The Regents of the University of California (Resources for Community Development)*

Dear Honorable Chief Justice Patricia Guerrero and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, the City of Berkeley respectfully requests that the Supreme Court grant the Petition for Review of filed in *Make UC a Good Neighbor et al. v. The Regents of the University of California (Resources for Community Development)*, Supreme Court Case No. S279142.

The Petition seeks review of the published opinion of the Court of Appeal, First District, Division Five, which held that Petitioner The Regents of the University of California (“the Regents”) violated the California Environmental Quality Act (“CEQA”) by not analyzing the potential noise impacts of constructing urgently needed student housing at the University of California, Berkeley (“UC Berkeley”). As the Petition states, this holding could set new and dangerous precedent that public agencies must analyze and mitigate not just environmental impacts of projects, but also perceived social impacts that may be caused by their intended occupants as well. This added layer of analysis, coupled with the potential for stereotypes and biases to affect it, finds no basis in CEQA—the State’s principal *environmental* protection law—and could significantly disrupt and delay much-needed housing development across the state. For this reason, the City of Berkeley urges the Court to grant the Petition for Review.

## **I. Statement of Interest of Amicus Curiae**

The City of Berkeley is a charter city duly organized and existing under Government Code sections 34000, et seq. It is also the home of UC Berkeley. As such,

Chief Justice Patricia Guerrero  
and Associate Justices  
April 20, 2023  
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the City is keenly aware of the need for additional, on-campus student housing. The lack of such student housing at UC Berkeley has had ripple effects throughout the community for years. Not only does it lead to significant disadvantages for UC Berkeley students—ranging from unaffordable housing to overcrowded living conditions off-campus to student homelessness—but it also places significant strain on the City’s housing market for other residents, increasing housing prices and displacing long-time members of the community. According to the Turner Center for Housing Innovation at UC Berkeley, “Racial disparities in the region’s migration patterns are pronounced: Hispanics and Blacks make up a disproportionately large share of low-income out-movers, and are more likely than others to move to the more affordable parts of California.” available at: [https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Disparity\\_in\\_Departure.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Disparity_in_Departure.pdf)). The impacts of this housing strain are felt most acutely by the City’s historically disadvantaged, minority communities.

The City is also aware of the desperate need for supportive housing for the region’s unhoused residents. According to recent counts, there are nearly 1,000 people living without shelter in the City of Berkeley. City of Berkeley Homeless Count and Survey Comprehensive Report 2019 at 13 (available at [https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport\\_Berkeley\\_2019-Final.pdf](https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf)). When asked, approximately 42% of these unhoused residents indicated that they suffered from “psychiatric or emotional conditions,” while over 30% indicated they had drug or alcohol abuse issues and/or PTSD. *Id.* at 34. To address these issues, the City has prioritized “[c]reat[ion of] affordable housing and housing support services for our most vulnerable community members” in its long-term planning. (See City of Berkeley Strategic Plan, summarized at <https://berkeleyca.gov/your-government/our-work/strategic-plan>.)

Given this backdrop, the City strongly supported the Regents’ plan to build more than 1,000 units of student housing and more than 100 units of permanent supportive housing for unhoused residents on the UC Berkeley campus. The City worked with the Regents to ensure that this development would serve the interests of students and the community, especially its unhoused members.

In fact, the City committed \$14.5 million to the construction of the supportive housing project. Permanent supportive housing has been proven to end homelessness by combining wraparound services with stable, permanent housing for unhoused people. The City is also working in partnership with the Regents to provide temporary housing for unhoused residents who previously resided on the project site, which is known as People’s Park.

Because of the City’s geographic, historic, and financial connection to the project at issue in this case, it submits this letter in support of granting review.

Chief Justice Patricia Guerrero  
and Associate Justices  
April 20, 2023  
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**II. Review by this Court is necessary to ensure that CEQA analysis remains focused on environmental impacts, not social impacts perceived to be associated with particular groups of people.**

The Supreme Court may grant review of an appellate decision to secure uniformity of the law and to settle important legal questions. (California Rules of Court, rule 8.500, subd. (b)(1).) Here, the legal question at issue is whether the CEQA (Public Resources Code sections 21100 et seq.) requires public agencies to consider, analyze and mitigate potential project impacts caused by perceived social traits of the people who will ultimately inhabit the project. The court of appeal answered this question in the affirmative, opening the door to an entirely new realm of analysis—and entirely new bases for legal challenge under CEQA.

As the Petition notes, requiring this new analysis could dramatically impact the process for approving not only the project at issue in this case, but all projects designed to house groups of people that have historically been excluded from our communities due to racism, classism, and other prejudice. It does not require much imagination to envision the comment letters the City and others will face when processing future affordable housing projects, group homes, senior facilities, daycare centers, rehabilitation facilities, etc., if this ruling is allowed to stand. Not only could these comments slow down the development process substantially, but they may also require special “mitigation” for such impacts, making these much needed projects ever more expensive to develop.

