

# AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, March 8, 2022

6:00 PM

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 – LORI DROSTE

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

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/82967064417>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **829 6706 4417**. 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 teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).

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

## Preliminary Matters

### Roll Call:

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

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

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

## Consent Calendar

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

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

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

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

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

## Consent Calendar

- 1. Amending Berkeley Municipal Code Chapter 4.38, Supplementary Retirement and Income Plan II, to Permit Participation of Berkeley Fire Fighters Association Local 1227 I.A.F.F.**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,800-N.S. to amend the Berkeley Municipal Code Chapter (BMC) 4.38, Supplementary Retirement and Income Plan II (SRIP II), to permit participation of Berkeley Fire Fighters Associations Local 1227 I.A.F.F (BFFA).  
**First Reading Vote:** Ayes – Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.  
**Financial Implications:** See report.  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
- 2. Resolution Adopting the Resolution of Intention of Amendment to the Miscellaneous CalPERS Contract Pursuant to California Government Code 20516; Adopt First Ordinance Reading authorizing an amendment to the contract between the City Council of the City of Berkeley and the Board of Administration of the California Public Employees' Retirement System**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,801-N.S. amending the City's contract with CalPERS to effectuate changes to the cost sharing agreement between the City and PEPPRA members of Service Employee International Union, Local 1021 Maintenance and Clerical (SEIU MC), Public Employees Union Local 1 (Local 1), Community Services & Part-Time Recreation Leaders Associations Local 1021 (SEIU CSU/PTRLA), and the Unrepresented Employees Group.  
**First Reading Vote:** Ayes – Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.  
**Financial Implications:** See report.  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
- 3. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**  
**From: City Manager**  
**Recommendation:** Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, and February 8, 2022.  
**Financial Implications:** To be determined.  
Contact: Farimah Brown, City Attorney, (510) 981-6950

## Consent Calendar

- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on March 8, 2022**  
**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:** \$7,470,316  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 5. Housing Consultant Contract Amendment (Contract # 32100126) – Anjanette Scott LLC**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to the City's contract with Anjanette Scott LLC to add up to \$50,000 for consulting services in a total amount not to exceed \$100,000, with a contract end date of June 30, 2023.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 6. Contract No. 32100082 Amendment: Resource Development Associates to Facilitate Grant Writing for the Specialized Care Unit**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to amend a contract with Resource Development Associates (RDA) to add grant writing services for the Specialized Care Unit (SCU) and mental health system for a total contract limit of \$245,000 for the period beginning January 1, 2021 and ending June 30, 2023. This amendment will add \$60,000 in funding and one year to the contract term.  
**Financial Implications:** See report.  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 7. Contract No. 319001221-1 Amendment: Rolling Orange, Inc. for Additional Website Redesign Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 319001221-1 with Rolling Orange, Inc. for the additional website redesign services, for an amount not-to-exceed \$10,000 and a total contract value not-to-exceed \$569,300 from March 1, 2019 to June 30, 2024.  
**Financial Implications:** See report.  
Contact: Michael Sinor, Information Technology, (510) 981-6500

## Consent Calendar

**8. Measure T1 Contract: Western Water Features Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster, Tile, and Filter Replacement**

**From: City Manager**

**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project, Specification No. 22-11489-C; 2. Accepting the bid of the lowest responsive and responsible bidder, Western Water Features, Inc.; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Western Water Features, Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project in an amount not to exceed \$1,010,000, which includes a contract amount of \$989,449 and a 10% contingency in the amount of \$20,551.

**Financial Implications:** \$1,010,000

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

**9. Amendment to Contract No. 32000219 with Lind Marine - Removal of Derelict and Abandoned Vessels at the Berkeley Marina**

**From: City Manager**

**Recommendation:** Adopt a resolution authorizing the City Manager to amend Contract No. 32000219 with Lind Marine to remove derelict and abandoned vessels at the Berkeley Marina by increasing the contract amount by \$42,000; and authorizing additional contingency of \$4,200 for a contract total not-to-exceed amount of \$188,400; and contingency of \$47,000; and extend the contract to September 30, 2023.

**Financial Implications:** \$188,400.

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

**10. Lease Agreement with NFS Unlimited, LLC for Skates-on-the-Bay**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance authorizing the City Manager to execute the attached ground lease with NFS Unlimited, LLC, the owner/lessee of Skates-on-the-Bay at the Berkeley Waterfront for a 10-year term with 2 additional options to extend for 5 years each, effective from May 1, 2022.

**Financial Implications:** See report.

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

## Consent Calendar

### 11. Updates to the Measure T1 Phase 1 Project List

**From: City Manager**

**Recommendation:** Adopt a resolution authorizing the following updates to the T1 Phase 1 list of approved projects:

1. Add the following project - Streets: West Street (adjacent to Strawberry Creek Park) from Addison to End.

2. Change the phase of the following project - Parks: Aquatic Park Tide Tubes Cleanout, (add "Construction").

3. Remove the following:

A. Projects added in October 2020: i. Streets: a. Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard; b. Cedar Street from 6th Street to San Pablo Avenue; c. Center Street from Martin Luther King Jr. Way to Shattuck Ave; d. Dohr Street from Ashby Avenue to Prince Street; e. Rose Street from Le Roy Avenue to La Loma Avenue; f. Santa Fe Avenue from Gilman Street to Cornell Avenue/Page St; g. Shasta Road from Grizzly Peak Boulevard to east City limit; and h. West Street from Bancroft Way to Dwight Way.

ii. Parks: James Kenney Park Play and Picnic Area

B. Projects added in July 2019: i. Green Infrastructure: a. Heinz Avenue near RR tracks; b. Jones Street between Fourth St and RR tracks; c. Ninth Street at Codornices Creek; d. Evaluation of Sacramento Street center median; and e. Tenth Street at Codornices Creek.

C. Projects from the original approved list: i. Streets: Bancroft from Shattuck to Milvia

**Financial Implications:** See report.

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

### 12. Donation: Memorial Bench at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle, DragonMax Founder and Coach.

**Financial Implications:** \$3,400 in revenue.

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

### 13. Ratification of Police Accountability Board's Standing Rules

**From: Police Accountability Board**

**Recommendation:** Ratify Standing Rules of the Police Accountability Board, revised in consideration of Mayor Arreguin's proposed amendments.

**Financial Implications:** None

Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950

## Council Consent Items

- 14. Support of SB 922**  
**From: Mayor Arreguin (Author), Councilmember Taplin (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Robinson (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution in support of SB 922 (Wiener), which would permanently exempt transportation-related projects from CEQA. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Scott Wiener and Nancy Skinner, and Assemblymember Buffy Wicks.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 15. Opposition to the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative**  
**From: Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution to oppose Initiative 21-0042A1, the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative. Send a copy of the Resolution to the League of California Cities.  
**Financial Implications:** See report.  
Contact: Jesse Arreguin, Mayor, (510) 981-7100
- 16. Referral to Implement State Law AB 43 for Reduced Speed Limits on High-Injury Commercial Corridors**  
**From: Councilmember Kesarwani (Author), Councilmember Taplin (Author), Councilmember Robinson (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager to implement state law AB 43 on:  
- High-injury commercial corridors as identified in our Vision Zero Annual Report, 2020-2021 in order to allow a reduction in speed limits by 5 miles per hour; - Any other corridors covered by AB 43, as appropriate, in order to implement reduced prima facie speed limits and identify those corridors for future traffic studies where prima facie limits are presently unsafe.  
Upon completion of this referral, we note that a budget allocation would be needed in the amount of \$25,000 to \$50,000 for new speed limit signage. Funding will be requested later (likely for the FY 2023-24 budget) in order to allow time for staff to determine the applicable streets for additional signage.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

## Council Consent Items

17. **Adopt a Resolution Supporting Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Berkeley Commission on the Status of Women’s Annual Dues to the Association of California Commissions for Women**  
**From: Councilmember Harrison (Author), Mayor Arreguin (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** Adopt a Resolution approving the expenditure of \$100 each from Vice Mayor Harrison, Mayor Arreguín, and Councilmember Taplin’s office budgets to the Association of California Commissions for Women to cover the prorated 2021-2022 annual membership dues and full dues for 2022-2023 for the Berkeley Commission on the Status of Women, with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of the aforementioned Mayor and Council office budgets, and providing for prospective “pre-approval” of such dues on an ongoing basis.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
18. **Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe’s Payment of Park Fees for Its 2022 Free Outdoor Performance Season**  
**From: Councilmember Harrison (Author)**  
**Recommendation:** Adopt Two Resolutions:  
1. Establishing a policy and referring to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.  
2. Approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Vice Mayor Harrison, to the San Francisco Mime Troupe, the non-profit fiscal sponsor of 2022 Berkeley Park performances, with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of Vice Mayor Harrison and any other Councilmembers who would like to contribute.  
**Financial Implications:** See report.  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
19. **Budget Referral: Grant Writing Services**  
**From: Councilmember Hahn (Author), Councilmember Bartlett (Author), Councilmember Harrison (Co-Sponsor)**  
**Recommendation:** Refer \$300,000 to the FY 2022-2023 budget process to expand the City’s capacity to seek and obtain grants and launch funded projects by hiring or contracting for writing and RFP/grant/program administration support.  
**Financial Implications:** See report.  
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150



## Council Consent Items

- 20. Support for AB 1713: Idaho Stop**  
**From: Councilmember Robinson (Author)**  
**Recommendation:** Send a letter to Assemblymember Tasha Boerner Horvath, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 1713, which would allow adult bicyclists to proceed through stop signs after yielding the right-of-way to immediate hazards.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Action Calendar

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

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

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

## Action Calendar – Old Business

- 21. Update on the Implementation of Fair and Impartial Policing Task Force Recommendations** (Continued from February 22, 2022)  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900
- 22. 2021 Year End Crime and Collision Data** (Continued from February 22, 2022)  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900

## Action Calendar – New Business

### 23. Request to Adopt a Resolution Approving Exception to the 180-Day Waiting Period to Hire a CalPERS Retired Annuitant in Accordance with Government Code Sections 7522.56 And 21224

**From: City Manager**

**Recommendation:** Staff respectfully recommends that the City Council adopt a resolution approving an exception to the 180-day waiting period for hiring a retired annuitant as an extra-help employee in the Department of Health, Housing & Community Services, due to their specialized skills that are necessary to perform work of a limited duration, and to prevent stoppage of public business during the Covid emergency.