CEQA does not require this result. The purpose of CEQA is to require public agencies to consider, minimize, and mitigate the *environmental* impacts of their actions. (*See, e.g.*, Pub. Resources Code, §§ 21100 [EIRs are required for projects that “may have a significant effect on the environment”], 21151.) Economic and social changes, on the other hand, are not required to be addressed under this statute. (*See, e.g.*, CEQA Guidelines §§ 15064, subdivision (e) [“[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment”], 15382 [“[a]n economic or social change by itself shall not be considered a significant effect on the environment”]; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 577 [CEQA does not require analysis of a project’s impacts on “community character”].)

The court of appeal’s decision to expand CEQA’s focus in this case and require analysis of impacts associated with student parties is especially misguided here, given that the purpose of the project is to alleviate overcrowding in student housing and reduce the need for students to live off-campus in Berkeley’s residential neighborhoods, where many of the noise complaints cited by the Court of Appeal occur. (*See, e.g.*, *Make UC a Good Neighbor v. Regents of the University of California* (2023) 88 Cal.App.5th 656, 686 [“noise from student parties is a problem in Berkeley’s residential neighborhoods near the campus”]; *id.* [“In 2007, the City of Berkeley found that parties *in residential*

Chief Justice Patricia Guerrero  
and Associate Justices  
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Page 4

*areas* “frequently become loud and unruly,” cause “excessive noise,” and constitute a public nuisance[.]) The City is directly involved with the issues of off-campus “mini-dorms,” which include large, single family homes in residential neighborhoods rented to numerous students with no oversight from the University, and adopted an ordinance regulating them due to their potential neighborhood impacts. (*See generally* Berkeley Municipal Code Chapter 13.42)

But the project at issue in this case is designed to address the reason why these problematic “mini-dorms” have sprung up in residential neighborhoods in the first place: the lack of sufficient *on-campus* student housing. (See Berkeley Municipal Code § 13.42.010(A).) The student housing proposed for People’s Park would be supervised, unlike these “mini-dorms,” with on-site Resident Assistants, Resident Directors, and a Residential Code of Conduct and a formal Residential Conduct Process. Thus, in addition to being inconsistent with the purpose of CEQA, the court of appeal’s decision also appears to mistake the remedy for the cause of the neighborhood impacts alleged in the case.

For all of these reasons, the City supports the Regents’ Petition for Review. Thank you for your consideration of our views.

Very truly yours,



Farimah Faiz Brown  
City Attorney





Rashi Kesarwani  
Councilmember, District 1

ACTION CALENDAR  
September 19, 2023

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

**FROM:** Councilmember Kesarwani (Author), Councilmember Taplin (Co-Sponsor), Councilmember Robinson (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

**SUBJECT:** Referral to Rezone Gilman Street to Maximize Revenue Productivity Per Acre

RECOMMENDATION

Refer to the City Manager and Planning Commission to rezone Gilman Street—a major thoroughfare for entering and exiting the City—from San Pablo Avenue to Interstate 80 to maximize revenue-generating and job-creating uses. Specifically, the rezoning of Gilman Street should consider the following:

- Potential for applying the Manufacturing, Research and Development (M-RD) zoning district currently planned for the Pacific Steel Casting site to a portion of Gilman Street. The M-RD zoning district seeks to better align with development interest by: allowing research and development, office, laboratory, and light manufacturing uses currently not permitted by the existing Manufacturing (M) zoning; and removing protections for existing manufacturing uses and constraints associated with certain development standards; and/or
- Consider a new zoning designation for a portion of Gilman Street west of San Pablo Avenue to I-80 that maximizes revenue productivity per acre via permitted uses and associated development standards; and
- Extend West Berkeley Commercial District (C-W) zoning on Gilman Street from Ninth Street further west for a certain number of blocks and enhance the flexibility of C-W development standards to increase the likelihood of redevelopment—in coordination with “Keep Innovation in Berkeley” Council referral (passed on Sept. 13, 2022) that seeks to allow research and development uses in C zones.<sup>1</sup>

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<sup>1</sup> Robinson, Rigel, Item #30 Referral: Keep Innovation in Berkeley,  
[https://berkeleyca.gov/sites/default/files/documents/2022-09-2180\\_Milvia\\_Street\\_Berkeley\\_CA\\_94704](https://berkeleyca.gov/sites/default/files/documents/2022-09-2180_Milvia_Street_Berkeley_CA_94704.pdf) ● Tel: (510) 981-7110 ● Fax: (510) 981-7111  
E-Mail: [rkesarwani@cityofberkeley.info](mailto:rkesarwani@cityofberkeley.info)

Refer \$250,000 to the FY 2024-25 budget process for consulting services to assist with the planning process and associated environmental review and economic analyses.

## CURRENT SITUATION AND ITS EFFECTS

***Current Gilman Street Zoning Not Aligned to Development Interest.*** Gilman Street is a major thoroughfare connecting North Berkeley to I-80. Currently, Manufacturing (M) zoning covers four blocks from I-80 to the west side of Fifth Street. Mixed Use Light Industrial (MU-LI) spans four blocks from the east side of Fifth Street to the west side of Ninth Street. West Berkeley Commercial District (C-W) applies to two blocks from the east side of Ninth Street to the east side of San Pablo Avenue. The current M zoning encourages heavy manufacturing uses that are misaligned with growing innovation sectors in need of biotechnology laboratories, warehouse and commercial uses, and office space.<sup>2</sup> The new Manufacturing, Research and Development (M-RD) zoning for the Pacific Steel Casting site is proposed to align to growing economic sectors and expand the City's tax base, with the following key features:

- Support a mix of uses, such as light manufacturing and research and development (R&D), particularly those which retain a diversity of employment opportunities in West Berkeley and can provide high-quality employment for people at all educational levels and add significantly to the tax base;
- Allow office and laboratory uses that support light industrial and R&D uses, and provide for high employment density;
- Provide opportunities for an urban campus-like environment with high-quality design and site planning that includes amenities for employees and visitors; and
- Support the development of industrial uses which satisfy performance standards that protect the environment.<sup>3</sup>

***City's Office of Economic Development 2023 Report Cites Unmet Demand to Locate in West Berkeley Among Innovation Sector Industries.*** A City of Berkeley Office of Economic Development (OED) report from February 2023 notes that innovation companies spin out of University of California, Berkeley and the Lawrence Berkeley National Lab, fueled by campus-based accelerators like Berkeley SkyDeck, Bakar Labs, and CITRIS Foundry or the Berkeley Lab's science-based entrepreneur

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13%20Item%2030%20Referral%20Keep%20Innovation%20in%20Berkeley.pdf, Sept. 13, 2022 Regular City Council Meeting

<sup>2</sup> Planning Commission Agenda Packet, Item #12 Pacific Steel Casting Zoning and General Plan Amendments and EIR Update, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-03-01%20PC%20Agenda\\_packet-edit\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-03-01%20PC%20Agenda_packet-edit_0.pdf), March 1, 2023, p. 63

<sup>3</sup> Planning Commission Agenda Packet, Item #12 Pacific Steel Casting Zoning and General Plan Amendments and EIR Scoping Session, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 90

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mentorship program, Activate – Berkeley (also known as Cyclotron Road).<sup>4</sup> Innovation sector industries—including software, life sciences, clean technology, food tech, and other science, technology, engineering and math (STEM) industries—that have grown out of Berkeley institutions often seek to locate their enterprises in the City of Berkeley, but face land-use restrictions that are hard to navigate, according to the OED report.<sup>5</sup> Berkeley’s location in the inner Bay Area and its position as an engine of major innovation and entrepreneurship means that it is well positioned to attract a greater share of R&D and advanced manufacturing uses to West Berkeley under the right set of allowable land uses and development standards.

***Significant Economic Benefits Are Associated with West Berkeley Zoning that Can Attract A Greater Share of Innovation Sector Industries.*** Research and development (“R&D”) refers to a land-use defined in the City’s zoning code, but also to “an industry and set of activities that companies undertake to create innovative, commercially-viable products and services,” according to the OED report. Berkeley’s R&D industry includes the following sectors: software, life sciences (biotechnology and health care), hardware, clean tech, and food and beverage. These sectors are growing, with life sciences a leading source of U.S. employment growth, according to the OED report. Average annual salaries for R&D-intensive industries are 2.2 times higher than the \$62,000 average annual salary for traditional manufacturing industries in the Bay Area.<sup>6</sup> We note additional economic benefits associated with this sector:

- *Jobs for People of All Education Levels.* R&D-intensive industries employ many types of technicians with associate’s or community college degrees. Nearly half of all life sciences employees in Alameda County do not have a bachelor’s degree.<sup>7</sup> Further, this sector can offer educational opportunities and career pathways for Berkeley Unified School District and Berkeley City College students.
- *Economic Multiplier Effect.* In Alameda County, every one direct job in the life science industry creates 3.18 jobs overall.<sup>8</sup> Life sciences campuses, such as

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<sup>4</sup> Office of Economic Development, *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 140

<sup>5</sup> Office of Economic Development, *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 141

<sup>6</sup> Office of Economic Development, *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 137

<sup>7</sup> Office of Economic Development, *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 138

<sup>8</sup> Office of Economic Development, *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 137

the one expected at the Pacific Steel Casting site, typically rely on unionized construction labor and will create hundreds of temporary construction jobs.