**Financial Implications:** See report.

Contact: Don Ellison, Human Resources, (510) 981-6807

## Public Comment – Items Not Listed on the Agenda

### Adjournment

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

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

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

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

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

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

#### COMMUNICATION ACCESS INFORMATION:

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



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

~~~~~

*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 February 24, 2022.*

Mark Numainville, City Clerk

## Communications

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

### **Item #18: Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season**

- 1. Rachel Davis
- 2. Thuan Tran
- 3. Mary Engle
- 4. Mary Rose

### **Energy Commission Transportation Priorities for the Fiscal Year 2023-2024 Budget**

- 5. Berkeley Energy Commission

### **Proposed Policy 351, Public Safety Fixed Video Surveillance Cameras**

- 6. Michael Chang, Chairperson, Police Accountability Board

### **Union Contract Wage Theft by City Management**

- 7. Mike Uberti
- 8. Nathan Dahl
- 9. Glenn Ingersoll
- 10. Barbara Gilbert (2)
- 11. Julia P

### **Parking Garage at 2215 4<sup>th</sup> Street**

- 12. Anne Burns
- 13. Mary Scott

### **Verizon Wireless Tower**

14. Anna Pisarello

**Implications of Lost Property Tax Revenue**

15. Alex Sharenko (2)

**Tenant Opportunity to Purchase Act (TOPA)**

16. Eric Friedman

17. Akshit Dewan

18. Mirelle Linquist

**Parking Tickets**

19. Michelle Milam

**Climate Change**

20. Christopher La Combe

21. Thomas Lord (2)

**Plastic Bag Ordinance**

22. Sofia Avila

**Eden I&R February**

23. Eden I&R

**Removal of Vines in the Berkeley Hills**

24. Senior Advocates & Associates

**Grizzly Peak Blvd.**

25. Bruce Brody

**Redistricting**

26. Sheila Goldmacher

**BART Redistricting**

27. BART

**Shellmound**

28. Laura Callen

29. AJ Pluss

30. Gail Susan Gordon

31. Bettemie Prins

32. Jane Perry

33. Sheri Prud'homme

**Housing**

34. Avran Gur Arye (14)

35. Photoano@

36. Ashvin Nair

**COVID/Masks/Pandemic**

37. Thomas Lord (2)

38. Vicki Sommer (2)

39. David Lerman

40. Jane Fink

**Reimagining Public Safety**

41. Amol Rao

42. Diana Bohn

**Solar and Wind Powering Berkeley Homes in March**

43. Kathleen Giustino

**Brown Act Viewpoint**

44. Thomas Lord

**Supplemental Communications and Reports**

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

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.



ORDINANCE NO. 7,800-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 4.38, SUPPLEMENTARY RETIREMENT AND INCOME PLAN II, TO PERMIT PARTICIPATION OF BERKELEY FIRE FIGHTERS ASSOCIATION LOCAL 1227 I.AF.F.

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

Section 1. That pursuant to the Memorandum of Understanding between the City of Berkeley and Berkeley Fire Fighters Association Local 1227 I.A.F.F. of July 1, 2021 - June 30, 2023, Section 4.38.106 of the Berkeley Municipal Code is amended to read in its entirety as follows:

**“4.38.106  
Employee.**

‘Employee’ shall mean any person who is:

1. Employed by the City and covered under its miscellaneous employees contract with the Administration of the State of California Public Employees Retirement System (a CalPERS miscellaneous employee); or
2. Employed by the City and represented by any of the following associations:
  - Berkeley Police Association (a police employee), effective January 1, 1989; or
  - Berkeley Fire Fighters Association Local 1227 I.A.F.F., effective March 20, 2022; or
3. Employed by any other public entity Employer that has adopted the Plan with approval of the Council.”

Section 2. That Sections 4.38.107 and 4.38.201 of the Berkeley Municipal Code are amended to make non-substantive, clerical changes to read in their entirety as follows:

**“4.38.107  
Employer.**

‘Employer’ shall mean the City of Berkeley and any other public entity that has adopted the Plan with the approval of the Council. Effective as of July 1, 2007, the Berkeley Housing Authority shall be considered an Employer under the Plan with respect to its employees. An Employer who has been approved to participate in the Plan may do so as long as it fulfills its obligations as an Employer under the Plan to the satisfaction of the City of Berkeley, as determined by the City of Berkeley’s sole and absolute discretion. If

the City determines that an Employer is not fulfilling its obligations, the City shall provide written notice to that effect to the Employee and that Employer's participation under the Plan shall terminate as of the date of such notice. (Ord. 7264-NS § 2, 2012)

**4.38.201**

**Participation date.**

Any Employee who was a Participant in the Plan immediately prior to January 1, 2001 shall continue to be a Participant on January 1, 2001. Each other Employee who becomes such on or after July 22, 1988 shall become a Participant upon their date of employment, or if later, the date they become an Employee. Any Participant of the City of Berkeley Supplementary Retirement Income Plan I may elect, at any time, to cease participation in that plan and become a Participant in this Plan (i.e., the City of Berkeley Supplementary Retirement Income Plan II). Such election shall be irrevocable. Any Participant who is a police employee on January 1, 2005 shall cease being an active or inactive participant in this Plan on December 31, 2004."

At a regular meeting of the Council of the City of Berkeley held on February 22, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: Bartlett.



ORDINANCE NO. 7,801-N.S.

AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF BERKELEY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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

Section 1.

That an amendment to the contract between the City Council of the City of Berkeley and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit A, and by such reference made a part hereof as though herein set out in full.

Section 2.

The Mayor of the City of Berkeley City Council is hereby authorized, empowered, and directed to execute said amendment for, and on behalf of, said Agency.

Section 3.

This Ordinance shall take effect thirty (30) days after the date of its adoption. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 22, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: Bartlett.





## EXHIBIT

California  
Public Employees' Retirement System

---




---

# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Berkeley

---



---

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective March 1, 1942, and witnessed January 30, 1942, and as amended effective September 1, 1947, April 1, 1949, January 1, 1952, May 1, 1954, March 1, 1956, August 1, 1959, November 1, 1961, June 29, 1962, December 1, 1962, April 1, 1963, August 1, 1963, October 1, 1964, October 16, 1965, November 16, 1968, March 1, 1973, December 16, 1973, December 1, 1974, July 22, 1976, May 25, 1978, July 9, 1978, January 2, 1983, October 28, 1983, July 18, 1986, June 26, 1988, June 30, 1992, November 28, 1996, October 15, 1998, November 6, 1998, April 9, 1999, April 14, 2000, July 14, 2000, December 22, 2000, July 7, 2002, January 5, 2003, June 13, 2003, December 28, 2012, July 3, 2016, November 6, 2016, January 1, 2017 and December 31, 2017 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 20 are hereby stricken from said contract as executed effective December 31, 2017, and hereby replaced by the following paragraphs numbered 1 through 20 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local fire members and for those classic local police members entering membership in the police classification on or prior to December 28, 2012, age 55 for classic local police members entering membership for the first time in the police classification after December 28, 2012 and age 57 for new local safety members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after March 1, 1942 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.

4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).
  
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **PERSONS EMPLOYED JUNE 1, 1962, OR THEREAFTER IN THE FOLLOWING CLASSES IN THE FOLLOWING CLASSES IN THE RECREATION AND PARKS LIBRARY, AND FINANCE DEPARTMENTS:**

**ASSISTANT CAMP UTILITY MAN  
CAMP CLERK  
CAMP COUNSELOR  
CAMP NURSE  
CAMP SUPERVISOR  
CAMP UTILITY MAN  
CAMP RECREATION LEADER**

**COOK'S AIDE  
CHIEF COOK  
FIRST ASSISTANT COOK  
KITCHEN HELPER  
SECOND ASSISTANT COOK**

**DINING ROOM HELPER  
DINING ROOM SUPERVISOR**

**FIELD APPRAISER**

**LIBRARY PAGE I  
LIBRARY PAGE II**

**LIFEGUARD**

**ASSISTANT PLAYGROUND LEADER  
PLAYGROUND LEADER  
PLAYGROUND LEADER TRAINEE  
SENIOR PLAYGROUND LEADER**

**SPECIAL ACTIVITY LEADER;**

- b. **PERSONS EMPLOYED APRIL 1, 1963, OR THEREAFTER AS POLICE TRAINEES;**
  - c. **PHYSICIANS EMPLOYED AFTER AUGUST 1, 1963, CLASSIFIED AS "PHYSICIANS" IN THE CITY'S POSITION ORDINANCE AS THAT ORDINANCE EXISTED ON AUGUST 1, 1963;**
  - d. **PERSONS COMPENSATED ON AN HOURLY BASIS WHO ENTER EMPLOYMENT WITH PUBLIC AGENCY ON OCTOBER 16, 1965, OR THEREAFTER; AND**
  - e. **EMPLOYEES WHO FIRST ENTERED PUBLIC AGENCY SERVICE PRIOR TO JANUARY 26, 1973, IN AN EMPLOYMENT IN WHICH THEY WERE ELIGIBLE FOR MEMBERSHIP IN ANY ONE OF THE PUBLIC AGENCY'S RETIREMENT SYSTEMS FOR SAFETY MEMBERS, AND WHO HAVE NOT EXECUTED AND FILED WITH THE PUBLIC AGENCY A WAIVER OF RIGHTS UNDER THE LOCAL SYSTEM DURING THE PERIOD PRESCRIBED, SUCH EXCLUSION SHALL APPLY WHETHER OR NOT THE EMPLOYEE REENTERS SERVICE OF THE PUBLIC AGENCY THEREAFTER.**
6. Those safety members in the local retirement system employed by Public Agency and who did not waive their rights under said local system were provided another opportunity to execute and file a waiver on or before October 28, 1983.
7. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
8. Public Agency and the Berkeley Redevelopment Agency have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Berkeley Redevelopment Agency, pursuant to Section 20567.6 of the Government Code. Such merger is effective as of August 1, 1977. Public Agency, by this contract, assumes the assets and liabilities accumulated under the former contract of the Berkeley Redevelopment Agency. Legislation repealed said Section effective January 1, 1988.

9. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after January 5, 2003 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 5, 1957, the effective date of Social Security coverage, and prior to December 31, 1982, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
10. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after January 5, 2003 shall be determined in accordance with Section 21354.5 of said Retirement Law, subject to the reduction provided therein for service on and after January 5, 1957, the effective date of Social Security coverage, and prior to December 31, 1982, termination of Social Security, for members whose service has been included in Federal Social Security (2.7% at age 55 Full and Modified).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
12. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member and for those classic local police members entering membership in the police classification on or prior to December 28, 2012 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
13. The percentage of final compensation to be provided for each year of credited current service as a classic local police member entering membership for the first time in the police classification after December 28, 2012 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
14. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
15. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members only.
  - b. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance).

- c. Section 21536 (Local System Service Credit Included in Basic Death Benefit).
- d. Section 21222.1 (One-Time 5% Increase - 1970) for local miscellaneous members only. Legislation repealed said Section effective January 1, 1980.
- e. Section 21222.2 (One-Time 5% Increase - 1971). Legislation repealed said Section effective January 1, 1980.
- f. Section 20042 (One-Year Final Compensation) for classic local miscellaneous members, classic local fire members and for those classic local police members entering membership on or prior to December 28, 2012.
- g. Section 20965 (Credit for Unused Sick Leave).
- h. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local police members only.
- i. Section 21548 (Pre-Retirement Option 2W Death Benefit) for local police members only.
- j. Section 21024 (Military Service Credit as Public Service).
- k. Section 21023.5 (Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service).
- l. Section 21574.5 (Indexed Level of 1959 Survivor Benefits) for local fire members only.
- m. Section 20475 (Different Level of Benefits): Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local police members entering membership for the first time with this agency in the police classification after December 28, 2012.
- n. Section 20516 (Employees Sharing Additional Cost):

From and after July 3, 2016, 1.25% for local miscellaneous members in the International Brotherhood of Electrical Workers Local 1245.

From and after November 6, 2016, 8% for classic local miscellaneous members in the Public Employees Union Local 1.

From and after November 6, 2016 and until the effective date of this amendment to contract, 8% for new local miscellaneous members in the Public Employees Union Local 1.



From and after the effective date of this amendment to contract, 5% for new local miscellaneous members in the Public Employees Union Local 1.

From and after January 1, 2017, 8% for classic local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.

From and after January 1, 2017 and until the effective date of this amendment to contract, 8% for new local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.

From and after the effective date of this amendment to contract, 5% for new local miscellaneous members in the Community Services & Part-Time Recreation Leaders Association Local 1021.

From and after December 31, 2017, 8% for classic local miscellaneous members in the Unrepresented Employees group.

From and after December 31, 2017 and until the effective date of this amendment to contract, 8% for new local miscellaneous members in the Unrepresented Employees group.