- *Enhancing Jobs-Housing Balance Within Berkeley.* Rezoning Gilman Street has the potential to create job opportunities for Berkeley residents who currently commute elsewhere for these same jobs, thereby improving Berkeley's job-housing balance and reducing negative impacts associated with lengthy commutes.
- *Neighborhood Vitality and Expanded Tax Base.* Underutilized or vacant parcels in West Berkeley can become magnets for unwelcome activities, including crime, graffiti, illegal dumping and problematic street behavior that negatively impacts nearby businesses and drains City staff resources. Rezoning Gilman Street helps to ensure that parcels turn over quickly for productive uses that generate revenue, create jobs, and grow the City's tax base.

***Pacific Steel Casting Case Study Shows Zoning Modifications Can Be Used to Attract Investment and Promote Economic Development in West Berkeley.*** The M-RD zoning district planned for the Pacific Steel Casting site seeks to revitalize this vacant blighted ten-acre property. In April 2021, the City Council unanimously passed a referral to rezone the Pacific Steel Casting property, citing numerous issues of public concern, including neighborhood blight, environmental contamination, and hundreds of former Pacific Steel Casting employees owed their pension benefits from the bankrupt former employer.<sup>9</sup> This referral initiated the City's development of the planned M-RD zoning district. In August 2023, *Berkeleyside* reported that the ten-acre parcel had been acquired by a development team with the goal of transforming the property into a life sciences campus, demonstrating the importance of zoning modifications to attract investment and promote economic development.<sup>10</sup> The project is estimated to create more than 2,700 permanent life science related jobs on site, with an additional 405 jobs for supporting and service employment.<sup>11</sup> The acquisition and redevelopment will also remediate environmental contamination and fund pensions owed to workers.

## BACKGROUND

<sup>9</sup> Kesarwani, Rashi, Item #35 Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property, <https://berkeleyca.gov/sites/default/files/documents/2021-04-20%20Item%2035%20Referral%20to%20the%20Planning%20Commission.pdf>, April 20, 2021 Regular City Council Meeting

<sup>10</sup> Savidge, Nico, *Pacific Steel site sold in step toward major new life sciences campus*, <https://www.berkeleyside.org/2023/08/02/pacific-steel-site-sold-in-step-toward-major-new-life-sciences-campus>, *Berkeleyside*, Aug. 2, 2023

<sup>11</sup> Office of Economic Development, *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-01%20PC%20Agenda%20Packet_0.pdf), Feb. 1, 2023, p. 146

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***West Berkeley Plan Approved 30 Years Ago With Few Revisions to Date.*** The West Berkeley Plan was adopted by the Berkeley City Council in 1993. The plan, which created a new set of land uses and zoning districts for West Berkeley, was the first set of revisions since the Special Industrial Zone was created in 1956.<sup>12</sup> The West Berkeley Plan, like the City's General Plan and other neighborhood-specific area plans, states the community's priorities and values and helps guide development within the area. Its six established elements—land use, economic development, environmental quality, transportation, physical form (urban design), housing and social services—provide a framework for policies and development within the area, with the ultimate goal of improving the quality of urban life for West Berkeley residents. The Plan Concept and Vision portion notes that the area plan and policies were developed to extend through 2005.<sup>13</sup> While amendments to the West Berkeley Plan were adopted in 2011, no significant revisions have since been adopted.<sup>14</sup>

### FISCAL IMPACT

Staff time to implement the referral, and \$250,000 for consulting services to assist with the planning process and associated environmental review and economic analyses.

### ENVIRONMENTAL IMPACT

Underutilized or vacant parcels in West Berkeley can become magnets for crime, graffiti, illegal dumping, and problematic street behavior that negatively impacts nearby businesses. Rezoning Gilman Street can help to ensure that parcels turn over quickly for productive uses that remediate any existing environmental hazards, generate revenue, and create jobs.

### CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

<sup>12</sup> West Berkeley Plan, [https://berkeleyca.gov/sites/default/files/2022-03/12\\_14\\_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf](https://berkeleyca.gov/sites/default/files/2022-03/12_14_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf), Dec. 14, 1993, p. 169

<sup>13</sup> West Berkeley Plan, [https://berkeleyca.gov/sites/default/files/2022-03/12\\_14\\_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf](https://berkeleyca.gov/sites/default/files/2022-03/12_14_1993%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2057301%3B%20West%20Berkeley%20Area%20Plan%3B.pdf), Dec. 14, 1993, p. 164

<sup>14</sup> Proposed Amendments to the West Berkeley Plan, [https://berkeleyca.gov/sites/default/files/2022-03/3\\_22\\_2011%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2065210%3B%20%3B%20West%20Berkeley%20Project%20Amending%20the%20West%20Berkeley%20Plan%20and%2C%20by%20Reference%2C%20the%20General%20Plan.pdf](https://berkeleyca.gov/sites/default/files/2022-03/3_22_2011%3B%20CLK%20-%20Resolution%3B%20City%20Council%3B%2065210%3B%20%3B%20West%20Berkeley%20Project%20Amending%20the%20West%20Berkeley%20Plan%20and%2C%20by%20Reference%2C%20the%20General%20Plan.pdf), March 22, 2011

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Office of the City Manager

INFORMATION CALENDAR  
September 19, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Farimah Brown, City Attorney  
 Subject: Settlement with California River Watch of Notice of Intent to File Suit

INTRODUCTION

Under Berkeley Municipal Code section 2.06.120G, all settlements that are not announced at the conclusion of a closed session are provided to the Council and the public via an information report.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to the Council's authorization on July 24, 2023, the City has entered into the attached Settlement Agreement and Release.

BACKGROUND

The Berkeley Transfer Station collects and discharges stormwater, and therefore it is an industrial facility subject to certain permit requirements overseen by the State Water Resources Control Board under the federal Clean Water Act. As required by these authorities, the City has developed a Stormwater Pollution Prevention Plan (SWPPP) that includes (1) Best Management Practices (BMPs) to (a) minimize exposure of stormwater to the Transfer Station's industrial activities, (b) control and contain stormwater to reduce discharges, and (c) provide basic treatment on site; and (2) procedures for discharge monitoring, sampling, and reporting.

On or about October 24, 2022, the City received a letter sent on behalf of California River Watch, alleging various violations of the City's requirements to address stormwater discharges from the Berkeley Transfer Station. The letter is styled as a "Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)" (Notice), indicating River Watch's intention to file suit in federal court based on its perception of violations of the Clean Water Act.

City staff and environmental consultants evaluated the Notice's allegations and engaged with River Watch to identify specific BMPs and other SWPPP updates to address the alleged violations. On July 24, 2023, the Council agreed that these SWPPP updates and payment to River Watch of its claimed attorneys' fees, in exchange for a release from River Watch, represented a positive and responsible resolution of the

issues raised by the Notice. The attached Settlement Agreement and Release reflects the terms reached by the parties consistent with the Council's approval.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The operational changes being implemented at the Berkeley Transfer Station can reasonably be expected to reduce the amount and increase the quality of any stormwater discharged from the facility, thereby reducing the City's impact to local water resources.

POSSIBLE FUTURE ACTION

None considered.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Not applicable (no possible future actions considered).

CONTACT PERSON

Farimah Brown, City Attorney, 510-981-6950

Attachments:

1: Settlement Agreement and Release

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”), effective as of the last date of execution below (“Effective Date”), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members (“CRW”), and the City of Berkeley (“City”), a California charter city. CRW and the City are sometimes hereinafter each referred to as “Party” or collectively as the “Parties.”

### RECITALS

- A. CRW is an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protecting, enhancing, and helping to restore the surface and ground waters of California including coastal areas, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora, and fauna, and to educating the public concerning environmental issues associated with these environs.
- B. The City owns and operates the City of Berkeley Transfer Station located at 1201 Second Street, Berkeley, California (“Facility”). The Facility accepts municipal, commercial, and private solid waste, and green waste for composting.
- C. The Facility is subject to various federal and state regulatory requirements under the Clean Water Act (“CWA”) including compliance with State Water Resource Control Board General Industrial Activities Storm Water Permit, Water Quality Order No. 2014-0057-DWQ (“IGP”).
- D. On or about October 24, 2022 CRW, through its authorized representative, served the City with a Notice of Violations and Intent to File Suit Under the CWA, alleging violations of the CWA relating to activities taking place at the Facility (“CWA Notice”).
- E. The Parties have expended effort and resources in investigating and evaluating the allegations set forth in the CWA Notice, including the exchange of information regarding the Facility and a site inspection of the Facility on February 17, 2023.
- F. The Parties, through their authorized representatives, and without either adjudication of CRW’s allegations and claims or admission by the City of any alleged violation or wrongdoing, now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the City, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the CWA Notice.
- G. The Parties agree it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolve CRW’s allegations and claims as set forth in the CWA Notice.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

## TERMS AND CONDITIONS

1. Parties Bound by This Agreement and Term of Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds and inures to the benefit of CRW and the City and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future. The “Termination Date” of this Agreement shall be the earlier of five (5) years from the Effective Date of this Agreement or the completion of the City’s planned Transfer Station redesign.