From and after the effective date of this amendment to contract, 7% for new local miscellaneous members in the Unrepresented Employees group.

From and after December 31, 2017, 8% for classic local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.

From and after December 31, 2017 and until the effective date of this amendment to contract, 8% for new local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.

From and after the effective date of this amendment to contract, 7% for new local miscellaneous members in the Service Employees International Union Local 1021 Maintenance and Clerical Chapters.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

16. Public Agency, in accordance with Government Code Section 20834, shall not be considered an "employer" for purposes of the Public Employees' Retirement Law. Contributions of the Public Agency shall be fixed and determined as provided in Government Code Section 20834, and such contributions hereafter made shall be held by the Board as provided in Government Code Section 20834.
17. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
18. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
  - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local police members.
  - c. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574.5 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local fire members.
  - d. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - e. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
19. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

20. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF BERKELEY

BY \_\_\_\_\_  
MELODY BENAVIDES, CHIEF  
PENSION CONTRACTS AND PREFUNDING  
PROGRAMS DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk





Office of the City Attorney

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council  
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, and February 8, 2022.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

The City Council made the initial findings required under the Government Code on September 28, 2021. The Council must make the findings every thirty days in order to continue to meet exclusively through video conference or teleconference.

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public. These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on March 8, 2022, the Council will need to review and ratify the resolution by April 7, 2022.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998  
Mark Numainville, City Clerk, (510) 981-6908

Attachments:

1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and



WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council made the initial findings required by the Government Code on September 28, 2021; and

WHEREAS, the City Council made subsequent findings required by the Government Code on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, and February 8, 2022; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by April 7, 2022.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination.

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference.

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.





Office of the City Manager

CONSENT CALENDAR  
March 8, 2022

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 March 8, 2022

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.

Total estimated cost of items included in this report is **\$7,470,316**.

| <u>PROJECT</u>                                                                                           | <u>Fund</u> | <u>Source</u> | <u>Amount</u>      |
|----------------------------------------------------------------------------------------------------------|-------------|---------------|--------------------|
| City of Berkeley, Zero Waste Division, Construction and Demolition Material Hauling and Sorting Services | 601<br>341  |               | \$7,470,316        |
| <b>Total:</b>                                                                                            |             |               | <b>\$7,470,316</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager’s purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on March 8, 2022

CONSENT CALENDAR  
March 8, 2022

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 services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on February 8, 2022

- a) City of Berkeley, Zero Waste Division, Construction and Demolition Material Hauling and Sorting Services

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

DATE SUBMITTED: March 8, 2022

| SPECIFICATI<br>ON NO. | DESCRIPTION<br>OF GOODS /<br>SERVICES<br>BEING<br>PURCHASED                                              | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                       | ESTIMATED COST                                                                                                                                                                                               | BUDGET CODE TO BE<br>CHARGED                                                                                                          | DEPT. /<br>DIVISION | CONTACT<br>NAME &<br>PHONE |
|-----------------------|----------------------------------------------------------------------------------------------------------|----------------------------|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------------|
| 22-11499-C            | City of Berkeley, Zero Waste Division, Construction and Demolition Material Hauling and Sorting Services | 3/10/2022                  | 4/14/2022                         | RFP for the Construction and Demolition (C&D) Materials that is delivered to the City's Transfer Station, which will be loaded by City equipment into long haul trailers provided transfer trailers, then hauled to an offsite C&D sorting facility. The offsite facility will attain a minimum of 65% recycling rate for all materials delivered. | Frist 5 year term years<br>FY 2022 -2027<br><br>\$4,943,960<br>Fund 601<br><br>\$1,500,000<br>Fund 341<br><br>Optional, 5 year<br>FY 2028-2032<br><br>\$5,970,316<br>Fund 601<br><br>\$1,500,000<br>Fund 341 | 601-54-627-734-3023-000-<br>472-612990-<br><br>341-54-627-732-3025-000-<br>431-612990-<br><br>341-54-627-733-3026-000-<br>431-612990- | PW/ Zero Waste      | Greg Apa<br>981-6359       |
| <b>Dept TOTAL</b>     |                                                                                                          |                            |                                   |                                                                                                                                                                                                                                                                                                                                                    | <b>\$7,470,316</b>                                                                                                                                                                                           |                                                                                                                                       |                     |                            |
| <b>DEPT. TOTAL</b>    |                                                                                                          |                            |                                   |                                                                                                                                                                                                                                                                                                                                                    | <b>\$7,470,316</b>                                                                                                                                                                                           |                                                                                                                                       |                     |                            |





Office of the City Manager

CONSENT CALENDAR  
March 8, 2022

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: Housing Consultant Contract Amendment (Contract # 32100126) – Anjanette Scott LLC

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to the City's contract with Anjanette Scott LLC (contract # 32100126) to add up to \$50,000 for consulting services in a total amount not to exceed \$100,000, with a contract end date of June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

The total not-to-exceed amount of this contract will be \$100,000. Resources for the contract will be provided from General Fund allocated to the Housing and Community Services Division, ERMA GL Code 011-51-504-530-0000-000-444-612990, which is currently available in the Fiscal Year 2022 Budget.

CURRENT SITUATION AND ITS EFFECTS

The City has a contract with Anjanette Scott LLC to provide project management services for the Housing Trust Fund program. These services include reviewing and underwriting project proposals, drafting loan documents, managing projects under development, reviewing draw requests, and supporting other work of the Housing Trust Fund and Below Market Rate programs as needed.

The current contract with Anjanette Scott LLC expires on February 28, 2022, though the City Manager is authorized to extend the contract by giving written notice. Staff will request an extension of the current contract to June 30, 2022.

The City has a robust affordable housing pipeline, and the work required to support the existing projects exceeds the capacity of current housing staff. The Housing and Community Services Division is in the process of hiring new staff, but requires outside support; both in the interim and during the transition period while new staff are being trained.

Supporting housing programs is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BACKGROUND

Anjanette Scott LLC entered into the current contract with the Housing Department on February 7, 2021 to provide project management services to support the City’s affordable housing programs, particularly the Housing Trust Fund program. In response to the continued need for outside project management support, the contract was amended on August 1, 2021 to extend the contract and increase the total amount to \$50,000.

The consultant has participated in construction and management meetings for Berkeley Way, reviewed project draw requests, reviewed and assessed funding applications received through the 2021 Housing Trust Fund Request for Proposals, developed the City’s Homekey Request for Proposals, drafted loan documents for Housing Trust Fund projects, and provided general project management support on housing projects as needed. The consultant has provided critical support in a time of unprecedented housing activity, and staff request extending the contract to ensure continuous support for housing programs and projects.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts related to amending the consultant contract.

RATIONALE FOR RECOMMENDATION

In recent years, the City has funded an unprecedented number of affordable housing projects thanks to new affordable housing funding sources. The workload required to support these projects exceeds the capacity of current staff. The City is in the process of hiring new Community Development Project Coordinators, but for continuity and in order to provide the level of project support needed, staff recommend extending and amending Anjanette Scott LLC’s contract.

ALTERNATIVE ACTIONS CONSIDERED

If the Department is unable to amend and extend the contract with Anjanette Scott LLC, staff will not be able to adequately support the affordable housing projects in the City’s pipeline.

CONTACT PERSON

Jenny Wyant, Senior Community Development Project Coordinator, HHCS,  
(510) 981-5228

Attachments:  
1: Resolution



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

APPROVING AN AMENDMENT OF THE PERSONAL SERVICES CONTRACT WITH  
ANJANETTE SCOTT LLC

WHEREAS, the City Council established a Housing Trust Fund (HTF) program to assist in the development and expansion of housing affordable to low- and moderate-income persons who either work or reside within the City of Berkeley, and authorized the City Manager to implement the HTF program; and

WHEREAS, on February 7, 2021, the Health, Housing and Community Services Department entered into a contract with Anjanette Scott LLC (contract # 32100126) to provide project management support to the City's affordable housing programs including the HTF program and Below Market Rate program as needed; and

WHEREAS, Anjanette Scott LLC continues to provide critical support to the affordable housing programs, and staff identified an ongoing need to provide coverage and support to housing developments with City funding reservations.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is authorized to amend the personal services contract with Anjanette Scott LLC (contract # 32100126) to add up to \$50,000 for a total not to exceed amount of up to \$100,000, and extend the contract to June 30, 2023.

BE IT FURTHER RESOLVED the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.





Office of the City Manager

CONSENT CALENDAR  
March 8, 2022

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: Contract No. 32100082 Amendment: Resource Development Associates to Facilitate Grant Writing for the Specialized Care Unit

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to amend a contract with Resource Development Associates (RDA) to add grant writing services for the Specialized Care Unit (SCU) and mental health system for a total contract limit of \$245,000 for the period beginning January 1, 2021 and ending June 30, 2023. This amendment will add \$60,000 in funding and one year to the contract term.

FISCAL IMPACTS OF RECOMMENDATION

The total not-to-exceed amount of this contract will be \$245,000. Resources for the contract will be provided from the following fund: \$60,000 in General Funds allocated to the Mental Health Division, ERMA GL Code 011-51-503-520-0000-000-451-612990, which is currently available in the Fiscal Year 2022 Budget.

CURRENT SITUATION AND ITS EFFECTS

On December 1, 2020 by Resolution No. 69,621-N.S., City Council approved Contract No. 32100082 with Resource Development Associates for SCU design. The contract amendment will fund grant writing services to support the creation and implementation of the SCU and enhance the mental health system.

BACKGROUND

The original contract with RDA was for a comprehensive feasibility study, community engagement process, best practice research, data collection, program design, and implementation plan for an SCU to respond to public safety calls that do not require presence of law enforcement. While RDA has been conducting the work for the scope in this contract, there have been opportunities to apply for grants that could support the SCU and help improve the mental health system. RDA is uniquely positioned to pursue these grants, given their detailed knowledge of the SCU project and their experience in grant development. This contract aligns with the Strategic Plan goal to champion and demonstrate social and racial equity.

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

RDA was selected as the vendor for the original contract through a competitive RFP process, and the evaluation panel for the RFP included both City Staff and community stakeholders. Given RDA's detailed knowledge of the SCU design and experience in grant development, they are uniquely qualified to perform the grant writing services in this amendment.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Lisa Warhuus, Director of Health Housing and Community Services, (510) 981-5404  
Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, (510) 981-5249

Attachments:

1: Resolution

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

CONTRACT NO. 32100082 AMENDMENT: RESOURCE DEVELOPMENT  
ASSOCIATES FOR SPECIALIZED CARE UNIT

WHEREAS, on July 14, 2020, the City Council of the City Berkeley passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley that included direction to the City Manager to analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit (SCU); and

WHEREAS, City of Berkeley community members would prefer a 24/7 mental health crisis response system that does not so heavily involve law enforcement; and

WHEREAS, Resource Development Associates will conduct a comprehensive feasibility study, program design and implementation plan for an SCU to respond to public safety calls that do not require presence of law enforcement; and

WHEREAS, Resource Development Associates' services align with the Strategic Plan goal to champion and demonstrate social and racial equity; and

WHEREAS, Resource Development Associates was selected through a competitive Request for Proposals process; and

WHEREAS, on December 1, 2020 by Resolution No. 69,621-N.S. City Council approved Contract No. 32100082 with Resource Development Associates for SCU design; and

WHEREAS, this amendment will fund grant writing services to support the creation and implementation of the SCU framework designed by RDA and enhancement of the mental health system; and

WHEREAS, funds are currently available in the Fiscal Year 2022 Budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to amend the existing contract with Resource Development Associates (RDA) by adding \$60,000 to facilitate grant writing services for the Specialized Care Unit (SCU) for a total contract limit of \$245,000 for the period beginning January 1, 2021 and ending June 30, 2023. A record signature copy of the contract and any amendments between the City and RDA shall be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Michael Sinor, Interim Director, Information Technology  
Subject: Contract No. 319001221-1 Amendment: Rolling Orange, Inc. for Additional Website Redesign Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 319001221-1 with Rolling Orange, Inc. for the additional website redesign services, for an amount not-to-exceed \$10,000 and a total contract value not-to-exceed \$569,300 from March 1, 2019 to June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional professional services is available in the Fiscal Year (FY) 2022 and 2023 IT Cost Allocation fund as outlined below. Spending in future years for this amendment is subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

\$1,750 FY 2022: Professional Services  
Budget Code: 680-35-363-384-6005-000-472-612990-  
(IT Cost Allocation, Business Applications, Professional Services)

\$8,250 FY 2023: Professional Services  
Budget Code: 680-35-363-384-6005-000-472-612990-  
(IT Cost Allocation, Business Applications, Professional Services)

---

**\$10,000 FY 2022 and FY 2023: Total Professional Services**

CURRENT SITUATION AND ITS EFFECTS

The City began working with Rolling Orange, Inc. to develop a new city website in March 2019. The project includes the development of a new information architecture, new look and feel, mobile-responsive design, and build-out of the new website in the Drupal content management system.

The City’s website hosts four custom-built tools that are highly used by community members – a Building Permit Fee estimator, Council District lookup tool by address, Rent Board Stabilization Annual General Adjustment (AGA) calculator, and Rent Board

Stabilization Security deposit interest calculator. These applications were determined to be essential features of the website, but the existing code is incompatible with the new software and hosting environment. These tools will be rebuilt and integrated into the new website.

Annual General Adjustment (AGA) Calculator: Each year the Berkeley Rent Board passes an Annual General Adjustment (AGA) which allows landlords to raise the rents for all rental units fully covered by the Berkeley Rent Ordinance for which the landlord did not establish an initial rent during the prior calendar year. The AGA calculator is a tool for the landlords to use in determining the maximum rent amount for their rental units.

Security Deposit Interest Calculator: The Berkeley Rent Stabilization Ordinance requires landlords to pay tenants interest on their security deposits while being held by the landlord. Landlords must use the "Berkeley Bank Rate" when calculating the amount of security deposit interest to return to tenants. The Security Deposit Interest calculator is a tool for the landlords to use in determining the amount of interest to be paid to the tenant.

The website redesign is a Strategic Plan Priority Project, advancing our goal to be a customer-focused organization that provides excellent, timely, easily accessible service and information to the community.

## BACKGROUND

Rolling Orange, Inc was selected to develop a new website for the City of Berkeley after a competitive bidding process. In February 2018, the City published Request for Proposal (RFP) No. 17-1118-C seeking a website redesign and new web content management system with secure, high-performance offsite hosting.

The City received twenty-five (25) responses. A multi-departmental team evaluated the proposals and conducted two rounds of interviews and software demonstrations. Rolling Orange was selected for the project after receiving the highest scores from both the evaluation team and other stakeholders who were invited to attend the demonstrations.

The City began work with Rolling Orange in March 2019. Working closely with City staff to assess technical and user needs, Rolling Orange has developed new posting templates, workflows, navigation structures and underlying technical architecture, and has completed end-user testing on a prototype version of the new website.

The new website will use secure, off-site hosting, allowing the City to retire the server that currently hosts the website. This necessitates the replacement of several legacy applications which had been custom built in-house and are currently maintained and support by Information Technology staff.



During technical discovery and template development with Rolling Orange, several additional needs were identified and addressed in previous amendments: replacement of self-hosted custom applications, system integration for 311 intake forms, implementation of portals for Rent Stabilization Board and Berkeley Housing Authority, additional template and guided service delivery tool development, and additional applications for the Rent Stabilization Board webpage. Work on these items have started and are in various stages of completion.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The improvements in website ease-of-use and availability of online transactions will help reduce travel associated with on-site visits to City offices. The improved functionality of the new software will increase efficiency of internal processes thus reducing paper-based processes resulting in an environmentally sound and cost-effective information technology infrastructure.

Additionally, moving the website from onsite to offsite hosting will reduce the City's server and storage computing needs as well as ongoing maintenance needed to maintain the equipment. It will also provide redundancy in case of a disaster such as earthquake, etc.

#### RATIONALE FOR RECOMMENDATION

The replacement of existing custom applications and integration into the new website will reduce maintenance and support needed from Information Technology staff and improve the new website's utility and ease-of-use for community members.

#### ALTERNATIVE ACTIONS CONSIDERED

Alternative actions considered included not including this functionality on the new website, however this option is not practical. Online issue reporting and easier online transactions are highly desired by community members and are part of the City's Strategic Plan.

#### CONTACT PERSON

Michael Sinor, Interim Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 319001221-1 AMENDMENT: ROLLING ORANGE, INC. FOR WEBSITE REDESIGN, WEB CONTENT MANAGEMENT SYSTEM (CMS), AND SUPPORT

WHEREAS, on February 27, 2018, the City issued a Request for Proposals (RFP) for a website redesign and web content management system and received twenty-five qualifying vendor responses; and

WHEREAS, the RFP evaluation committee evaluated each proposal and determined that the Rolling Orange, Inc. proposal best met the City's operational, technological, and fiscal requirements; and

WHEREAS, additional technical discovery after the commencement of work with Rolling Orange identified additional functional needs for the new website, including the replacement and integration of several custom-built applications and enhanced online 311 reporting; and

WHEREAS, funding for the additional development services is available in Fiscal Year (FY) 2022 and 2023 IT Cost Allocation Fund, and spending in future years for this amendment is subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 319001221-1 with Rolling Orange, Inc. for website redesign and web content management system, increasing the amount by \$10,000, for a total contract amount not to exceed \$569,300 from March 1, 2019 to June 30, 2024.



Office of the City Manager

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront  
Subject: Measure T1 Contract: Western Water Features Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster, Tile, and Filter Replacement

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project, Specification No. 22-11489-C;
2. Accepting the bid of the lowest responsive and responsible bidder, Western Water Features, Inc.; and
3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Western Water Features, Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project in an amount not to exceed \$1,010,000, which includes a contract amount of \$989,449 and a 10% contingency in the amount of \$20,551.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this construction project contract in the amount of \$1,010,000 is comprised of \$350,000 of Measure T1 Phase 2 funds and \$660,000 of City General Fund.

**King Pool Tile and Plaster – PRWT122011**

Measure T1 Phase 2

511-52-545-000-0000-000-461-663110-.....\$350,000

General Fund

011-52-545-000-0000-000-461-663110-.....\$88,275

**West Campus Pool Tile, Plaster, and Filter Replacement- PRWPK22005**

General Fund

011-52-545-000-0000-000-461-663110-.....\$571,725

**Total .....\$1,010,000**

CURRENT SITUATION AND ITS EFFECTS

On December 15, 2020, City Council approved phase 2 projects for the Measure T1 Infrastructure Bond that was passed by voters by an 86.5% margin on November 3, 2016. Phase 2 included an allocation of \$350,000 to complete the work at King Pool. The remaining \$88,275 needed for King Pool is funded from General Fund. The West Campus Pool is not eligible for T1 funds because of the limited length of the 5-year agreement for the use of the pool. Therefore, the work at West Campus Pool is funded by \$571,725 of General Fund.

Specification # No 22-11489C was competitively bid out in early January 2022. On January 27, 2022 the City received 2 bids for the specified work from Tricon Construction. Inc. and Western Water Features Inc., who was determined to be the lowest responsive and responsible bidder. Staff recommends council approval of a contract with the Western Water Features Inc. for construction services at King and West Campus Pools.

BACKGROUND

The City currently operates two year-round public pools, King and West Campus. West Campus pool was built in 1964 and King pool in 1965. Both pools are owned by the Berkeley Unified School District (BUSD) and operated by the City via an MOU, the most recent version of which was approved by City Council in December of 2020. Agreements for pools use and maintenance between the BUSD and the City have been in place since these pools were constructed. Per the current agreement, the City is responsible for the maintenance and upkeep of all pool and pool building infrastructure.

In the past 12 years, the City has performed the following major maintenance projects:

- 2009 Replacement of King Pool plaster, coping stones, tile and VGB Compliance.
- 2010 Replacement of West Campus pool plaster, coping stones, tile and VGB Compliance.
- 2013 King Pool Pumps and Filters replaced/ 1 West Campus filter replaced with used filter from Willard.
- 2017 King Pool Boiler Replaced.
- 2018 West Campus Pool Boiler Replaced.

Municipal pool plaster and tile life expectancy is between 7-10 years. It has been 13 years since King Pool and 12 years since West Campus pool have received this maintenance work. Additionally, the West Campus pool filters have not been replaced since the mid-1990's and are in-need of complete replacement. All of this work will be accomplished with the completion of this contract.

ENVIRONMENTAL SUSTAINABILITY

This promotes environmental sustainability and meets the Strategic Plan Goal 1 to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