2. Remedial Measures by the City. In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, the City shall perform the below-specified remedial measures at the Facility. The City reserves the right, in its sole discretion, to determine (i) which persons shall perform any work described herein, including contractors, and (ii) the scope and technical details of, and manner to implement, any such work, subject to review and approval by the Regional Water Quality Control Board (or such other regulatory agency as may, from time to time, exercise jurisdiction with respect to environmental matters governing the Facility):

2.1. Sampling and Monitoring. In addition to any other sampling and monitoring requirements of the IGP, the City shall:

2.1.a. Collect the first storm water sample in Annual Reporting Year 2024-2025 and Annual Reporting Year 2025-2026 from the first “Qualifying Storm Event” (“QSE”) as defined in the IGP (“first flush”) and subject to the timing/safety protocols set forth in IGP §§ XI.B.5 and XI.C.6.a.ii.

2.1.b. Within three (3) months after the Effective Date of this Agreement, the City shall implement the following Best Management Practices (“BMPs”) to enable the required number of sampling events:

- i. Use of a precipitation log sheet and video to document discharges during QSEs ;
- ii. Installation of a Personal Digital Weather Station to track rain accumulation in real time.

2.1.c. Within three (3) months after the Effective Date of this Agreement, the City shall, in addition to its regular suite of parameters, initiate sampling for TPHg and TPHd. If two (2) successive sampling events show no presence of said parameters at levels exceeding water quality standards including Numeric Action Levels, EPA Benchmarks or California Toxics Rule limits, the City may discontinue sampling for these additional parameters.

2.2. Best Management Practices (“BMPs”): The City shall implement the following BMPs at the Facility within the time frames specified:

2.2.a. Within one (1) month after the Effective Date of this Agreement, the City shall create



and maintain detailed logs reflecting trench drain inspection and maintenance.

2.2.b. Within one (1) month after the Effective Date of this Agreement, the City shall implement increased housekeeping of the grate leading to the sump in Catchment Area E, including hand sweeping in the vicinity of the sump to ensure stormwater is directed into the sump and ultimately the nearby storage tanks.

2.2.c. Prior to the next rainy season, the City shall re-paint rusted yellow construction debris containers in Catchment Area A and repair or replace any containers with punctured floors. The City shall remove from service any containers with punctured floors not repaired prior to the first expected rains.

2.2.d. Within three (3) months after the Effective Date of this Agreement, the City shall implement additional housekeeping BMPs in the area of the DP-9 Sampling Point to include cleanup of trash and removal of any abandoned metal behind the Paper Recycling Warehouse.

2.2.e. Within one (1) month after the Effective Date of this Agreement, the City shall implement increased housekeeping of the grate leading to the sump in Catchment Area F, including hand sweeping to ensure stormwater is directed into the sump and ultimately the nearby storage tanks.

2.3. Updating of Storm Water Pollution Prevention Plan ("SWPPP"): Within three (3) months after the Effective Date of this Agreement, the City shall update the Facility's SWPPP to incorporate all changes set forth in, or resulting from this Agreement.

3. Attorneys' Fees and Costs. Within thirty (30) calendar days after the Effective Date of this Agreement, the City shall pay CRW the sum of Sixty Three Thousand Five Hundred Twenty Nine Dollars and Twenty Three Cents (\$63,529.23) as reimbursement for CRW's investigative and attorneys' fees and costs. Payment shall be made in the form of a single check payable to "California River Watch" and mailed to the Law Office of Jack Silver, 708 Gravenstein Highway North, #407, Sebastopol, CA 95472. Said payment shall constitute full and complete satisfaction of all costs and attorneys' fees incurred by CRW that have been or could have been claimed in connection with this matter up to and including the Effective Date of this Agreement, and for CRW's expert's and attorneys' fees and costs for monitoring and enforcing the City's compliance with the ongoing obligations under this Agreement up to and including the Termination Date of this Agreement.

4. Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims, and demands by CRW against the City with respect to any and all allegations or claims made in the CWA Notice or any CWA violation, if any, that occurred on or before the Effective Date of this Agreement. CRW on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, except as otherwise provided for herein, does hereby absolutely, fully and forever release, relieve, remise and discharge the City and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from all causes of action, claims, damages, penalties, demands, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature

whatsoever, which could have arisen out of or directly relating to claims that were made, or could have been made in the Parties' correspondence, with regard to compliance with the CWA at the Facility up to the Effective Date of this Agreement. The release provided for herein shall be valid and effective whether the claims hereby released (i) were known or unknown, suspected, or unsuspected, (ii) were based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. The release set forth in this Section 4 shall survive the termination of this Agreement, whether such termination occurs by satisfaction of the terms and conditions hereof or operation of law.