RATIONALE FOR RECOMMENDATION

Western Water Features, Inc. is highly qualified and responsive. They have successfully worked for the City of Berkeley and many other local municipalities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700

Attachment:

- 1: Resolution
- 2: Bid Abstract

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

MEASURE T1 CONTRACT: WESTERN WATER FEATURES INC. FOR THE KING POOL PLASTER AND TILE REPLACEMENT AND WEST CAMPUS POOL PLASTER, TILE, AND FILTER REPLACEMENT

WHEREAS, the City currently operates two year-round public pools, King and West Campus. West Campus pool was built in 1964 and King pool in 1965. Both pools are owned by the Berkeley Unified School District (BUSD) and operated by the City via an MOU. Per the current agreement, the City is responsible for the maintenance and upkeep of all pool and pool building infrastructure; and

WHEREAS, the life expectancy of municipal pool plaster and tile is between 7-10 years. It has been 13 years since King Pool and 12 years since West Campus pool have received this maintenance work. Additionally, the West Campus pool filters have not been replaced since the mid-1990's and are in-need of complete replacement; and

WHEREAS, on December 15, 2020, City Council approved phase 2 projects for the Measure T1 Infrastructure Bond program, which allocated of \$350,000 to complete the work at King Pool. The remaining \$88,275 needed for King Pool is funded from General Fund. The West Campus Pool is not eligible for T1 funds because of the limited length of the 5-year agreement for the use of the pool. Therefore, the work at West Campus Pool is funded by \$571,725 of General Fund; and

WHEREAS, Specification # No 22-11489C was competitively bid out in early January 2022. On January 27, 2022 the City received 2 bids for the specified work: Tricon Construction. Inc. and Western Water Features Inc. Western Water Features, Inc. was determined to be the lowest responsive and responsible bidder. Staff recommends council approval of a contract with the Western Water Features Inc. for construction services at King and West Campus Pools.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project, Specification No. 22-11489-C are approved; and

BE IT FURTHER RESOLVED that the construction contract is awarded to the Western Water Features, Inc.as the lowest responsive and responsible bidder; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Western Water Features, Inc. for the King Pool Plaster and Tile Replacement and West Campus Pool Plaster and Tile Replacement and Filter Replacement Project in an amount not to exceed \$1,010,000, which includes a contract amount of \$989,449 and a 10% contingency in the amount of \$20,551. A record signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

**FOR:** King Pool Plaster and Tile Project      **Spec. #** 22-11489-C      **Bid Date:** 1/27/2022

required w/ bid

|    | Bidders                      | Base Bid    | Bid Bond | Addenda (1) | Reg. & Exp | Subs | Non-Coll. | Certs. |
|----|------------------------------|-------------|----------|-------------|------------|------|-----------|--------|
| 1  | Tri Con Construction         | \$1,335,930 | x        | x           | x          | x    | x         | x      |
| 2  | Western Water Features, Inc. | \$989,449   | x        | x           | x          | x    | x         | x      |
| 3  |                              |             |          |             |            |      |           |        |
| 4  |                              |             |          |             |            |      |           |        |
| 5  |                              |             |          |             |            |      |           |        |
| 6  |                              |             |          |             |            |      |           |        |
| 7  |                              |             |          |             |            |      |           |        |
| 8  |                              |             |          |             |            |      |           |        |
| 9  |                              |             |          |             |            |      |           |        |
| 10 |                              |             |          |             |            |      |           |        |

Bid Recorder: DPST \_\_\_\_\_

Darryl Sweet

Bid Opener: \_\_\_\_\_ JR \_\_\_\_\_

Josh Roben

Project Manager: Justin Pitcher \_\_\_\_\_

Justin Pitcher







Office of the City Manager

09

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Amendment to Contract No. 32000219 with Lind Marine - Removal of Derelict and Abandoned Vessels at the Berkeley Marina

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend Contract No. 32000219 with Lind Marine to remove derelict and abandoned vessels at the Berkeley Marina by increasing the contract amount by \$42,000; and authorizing additional contingency of \$4,200 for a contract total not-to-exceed amount of \$188,400; and contingency of \$47,000; and extend the contract to September 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

In 2021, the Parks, Recreation, and Waterfront Department received a third SAVE grant in the amount of \$42,000 from the California Division of Boating and Waterways (DBW) that requires a local match of 10% (\$4,200) (Resolution No. 69,876-N.S. on May 25, 2021). These grant funds will be deposited into account code 607-52-544-592-0000-000-472-612990- PRWWF22005, and the local match has been budgeted in the Marina Fund account code 608-52-544-592-0000-000-472-612990- PRWWF22005. These funds, totaling \$46,200, will be appropriated as part of the second amendment to the FY2022 annual appropriations ordinance.

|                           | <b>Contract</b>  | <b>Contingency</b> | <b>Total</b>     |
|---------------------------|------------------|--------------------|------------------|
| <b>Current Amount</b>     | \$146,400        | \$42,800           | \$189,200        |
| <b>Proposed Amendment</b> | \$42,000         | \$ 4,200           | \$46,200         |
| <b>Total</b>              | <b>\$188,400</b> | <b>\$47,000</b>    | <b>\$235,400</b> |

CURRENT SITUATION AND ITS EFFECTS

In 2021, the City received a third SAVE grant from the California Division of Boating and Waterways in the amount of \$42,000 to remove derelict and abandoned vessels at the Berkeley Marina. A second contract amendment with Lind Marine is required in order to perform the vessel removal services funded by the grant. This new round of funding will enable us to keep our docks clear of derelict vessels in the coming year, and build upon

the progress we made in removing twenty-five (25) derelict vessels since receiving the 2019 SAVE Grant.

The current contract with Lind Marine will be extended to September 30<sup>th</sup> 2023. Along with the contract total not-to-exceed amount of \$188,400, \$47,000 will act as a contingency to cover future abandoned vessel removals and unforeseen circumstances and that may arise between now and the expiration of the SAVE 2021 grant in September 30, 2023.

### BACKGROUND

Each year, approximately five to ten vessels get abandoned by their owners at the Berkeley Marina because they lack funds to repair the vessels or they lack funds to pay for their dockage fees. Due to the age and neglect of the vessels, they have no value, are not sea-worthy, and are likely to sink. These vessels occupy slips in the Berkeley Marina that could otherwise be used to generate dockage revenue for the City, and these vessels are a visual blight on our Marina and harm our reputation.

Responsibility for derelict and abandoned vessels, unfortunately, often falls on public agencies. For the past 20 years, the Division of Boating and Waterways has provided grant funding assistance to public agencies to properly remove, store, and dispose of abandoned, wrecked, or dismantled vessels or any other partially submerged objects that pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent.

In 2019, the Parks, Recreation, and Waterfront Department received a grant in the amount of \$130,000 from the California Division of Boating and Waterways (DBW) to remove abandoned vessels that required a local match of 10% (\$13,000) (Resolution No. 68,791-N.S.) On March 26, 2019, the City conducted a competitive Request For Proposal (RFP) process and Lind Marine was selected to perform these services.

In 2020, the City received a second SAVE grant in the amount of \$42,000, which was added to the Lind contract as amendment number 1 (Resolution No. 69,349-N.S.)

In 2021, the City received a third SAVE grant in the amount of \$42,000. In order to add this funding to the Lind contract to complete the work, a second contract amendment is needed.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Derelict, abandoned, and sunken vessels pose a navigational and environmental hazard to the Bay waters at the Berkeley Marina. Removal and proper disposal of these vessels contributes to the improvement of water quality of the waters of the Bay.

### RATIONALE FOR RECOMMENDATION

The Parks, Recreation, and Waterfront Department has the primary responsibility for removing derelict and abandoned vessels from local waters. The contract amendment

will allow the City to continue to safely remove these potential environmental and navigational hazards from the Berkeley Marina.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 981-6737

Sean Crothers, Waterfront Supervisor, 981-6744

Attachments:

1. Resolution

RESOLUTION NO. ##,###-N.S.  
AMENDMENT TO CONTRACT 32000219: LIND MARINE, INC. FOR REMOVAL OF  
ABANDONED VESSELS AT THE BERKELEY MARINA

WHEREAS, each year, approximately five to ten vessels get abandoned by their owners at the Berkeley Marina because they lack funds to repair the vessels or they lack funds to pay for their dockage fees. Due to the age and neglect of the vessels, they have no value, are not sea-worthy, and are likely to sink. These vessels occupy slips in the Berkeley Marina that could otherwise be used to generate dockage revenue for the City, and these vessels are a visual blight on our Marina and harm our reputation; and

WHEREAS, responsibility for abandoned vessels, unfortunately, often falls on public agencies. For the past 20 years, the Division of Boating and Waterways has provided grants to public agencies, including the City of Berkeley, to remove, store, and dispose of abandoned, wrecked, or dismantled water vessels or any other partially submerged objects that pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent; and

WHEREAS, the Parks, Recreation and Waterfront Department has the primary responsibility for removing derelict and abandoned vessels from local waters. By applying for SAVE grants, the City is able to substantially leverage our existing funding for these projects, and safely remove potential environmental and navigational hazards from our waters; and

WHEREAS, In 2021, the Parks, Recreation, and Waterfront Department received a third SAVE grant in the amount of \$42,000 from the California Division of Boating and Waterways (DBW) that requires a local match of 10% (\$4,200) (Resolution No. 69,876-N.S. on May 25, 2021). Grant funds will be deposited into account code 607-52-544-592-0000-000-472-612990-PRWWF22005, and the local match has been budgeted in the Marina Fund account code 608-52-544-592-0000-000-472-612990- PRWWF22005. These funds, totaling \$46,200, will be appropriated as part of the second amendment to the FY2022 annual appropriations ordinance; and

WHEREAS, in February of 2019, the City conducted a competitive RFP process to obtain services for this project, and received four proposals on April 2, 2019. The bid of Lind Marine was determined to best meet the requirements as set out in the RFP.

WHEREAS, on April 14, 2021, the City Council authorized an amendment to the contract increasing the amount by \$42,000, in addition to \$4,200 in contingency to fund the removal of additional abandoned vessels at the Berkeley Marina, for an amount not to exceed \$189,200; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to amend contract no. 32000219 with Lind Marine to remove and dispose derelict and abandoned vessels at the Berkeley Marina by increasing the contract amount by \$42,000; and authorizing additional

contingency of \$4,200 for a total not-to-exceed contract amount of \$188,400; and a total authorized contingency of \$47,000. As well as extend the contract to September 30, 2023 to coincide with the expiration of the SAVE 2021 grant agreement on September 30, 2023. A record signature copy of said contract will be on file in the Office of the City Clerk.





Office of the City Manager

10

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Lease Agreement with NFS Unlimited, LLC for Skates-on-the-Bay

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute the attached ground lease with NFS Unlimited, LLC, the owner/lessee of Skates-on-the-Bay at the Berkeley Waterfront for a 10-year term with 2 additional options to extend for 5 years each, effective from May 1, 2022.

FISCAL IMPACTS OF THE RECOMMENDATION

The City's total annual rent received is expected to be similar to or higher than current levels. The existing lease, which is in holdover status, requires base rent of \$24,000/month (\$288,000/year). In the proposed lease, the base rent will be \$24,000/month, and will add a percentage rent of 3.5% of gross revenue above \$1.5 million. In exchange for capital improvements, including to the roof and adjacent parking lot, the tenant will receive up to \$100,000/year credit against annual rent during the initial term only. Base rent will escalate every 5 years by the lesser of 10% or 4 x the CPI increase over the prior 5 years. The lease includes 2 options to extend for an addition 5-year period each; if exercised, monthly rent will increase by the lesser of 10% or 4 x the CPI increase over the prior 5 years. Lease revenue will be deposited in the Marina Fund Budget Code 608-52-544-592-0000-000-000-461120.

Based on pre-Covid gross revenue of \$8.3M/year, this would result in a total rent payment of \$426,000/year. At peak pandemic revenue levels of \$1.75M/year, total rent would fall to \$195,000/year.

In addition, the new lease provides a delayed rent payment agreement for the tenant to repay \$313,000 in deferred rent during the Covid pandemic. This will be paid in 10 equal annual payments of \$31,300, and will not be eligible for any credits. No interest will be charged on this amount, consistent with the terms of the Covid-19 Emergency Response Ordinance, (Ordinance 7,743-N.S.)

Funds for annual rent and delayed rent repayment will be deposited into the Marina Fund revenue account: 608-52-544-592-0000-000-000-461120-.

### CURRENT SITUATION AND ITS EFFECTS

The City's lease for Skates-on-the-Bay, a Waterfront restaurant just north of the Berkeley Pier, has been in holdover status since January 1, 2019, as new lease terms are negotiated. The restaurant was constructed in 1967 by the original tenant, Manning's Inc. under a 50-year ground lease. Since 2019, Skates has been under the ownership of Landry's Inc., doing business as NFS Unlimited, Inc.

This proposed lease continues the existing restaurant as Skates-on-the-Bay, and provides a 10-year base term, with an additional 10-year option period.

The premises will continue to include the approx. 12,000 square foot restaurant building and pilings, driveway, median, garbage area and surrounding landscaping. The restaurant has non-exclusive use and maintenance responsibilities for the adjacent parking lot.

As described above, the rent includes base rent of \$24,000/mo (or \$288,000/year); percentage rent of 3.5% of gross sales over \$1.5M; and up to \$100,000/year in rent credit during the original lease term for approved capital expenditures including but not limited to replacement of the roof and renovation of the adjacent parking lot. The lease also includes a delayed rent repayment agreement by which the \$313,000 in unpaid rent during the Covid pandemic will be repaid in 10 equal annual installments.

The building is located on State tidelands held in trust by the City of Berkeley for the promotion of commerce, navigation, and fisheries ("public trust uses"). Restaurants are considered "public trust uses" of State tidelands.

### BACKGROUND

The City entered into a 50-year ground lease with prior owner of Skates-on-the-Bay, Mannings, Inc. on March 23, 1967 (Ord. 4247-N.S.). This initial agreement was amended on May 18, 1967; July 6, 1967; May 7, 1974 (Ord. 4697-N.S.); June 6, 1974; February 14, 1978 (Ord. 5027-N.S.); and September 24, 1996 (Ord. 6341-N.S.) Council most recently amended the lease on March 13, 2018, in an action that extended the lease term to December 31, 2018 and added a holdover clause (Ord. 7591-N.S.) In July 2019, Skates-on-the-Bay transferred ownership to Landry's, Inc., doing business as NFS Unlimited, LLC.

Council reviewed the proposed lease terms in closed session meetings on December 10, 2019 and November 16, 2021.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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



Lease Agreement for 100 Seawall Drive  
NFS Unlimited, LLC for Skates-on-the-Bay

CONSENT CALENDAR  
March 8, 2022

Cesar Chavez Park, and capital projects at the Waterfront.

RATIONALE FOR RECOMMENDATION

The revenue generated by this lease will help restore revenue for the Marina Fund, which depends on berth and lease revenue to support all Waterfront operations.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700

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

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

Attachments:

1. Ordinance
2. Exhibit A: Lease Agreement

ORDINANCE NO. –N.S.

LEASE AGREEMENT WITH NFS UNLIMITED, LLC FOR SKATES-ON-THE-BAY

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

Section 1. The City Manager is hereby authorized to execute a ten-year ground lease agreement and any amendments with NFS Unlimited, LLC for the Skates-on-the-Bay restaurant and premises at the Berkeley Waterfront. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The base rent will be \$24,000/month, and will add a percentage rent of 3.5% of gross revenue above \$1.5 million. In exchange for capital improvements, including to the roof and adjacent parking lot, the tenant will receive up to \$100,000/year credit against annual rent during the initial term only. Base rent will escalate every 5 years by the lesser of 10% or 4 x the CPI increase over the prior 5 years. The lease includes 2 options to extend for an addition 5-year period each; if exercised, monthly rent will increase by the lesser of 10% or 4 x the CPI increase over the prior 5 years. Lease revenue will be deposited in the Marina Fund Budget Code 608-52-544-592-0000-000-000-461120. In addition, the new lease provides a delayed rent payment agreement for the tenant to repay \$313,000 in deferred rent during the Covid pandemic. This will be paid in 10 equal annual payments of \$31,300, and will not be eligible for any credits. No interest will be charged on this amount, consistent with the terms of the Covid-19 Emergency Response Ordinance, (Ordinance 7,743-N.S.)

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibit A:

Lease Agreement

**GROUND LEASE**

**by and between**

**CITY OF BERKELEY  
("Landlord")**

**and**

**NFS UNLIMITED, LLC  
("Tenant")**

Doing Business As (DBA) Skates on the Bay

Dated \_\_\_\_\_, 2022

TABLE OF CONTENTS  
(Ground Lease)

|                                                                      | Page |
|----------------------------------------------------------------------|------|
| ARTICLE 1. PROPERTY AND BACKGROUND .....                             | 1    |
| <b>1.1 Overview</b> .....                                            | 1    |
| <b>1.2 Ground Lease</b> .....                                        | 1    |
| ARTICLE 2. TERM .....                                                | 1    |
| <b>2.1 Term</b> .....                                                | 1    |
| <b>2.2 Options to Extend.</b> .....                                  | 1    |
| ARTICLE 3. RENT AND SECURITY .....                                   | 2    |
| <b>3.1 Rent</b> .....                                                | 2    |
| <b>3.2 Annual Rent</b> .....                                         | 2    |
| <b>3.3 Payment of Annual Rent.</b> .....                             | 2    |
| <b>3.4 Base Rent Adjustments</b> .....                               | 2    |
| <b>3.6 Gross Receipts</b> .....                                      | 3    |
| <b>3.7 Late Charge</b> .....                                         | 6    |
| <b>3.8 Application of Payments</b> .....                             | 6    |
| <b>3.9 Payment of Deferred Rent.</b> .....                           | 6    |
| ARTICLE 4. TAXES AND ASSESSMENTS .....                               | 6    |
| <b>4.1 Personal Property Taxes</b> .....                             | 6    |
| <b>4.2 Statement Regarding Possessory Interest Tax</b> .....         | 6    |
| <b>4.3 Real Property Taxes</b> .....                                 | 7    |
| <b>4.4 Assessments</b> .....                                         | 7    |
| <b>4.5 Tenant’s Tax Liability Prorated</b> .....                     | 7    |
| <b>4.6 Real Property Tax Contest</b> .....                           | 7    |
| ARTICLE 5. USE, CHARACTER, OPERATION AND MAINTENANCE COVENANTS ..... | 8    |
| <b>5.1 General</b> .....                                             | 8    |
| <b>5.2 Use Obligations</b> .....                                     | 8    |
| <b>5.3 General Use Prohibitions</b> .....                            | 8    |
| <b>5.4 Non-Discrimination</b> .....                                  | 9    |
| <b>5.5 General Standards of Maintenance</b> .....                    | 10   |
| <b>5.6 Parking Lot</b> .....                                         | 10   |
| <b>5.7 Governmental Requirements</b> .....                           | 11   |
| <b>5.8 Landlord Access Rights</b> .....                              | 11   |
| <b>5.9 Use of Berkeley Waterfront Property; Public Trust.</b> .....  | 11   |
| <b>5.10 Public Trust Tidelands Requirements.</b> .....               | 12   |
| <b>5.11 Landlord’s Status as a Landowner</b> .....                   | 13   |

TABLE OF CONTENTS  
(Ground Lease)

|                                                                                      | Page |
|--------------------------------------------------------------------------------------|------|
| 5.12 Regulatory Approvals Generally .....                                            | 13   |
| 5.13 Covenants Regarding Improvements .....                                          | 13   |
| ARTICLE 6. CONDITION OF PROPERTY .....                                               | 14   |
| 6.1 Landlord’s Disclaimers and Tenant’s Acknowledgements .....                       | 14   |
| 6.2 Hazardous Materials .....                                                        | 15   |
| ARTICLE 7. CONSTRUCTION AND LIENS .....                                              | 16   |
| 7.1 Improvements .....                                                               | 16   |
| 7.2 Alterations on Premises, Facility, or Non-Exclusive Use Areas .....              | 16   |
| 7.3 Construction Standards .....                                                     | 17   |
| 7.4 Protection of Landlord .....                                                     | 18   |
| 7.5 Liens and Stop Notices .....                                                     | 19   |
| 7.6 Notice .....                                                                     | 19   |
| ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY .....                     | 19   |
| 8.1 Ownership of Facility During Term .....                                          | 19   |
| 8.2 Ownership of Improvements at Termination or Expiration .....                     | 19   |
| 8.3 Removal and Ownership of Personal Property at Termination or<br>Expiration ..... | 20   |
| ARTICLE 9. UTILITIES .....                                                           | 20   |
| ARTICLE 10. INSURANCE AND INDEMNITY .....                                            | 20   |
| 10.1 General Insurance Requirements .....                                            | 20   |
| 10.2 Indemnity .....                                                                 | 22   |
| ARTICLE 11. DAMAGE OR DESTRUCTION .....                                              | 22   |
| 11.1 Restoration .....                                                               | 22   |
| 11.2 Right to Terminate Upon Destruction Near the End of the Term .....              | 24   |
| 11.3 Waiver .....                                                                    | 24   |
| 11.4 Determination of Extent of Destruction, Interference with Use .....             | 25   |
| 11.5 Procedures for Repair and Restoration .....                                     | 25   |
| ARTICLE 12. CONDEMNATION .....                                                       | 25   |
| 12.1 Definitions .....                                                               | 25   |
| 12.2 Parties’ Rights and Obligations to be Governed by Ground Lease .....            | 25   |
| 12.3 Total Taking .....                                                              | 25   |
| 12.4 Effect of Partial Taking .....                                                  | 25   |
| 12.5 Restoration of Facility .....                                                   | 26   |

TABLE OF CONTENTS  
(Ground Lease)

|                                                                         | Page |
|-------------------------------------------------------------------------|------|
| 12.6 Waiver of CCP Section 1265.130 .....                               | 26   |
| 12.7 Award .....                                                        | 26   |
| ARTICLE 13. BRAND QUALITY, ASSIGNMENT AND SUBLETTING .....              | 27   |
| 13.1 Brand Name and Quality .....                                       | 27   |
| 13.2 Assignment .....                                                   | 27   |
| 13.3 Subleases .....                                                    | 28   |
| ARTICLE 14. TENANT DEFAULTS AND LANDLORD’S REMEDIES .....               | 28   |
| 14.1 Defaults by Tenant .....                                           | 28   |
| 14.2 Remedies .....                                                     | 29   |
| 14.3 Damages .....                                                      | 30   |
| 14.4 Landlord’s Right to Cure Tenant’s Default .....                    | 30   |
| ARTICLE 15. MORTGAGEE PROTECTION PROVISIONS .....                       | 31   |
| 15.1 Ground Leasehold Mortgage Authorized .....                         | 31   |
| 15.2 Notice to Landlord .....                                           | 31   |
| 15.3 Definitions .....                                                  | 31   |
| 15.4 Consent of Ground Leasehold Mortgagee Required .....               | 31   |
| 15.5 Notice to Ground Leasehold Mortgagee .....                         | 32   |
| 15.6 Ground Leasehold Mortgagee Foreclosure .....                       | 32   |
| 15.7 Purchaser at Foreclosure .....                                     | 33   |
| 15.8 Ground Leasehold Mortgagee’s Right to Sell .....                   | 33   |
| 15.9 Holder Not Obligated to Construct Improvements .....               | 33   |
| 15.10 Right of Landlord to Cure Ground Leasehold Mortgage Default ..... | 34   |
| ARTICLE 16. MISCELLANEOUS .....                                         | 34   |
| 16.1 Holding Over .....                                                 | 34   |
| 16.2 Attorneys’ Fees .....                                              | 34   |
| 16.3 Quiet Possession .....                                             | 34   |
| 16.4 Force Majeure .....                                                | 34   |
| 16.6 Notices .....                                                      | 35   |
| 16.7 Waiver .....                                                       | 35   |
| 16.8 Surrender .....                                                    | 35   |
| 16.9 Binding .....                                                      | 35   |
| 16.10 Landlord’s Right to Enter Premises and Facility .....             | 35   |
| 16.11 Disclaimer of Partnership .....                                   | 36   |

TABLE OF CONTENTS  
(Ground Lease)

|                                                                     | Page |
|---------------------------------------------------------------------|------|
| 16.12 Memorandum .....                                              | 36   |
| 16.13 Quitclaim .....                                               | 36   |
| 16.14 Interpretation.....                                           | 36   |
| 16.15 Severability.....                                             | 36   |