The release contained herein is intended to be complete and final as to the City and to cover (1) known claims asserted in the CWA Notice, and also (2) unknown claims not asserted in the CWA Notice, which, if known by CRW at the time of executing this Agreement, might have affected its actions. Accordingly, CRW expressly waives the benefit of the provisions of section 1542 of the California Civil Code with respect to the released claims only, which section provides:

*A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.*

The Parties acknowledge that each of them has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

5. Covenant Not to Sue. For a period of five (5) years after the date Effective Date of this Agreement, CRW agrees that neither CRW, its officers, executive staff, members of its governing board, nor any organization under the control of CRW, its officers, executive staff, members of its governing board, will serve any Notice of Violations and Intent to File Suit or file any lawsuit against the City seeking relief for alleged violations of the CWA with regard to the Facility, nor will CRW initiate, support, or assist in any such lawsuit against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for, an injunction against any dispute, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of the releases contained herein. The covenants set forth in this Section 5 shall survive the termination of this Agreement, whether such termination occurs by satisfaction of the terms and conditions hereof or operation of law.

6. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability or responsibility by the City, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of liability or responsibility by the City which expressly denies any such liability, responsibility, or wrongdoing.

7. Force Majeure. The City shall not be deemed to be in default or breach of this Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force

majeure is defined as any event arising from causes beyond the reasonable control of the City or its contractors that delays or prevents performance including, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond the City's reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

8. Dispute Resolution Procedure. Disputes between CRW and the City concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures. If CRW asserts that the City is in violation of this Agreement, and the City corrects the action or inaction within sixty (60) days after written notice from CRW describing the asserted violations, no further enforcement action under the terms of this Agreement, including the dispute resolution process described in this Section 8, shall be taken by either party. Failure to satisfy the payment condition set forth in Section 3 is a substantial breach of this Agreement and relieves CRW of its obligations under this Agreement.

8.1. Good Faith Negotiations. CRW and the City shall make good faith efforts to resolve informally any alleged breach of this Agreement. If informal efforts to resolve the alleged breach are unsuccessful, the Party claiming a breach shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 8. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of this Agreement alleged to have been breached.

8.2. Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice under Section 8.A. is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator.

8.3. Arbitration. If the dispute is not resolved by the Parties through mediation, the Parties shall enter into binding arbitration, conducted by an arbitrator agreed upon by the Parties. The arbitration shall be binding and not subject to ordinary judicial appeal; however, it shall be subject to the procedural provisions provided for under California Code of Civil Procedure sections 1280 *et seq.* The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS (Judicial Arbitration and Mediation Services) to the extent other conventional rules are not promptly agreed upon by the Parties. The relief the arbitrator is empowered to award is limited to injunctive relief to take the actions specific in this Agreement. The Parties shall each bear their own costs and attorneys' fees in connection with the arbitration.

8.4. Waiver. By agreeing to the dispute resolution provisions set out in Section 8 of this Agreement, the Parties understand they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement, including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

9. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required to, or desire to serve upon or deliver to the other Party shall be in writing and shall be given by electronic mail when possible, or by certified United States mail, return receipt requested, addressed as set forth below:

If to CRW: California River Watch  
290 South Main St. # 817  
Sebastopol, CA 95472  
Email: [US@nriverwatch.org](mailto:US@nriverwatch.org)

Copy to: Jack Silver, Esq.  
Law Office of Jack Silver  
708 Gravenstein Highway North, #407  
Sebastopol, CA 95472  
Email: [lh28843@sbcglobal.net](mailto:lh28843@sbcglobal.net)

If to the City: City of Berkeley  
City Manager's Office  
2180 Milvia St.  
Berkeley, CA 94704  
Email: [manager@berkeleyca.gov](mailto:manager@berkeleyca.gov)

Copies to: City of Berkeley  
Office of the City Attorney  
2180 Milvia St. 4<sup>th</sup> Floor  
Berkeley, CA 94704  
Email: [attorney@berkeleyca.gov](mailto:attorney@berkeleyca.gov)

City of Berkeley  
Zero Waste Division  
1947 Center Street  
Berkeley, CA 94704  
Email: [PWRecycle@berkeleyca.gov](mailto:PWRecycle@berkeleyca.gov)

The foregoing addresses may be changed by Notice given in accordance with this Section 9. Any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided the sender does not receive notice of non-delivery. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

10. Attorneys' Fees. Other than the payment to CRW under Section 3, each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

11. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and

reviewed by CRW, the City, and the Parties' respective counsel who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

12. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement or any section thereof.

13. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement. The Parties agree that the rights and obligations established by this Agreement shall not be assigned, and any such assignment by a Party is invalid.

14. Counterparts/Signatures. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same Agreement, and may be signed by electronic means.

15. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

16. Entire Agreement in Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

17. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

18. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, then this Agreement shall be deemed amended to delete such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified.