| 16.16 Computation of Time.....                                      | 37   |
| 16.17 Legal Advice.....                                             | 37   |
| 16.18 Time of Essence .....                                         | 37   |
| 16.19 Nonliability of Landlord’s Officials and Employees .....      | 37   |
| 16.20 Assignment by Landlord.....                                   | 37   |
| 16.21 Applicable Law.....                                           | 37   |
| 16.22 Agent for Service of Process.....                             | 37   |
| 16.23 Covenants and Conditions .....                                | 38   |
| 16.24 Integration .....                                             | 38   |
| 16.25 Estoppel Certificates .....                                   | 38   |
| 16.26 Amendments to this Ground Lease .....                         | 38   |
| 16.27 Brokerage Commissions .....                                   | 38   |
| 16.28 City Non-Discrimination Ordinance .....                       | 39   |
| 16.29 Non-Discrimination Against Persons With Disabilities. ....    | 39   |
| 16.30 Conflict of Interest Prohibited. ....                         | 39   |
| 16.31 Nuclear Free Berkeley .....                                   | 40   |
| 16.32 Required Accessibility Disclosure.....                        | 40   |
| 16.33 Oppressive States. ....                                       | 40   |
| 16.34 Berkeley Living Wage Ordinance (LWO).....                     | 41   |
| 16.35 Berkeley Equal Benefits Ordinance (EBO).....                  | 41   |
| 16.36 Berkeley Marina Zone Worker Retention Ordinance.....          | 42   |
| 16.37 Pests and Pesticide Management.....                           | 42   |
| 16.38 Berkeley Sanctuary City Ordinance.....                        | 42   |
| 16.39 Audit.....                                                    | 43   |
| 16.40 City Business License, Payment of Taxes, Tax I.D. Number..... | 43   |
| 16.41 Survival.....                                                 | 43   |

TABLE OF CONTENTS  
(Ground Lease)

Page

LIST OF EXHIBITS

|                  |                            |
|------------------|----------------------------|
| <u>Exhibit A</u> | Site Map                   |
| <u>Exhibit B</u> | Memorandum of Ground Lease |
| <u>Exhibit C</u> | Improvements               |



**BASIC LEASE INFORMATION  
(Ground Lease)**

1. **“Landlord”** CITY OF BERKELEY, a public body corporate and politic

Notice Address:  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Manager  
Telephone: (510) 981-7000  
Facsimile: (510) 981-7099

With a copy to:  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704  
Attention: City Attorney  
Telephone: (510) 981-6991  
Facsimile: (510) 981-6960

2. **“Tenant”** NFS UNLIMITED, LLC, a Texas limited liability company

Notice Address:  
NFS Unlimited, LLC  
1510 West Loop South  
Houston, TX 77027  
Attention: General Counsel  
Telephone: (713) 386-7002  
Email: [sscheinthal@ldry.com](mailto:sscheinthal@ldry.com); [vwilliams@ldry.com](mailto:vwilliams@ldry.com)

With a copy to:  
NFS Unlimited, LLC  
1510 West Loop South  
Houston, TX 77027  
Attention: Rodney Lerner, VP - Real Estate  
Telephone: (713) 386-7082  
Email: [rlerner@ldry.com](mailto:rlerner@ldry.com)

3. **“Effective Date”** The later of (i) the date of last execution and (ii) the date that is 30 days after the Landlord’s City Council’s adoption of the Ordinance by which this Ground Lease is approved.

4. **“Premises” and “Facility”** The **“Premises”** are the approximately 0.77 acre area of land and associated vehicular drive aisle, walkways, western-facing parking stalls, garbage enclosure, and landscaping areas, commonly known and referred to as 100 Seawall Drive on the Berkeley Marina, Berkeley, California (being a portion of APN 60-2445-1), shown on the Site Map attached hereto as Exhibit A (**“Site Map”**). The **“Facility”** including without limitation the approximately 12,000

**BASIC LEASE INFORMATION  
(Ground Lease)**

rentable square feet free standing restaurant building located on the Premises, together with the building's support pilings, canopies and decking, as generally depicted in Exhibit A attached hereto, and all other improvements of any type constructed in accordance with the terms of this Ground Lease (together, the "**Facility**").

**5. "Non-Exclusive Use"**

Tenant shall have non-exclusive use of the parking lot adjacent to the Premises, as depicted in Exhibit A. Tenant is responsible for improvements and maintenance of the parking lot, as described in Exhibit C and section 5.6.

**6. "Permitted Use"**

To maintain and operate on the Premises a first-class restaurant and cocktail lounge serving alcoholic beverages for the convenience and promotion of commerce, navigation and fishery in the Berkeley Marina and for no other purpose.

**7. "Commencement Date"**

The Effective Date.

**8. "Term"**

10 years commencing on the Commencement Date, plus the first partial month if the Commencement Date is other than the first day of the month ("**Initial Term**"). Tenant has 2 options to extend the Initial Term for an additional 5 years each (each, an "**Extension Term**"), subject to Section 2.3 (Tenant's Option(s) to Extend). "**Lease Year**" shall be the 12-month period commencing with the Commencement Date and each anniversary thereof. The "**Expiration Date**" is the date the Term expires.

**BASIC LEASE INFORMATION  
(Ground Lease)**

- 9. **“Annual Rent”**
  - A. Generally. Payable as provided in Section 3 below, both:
    - B. **“Base Rent”** in the amount of Twenty Four Thousand and no/100<sup>th</sup> Dollars (\$24,000) per month (Two Hundred Eighty-eight Thousand and no/100<sup>th</sup> Dollars [\$288,000.00] per year); and
    - C. **“Percentage Rent”** equal to 3.5% of Gross Receipts (as defined in Section 3.4 below) in excess of \$1,500,000 per Lease Year. Except as otherwise expressly provided in this Ground Lease, Percentage Rent shall be calculated (and paid) on a annual basis by May 1<sup>st</sup> of each year.
    - D. **“Base Rent Adjustment”**. Base rent will increase every 5 years by the lesser of 10% or 4 x average CPI over the prior 5 years, as provided in section 3.3 below.
    - E. **“Tenant Improvement Allowance”** up to \$100,000 / year credit against annual rent during the Initial Term, with proof of receipts and Landlord prior written approval. Tenant Improvement expenses exceeding \$100,000 may be rolled over to subsequent years in the Initial Term.
  
- 10. **“Gross Receipts”** See Section 3.4.
  
- 11. **“Payment of Deferred Rent”** As provided in Section 3.7, parties agree that \$313,000 in deferred rent that was unpaid during the prior lease due to Covid will be repaid in 10 annual equal payments of \$31,300.
  
- 12. **“Improvements”** See Section 7.1 and Exhibit C.
  
- 13. **“Ground Lease Security”** None

\_\_\_\_\_

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

LANDLORD'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_

## GROUND LEASE

THIS GROUND LEASE ("**Ground Lease**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022, to be effective on the "**Effective Date**" (as defined in the Basic Lease Information), by and between the Landlord and Tenant identified in the Basic Lease Information, who agree as follows:

### ARTICLE 1. PROPERTY AND BACKGROUND

**1.1 Overview.** Tenant has succeeded to the interests of Mannings, Inc. as "Lessee" under that certain Ground Lease between the Landlord as "Lessor" and Manning's Inc. as "Lessee," dated March 23, 1967, as subsequently amended, assigned and subleased (together, the "**Prior Ground Lease**"). The term under the Prior Ground Lease expired on December 31, 2018 and since that date Tenant has continued to lease and occupy the Premises on a holdover basis as provided in the Prior Ground Lease. The term of the Prior Ground Lease will terminate immediately prior to the Commencement Date, and the parties desire to enter into a new ground lease for the Premises on the terms set forth herein. From and after the Commencement Date, neither party shall have any further rights or obligations under the Prior Ground Lease other than those obligations which survive expiration or termination thereof.

A. Premises. Landlord owns the Premises (as defined in the Basic Lease Information).

B. Improvements. Pursuant to the Prior Ground Lease, Tenant or its predecessors constructed and owns the Facility (as defined in the Basic Lease Information). Tenant will continue to own the Facility during the term of this Ground Lease.

C. Occupancy. Tenant currently leases and occupies the entire Premises and Facility under the Prior Ground Lease. There are no subtenancies.

**1.2 Ground Lease.** For and in consideration of the payment of Rent and the performance of all the covenants and conditions of this Ground Lease, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Term (as defined below) and upon the covenants and conditions set forth herein.

### ARTICLE 2. TERM

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

**2.2 Options to Extend.** Provided that Tenant is not in default under the terms of this Lease beyond any applicable notice and cure period, Tenant shall have two (2) consecutive options to extend the Term of this Lease for an additional five (5) years each (each, a "**Renewal Option**"). To exercise a Renewal Option, Tenant must deliver written notice to Landlord no later than six (6) months before the then-scheduled expiration of the Term. Base Rent to be paid by Tenant during each Renewal Option Term shall be determined

on the first day of such Renewal Option Term, and be adjusted annually based on the "Base Rent Adjustment" methodology described in 3.4 below.

**ARTICLE 3.  
RENT AND SECURITY**

**3.1 Rent.** Rent shall be paid as set forth in this Article 3. This Ground Lease is a net lease, and Base Rent, Percentage Rent and Annual Rent (as provided in Basic Lease Information or in Section 2.3), and other payments due and payable hereunder to or on behalf of Landlord (collectively, "**Rent**") shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. Any monthly payment of Annual Rent for any period during the Term which is for less than one month shall be a pro rata portion of the then-monthly portion of Annual Rent, based upon the actual number of days in the month. All Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

**3.2 Annual Rent.** During the Initial Term and any Renewal Terms, and commencing on the Commencement Date (as defined in the Basic Lease Information), Tenant shall pay to Landlord Annual Rent.

**3.3 Payment of Annual Rent.**

A. Tenant shall pay Base Rent in the amount of Twenty Four Thousand and no/100th Dollars (\$24,000) per month (Two Hundred Eighty-eight Thousand and no/100th Dollars [\$288,000.00] per year) to Landlord in monthly installments in advance on or before the first day of each month.

B. Tenant shall pay Percentage Rent commencing with the second Lease Year on the basis of the Gross Receipts for the preceding Lease Year. Percentage Rent shall be equal to 3.5% of Gross Receipts in excess of \$1,500,000 per Lease Year. Except as otherwise expressly provided in this Ground Lease, Percentage Rent shall be calculated (and paid) on an annual basis by May 1st of each year.

C. Tenant shall be entitled to receive a credit against Annual Rent for capital improvements listed in Exhibit C or approved in writing by the Landlord prior to commencement of the work. This Tenant Improvement Allowance may not exceed \$100,000.00 per Lease Year for each Lease Year in the Initial Term of this Lease. This allowance is provided only for actual expenses, not prospective expenses. Tenant must provide to Landlord receipts to document approved expenses prior to claiming this credit. Expenses that exceed \$100,000 in a particular year may be rolled over for credit in a subsequent year; provided, however, that Tenant shall receive a credit of no more than \$100,000 in each year of the Initial Term, and no credits in any Extension Term. For example, if \$300,000 is spent in Year 1, it may be claimed as a credit in Years 1, 2 and 3.

**3.4 Base Rent Adjustments.** Beginning on the first day of the sixth lease year ("**Adjustment Date**"), and every 5 years thereafter, the Base Rent shall increase by an annual amount determined by multiplying the annual base rent for the immediately preceding Lease Year by a factor equal to four (4) times the percentage increase, if any, in the Consumer Price Index (as defined herein) most recently published one month prior to the Adjustment Date over the Consumer Price Index published for the same month in the calendar year five (5)

years preceding such Adjustment Date, but in no event shall any increase in Base Rent exceed ten percent (10%) of the Base Rent paid by Tenant for the Lease Year immediately preceding the Adjustment Date. Landlord shall promptly advise Tenant (but in no event less than 15 days after the Adjustment Date) of any increase in the Base Rent by reason of increases in the Consumer Price Index. The term "**Consumer Price Index**" as used in this Lease shall mean the Consumer Price Index, for all Urban Consumers, San Francisco-Oakland-Hayward, All Items, published by the Bureau of Labor Statistics of the United States Department of Labor.

**3.6**                    **Gross Receipts.**

A.     Definition. "**Gross Receipts**" includes the gross selling price of all food, alcohol, merchandise, goods and services sold, leased or rented in or from the Premises by Tenant and (if any) its subtenants, licensees and concessionaires; whether for cash or on credit; whether the order is received directly by on-site personnel, or is received by telephone, facsimile, email or other electronic or other ordering system at the Premises or at another location, as long as the order is either received at or filled at or from the Premises (orders delivered from the Premises, whether by Tenant employee, independent contractors or third parties, are deemed filled at the Premises); includes the gross sale prices from approved vending and other machines on or at the Premises; and regardless of whether bookkeeping, payment or collection of any account may take place away from the Premises. Any installment or credit sale shall be treated as a sale for the full cash price at time of sale.

B.     Exclusions from Gross Receipts. Gross Receipts excludes the following:

1.     The amount of deposits or prepayments until applied, and the selling price of gift certificates or vouchers until redeemed;