19. Representations and Warranties. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering into this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

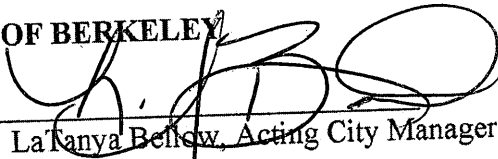
19. Representations and Warranties. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering into this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

20. No Third-Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns.

21. Authority. Each person signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute the Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

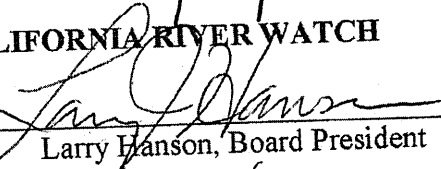
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

**CITY OF BERKELEY**

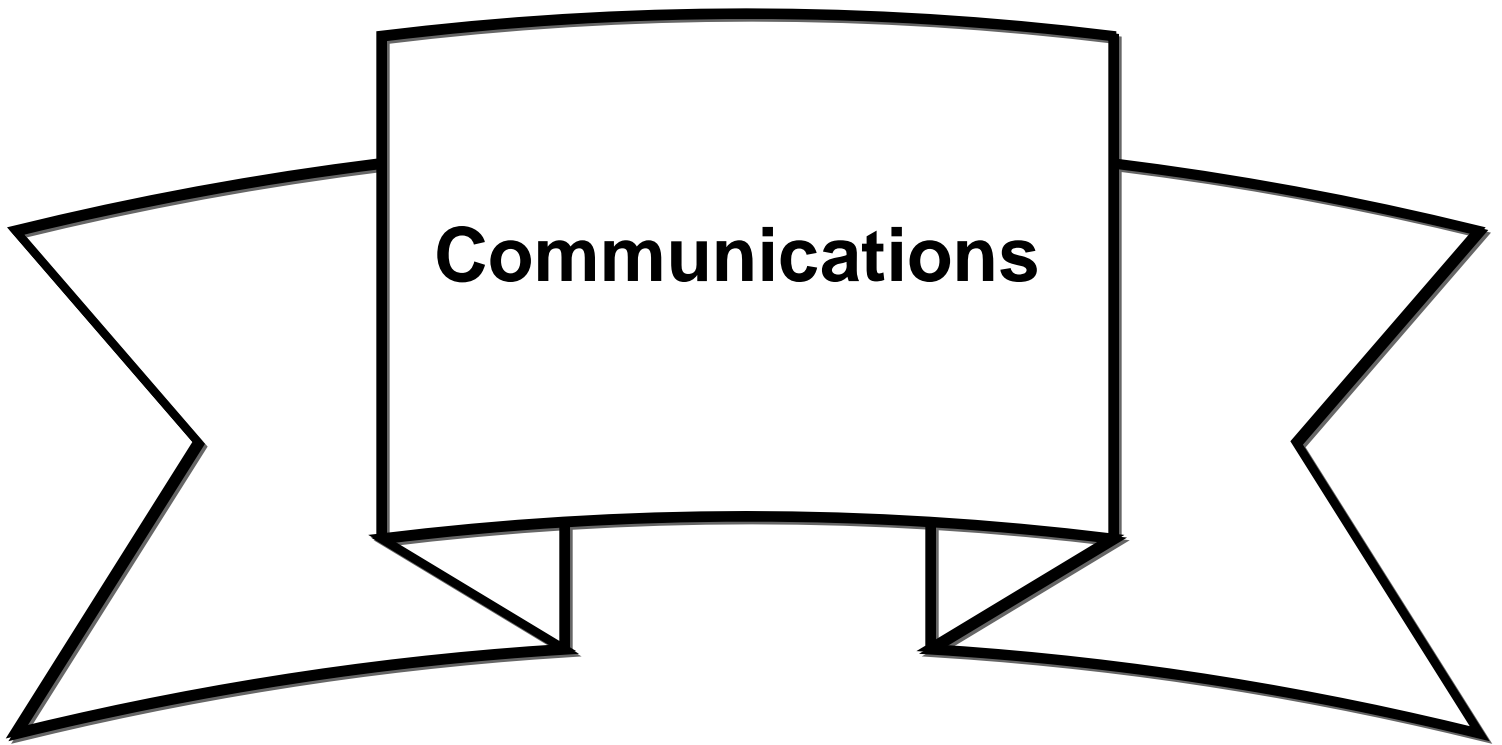
By:   
LaTanya Bellow, Acting City Manager

Dated: 7/27/23

**CALIFORNIA RIVER WATCH**

By:   
Larry Hanson, Board President

Dated: 7/26/2023



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**

<https://records.cityofberkeley.info/>

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