2.     Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales where not included in the original sales price, but not charges or expenses in connection with credit cards or bank cards (or other similar devices or systems now or hereafter developed), whether paid by the customer or by Tenant;

3.     The selling price of all items returned by customers and accepted for full credit and refunds to customers, or the amount of discounts and allowances made thereon, but only if the selling price of such items were previously included in Gross Receipts, and further provided that all such credits, discounts and allowances shall again be included in Gross Receipts when used or redeemed for merchandise or other items;

4.     Tenant's service of food or liquor for promotion purposes or to employees for which Tenant makes no charge, but which is shown on Tenant's books of account as sales;

5.     State, county or city sales, use, excise, gross receipts or similar taxes (including any such future taxes), but only if separately denominated from the selling price and collected from customers;

6.     Sums and credits received in settling claims for loss of or damage to inventory, merchandise, fixtures, equipment or furniture located within the Premises;

7. Sales of fixtures, equipment or property which is not inventory or stock in trade;
8. Amounts uncollected due to bad checks or uncollectible credit accounts;
9. Tips and gratuities received by Tenant's employees;
10. Proceeds received from insurance policies, condemnation awards and the like;
11. The amount of sales for merchandise, beverages (alcoholic or non-alcoholic) and food where no money is collected for such sales (commonly known in the industry as "comps" or "complimentaries") (with sales for such purposes not to exceed four percent (4%) of Gross Receipts per Lease Year);
12. The amount of sales for merchandise, beverages (alcoholic and non-alcoholic) and food where no money is collected for such sales due to damage, spoilage, plunder or breakage (commonly known as "spills");
13. Fees and charges paid to credit card, bank processing and check verification companies (including without limitation, Visa, MasterCard, American Express and Telecheck);
14. Proceeds from the sale of Tenant's business in whole;
15. The amount of any discounts or credits on sales provided to customers pursuant to any promotion, loyalty or rewards programs offered by Tenant or its affiliates from time to time (e.g., *Landry's Select Club*);
16. Revenue from the sale of memberships in the *Landry's Select Club* or similar memberships;
17. Receipts from valet parking;
18. Fees charged to Tenant by third-party delivery companies and related third-party ordering "apps" (e.g., DoorDash, UberEats, GrubHub);
19. Sales where and solely to the extent that, the proceeds are donated to charitable or non-profit organizations provided that such amounts do not exceed three percent (3%) of Gross Receipts in any Lease Year; and
20. A surcharge customarily charged to customers in Berkeley, CA by restaurant operators used to reimburse operators for costs and other employee expenses including healthcare.

C. Tenant shall, within 15-days after the end of each month, furnish Landlord with an unaudited monthly statement of Gross Receipts for the preceding month. Such statements shall not be used to compute Percentage Rent under this Ground Lease.

D. Tenant shall, not later than the date set forth in Section 2.3.B above, deliver to Landlord a detailed and accurate accounting in accordance with generally accepted accounting principles (“**GAAP**”) consistently applied, certified as correct under penalty of perjury by an officer of Tenant, showing the basis of computation of Gross Receipts and Percentage Rent for the applicable Lease Year. The accounting shall be accompanied by copies of all Tenant monthly state sales tax returns for the applicable Lease Year.

E. Tenant, on behalf of itself and its affiliated entities, shall maintain complete electronic books and records of its operations at its corporate office headquarters in Houston, Texas. Tenant shall keep all electronic books and records containing any or all of the foregoing information, for not less than five years from the end of the Lease Year to which they pertain. Landlord and its agents and employees shall have the right at any time during regular business hours to examine and inspect all Tenant books and accounts relating to Gross Receipts, including without limitation sales tax reports, tax returns, and other reports to any governmental agency, for the purpose of verifying the accuracy of any statement of Gross Receipts provided under this Ground Lease. If requested in writing by Landlord, within ten (10) business days of such request, Tenant shall deliver (at Tenant’s sole cost and expense) all electronically maintained books and records (i) in the form of fully readable (i.e., without requiring conversion to another type of file) electronic data files, or (ii) in the form of hard-copy (paper) printouts of the same.

F. Audit Rights and Obligations.

1. For purposes of verifying Percentage Rent payments due Landlord, Landlord shall have the right (not more than once in any five-Lease Year period) to require Tenant to submit full financial statements, prepared by a third-party certified public accountant, supporting Tenant’s computations of Gross Receipts and Percentage Rent for the applicable Lease Year. Landlord shall notify Tenant at least 30 days prior to expiration of the applicable Lease Year of the requirement to submit full financial statements for such Lease Year. Tenant shall submit such full financial statements to Landlord within 45 days following the end of the applicable Lease Year.

2. Additionally, Landlord’s representatives shall have the right (not more than once in any three-Lease Year period, unless a prior audit within that period revealed a discrepancy greater than the amount set forth below) to inspect Tenant’s books, leases, subleases, contracts, and all other pertinent records, and independently audit the results of Tenant’s operations, during reasonable business hours, on 10 business days’ written notice to Tenant. Tenant shall make all such records available to Landlord’s representatives for such audit. If as a result of an audit by an independent certified public accountant hired by Landlord, additional Percentage Rent is due Landlord for any Lease Year which exceeds by 4% the Percentage Rent actually paid for such Lease Year, the reasonable cost of such audit shall be paid by Tenant, and the additional amount of Percentage Rent owed Landlord shall bear interest from the date it should have been paid until paid at the lesser of 10% per annum compounded annually or the maximum rate permitted by Law (“**Interest Rate**”). If the discrepancy is less than 4%, Tenant need not pay any interest on the delinquent Percentage Rent as long as Tenant pays it within 30-days of issuance of the audit; otherwise, it will bear interest at the Interest Rate from the date it should have been paid until paid.

**3.7** Late Charge. The late payment of any Base Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service (“**Delinquency Costs**”). If Landlord has not received any installment of Base Rent within five days after its due date, Tenant shall pay a late charge of five percent of the delinquent amount immediately. The parties agree that



this five percent late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord in the event of a late Base Rent payment. Landlord's acceptance of late Base Rent, partial Base Rent and late charges does not equate with a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Ground Lease and/or by operation of Law.

**3.8**                    **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 Section or have any force or effect.

**3.9**                    **Payment of Deferred Rent.** Tenant and Landlord agree that \$313,000 in deferred rent that was unpaid during the prior lease due to the Covid-19 pandemic will be repaid in 10 annual equal payments of \$31,300 each. Payments will be due on May 1<sup>st</sup> of each lease year, starting on May 1<sup>st</sup>, 2022. These deferred rent payments are not included in "annual rent" as defined above, and no improvements may be credited against this amount due. No interest will be charged on the payment of deferred rent.

## **TAXES AND ASSESSMENTS**

**4.1**                    **Personal Property Taxes.** Tenant shall pay before delinquency all taxes, assessments, license fees and other charges ("**Taxes**") levied and assessed against Tenant's personal property installed or located in or on the Facility or the Premises which become payable during the Term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. Notwithstanding the foregoing, Tenant shall have the right to contest the imposition or collection of any such Taxes which Tenant reasonably believes was improperly assessed or calculated.

**4.2**                    **Statement Regarding Possessory Interest Tax.** This Ground Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes are referred to herein as "**Possessory Interest Taxes,**" and shall be paid by Tenant as part of Real Property Taxes as provided in Section 4.3 below.

**4.3**                    **Real Property Taxes.** Tenant shall pay all real property taxes and general and special taxes including Possessory Interest Taxes (collectively, "**Real Property Taxes**"), levied and assessed against the Premises or Facility or any portion thereof. Tenant shall, semiannually, pay the Real Property Taxes not later than the Taxing Authority's (as defined below) delinquency date. If, at any time during the Term, any authority having the power to tax, including any federal, state or county government or any political subdivision thereof (collectively, "**Taxing Authority**"), shall alter the methods and/or standards of taxation and assessment against the legal or equitable interests of Landlord in the Premises or Facility or any other improvements located or constructed thereon, in whole or in part, so as to impose a monetary obligation on Landlord in lieu of or in addition to the taxes and assessments in existence as of the date of this Ground Lease, such taxes or assessments based thereon, including: (a) any tax, assessment, excise, surcharge, fee, levy, penalty, bond or similar imposition (collectively, "**Impositions**"), on Landlord's right to rental or other income from the Premises or Facility or as against Landlord's leasing of the Premises, (b) any Impositions in substitution or in lieu, partially or totally, of any Impositions assessed upon real

property prior to any such alteration, (c) any Impositions allocable to or measured by the area of the Facility and/or Premises or the rental payable hereunder, including any Impositions levied by any Taxing Authority with respect to the receipt of such rental or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant or any subtenant of the Premises or Facility or any portion thereof, (d) any Impositions upon this lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Facility and/or Premises or any portion thereof, or (e) any special, unforeseen or extraordinary Impositions which, although not specifically described above, can fairly be characterized as a real property tax or a substitute for real property tax, shall be considered as Real Property Taxes for the purposes of this Ground Lease. Real Property Taxes shall exclude, however, all general income taxes, gift taxes, inheritance taxes and estate taxes, if any, owed by Landlord.

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

**4.5**                    **Tenant's Tax Liability Prorated.** Tenant's liability to pay Real Property Taxes and assessments shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Term at its inception and expiration or earlier termination in accordance with this Ground Lease.

**4.6**                    **Real Property Tax Contest.** Without Landlord's prior written consent, Tenant shall not seek a reduction in the assessed valuation of the Premises or Facility, or contest any Real Property Taxes that are to be paid by Tenant. Landlord's consent may be given or withheld in Landlord's sole discretion. If Landlord consents and Tenant seeks a reduction or contests the Real Property Taxes, Tenant shall remain obligated to pay all Real Property Taxes prior to delinquency, and shall at all times protect Landlord from foreclosure of any lien. Landlord shall not be required to join in any proceeding or contest brought by Tenant.

**ARTICLE 5.**  
**USE, CHARACTER, OPERATION AND MAINTENANCE COVENANTS**

**5.1**                    **General.** Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Facility for the Permitted Use and for no other purpose.

**5.2**                    **Use Obligations.** Tenant shall, during such hours and on all such days as comparable restaurants are customarily open for business, continuously use and operate the Facility and Premises solely as a first class restaurant, and at all times will carry a full and complete stock of food and beverages offered for sale at competitive prices and maintain adequate personnel for the efficient service of customers, and for no other purpose. In connection with Tenant's use and operation of the Facility, Tenant shall comply with all of the following:

A. Tenant shall employ its best judgment, efforts and abilities to operate the business in a manner calculated to produce the maximum profitable volume of sales, rents and transactions obtainable and to enhance the reputation and attractiveness of the Berkeley Marina.

B. Except for emergencies or holidays on which most comparable restaurants the City of Berkeley are also closed, Tenant shall be open for full business not less than six days per week, Tuesday and Wednesday between the hours of 3 pm and 8:30 pm, Thursday between the hours of 12 noon and 8:30 pm, Friday between the hours of 12 noon and 9 pm, Saturday between the hours of 11:30 am and 9 pm, and Sunday between the hours of 11:30 am and 8:30 pm. Tenant may close on nationally recognized holidays in its sole discretion.

C. Tenant shall not do or permit to be done anything which in any way unreasonably interferes with the normal operation and use of any portion of the Berkeley Waterfront (as defined in Section 5.9) or the means of ingress and egress thereto ("**Substantial Interference**"). Tenant shall use every effort to eliminate Substantial Interference, including taking prompt legal action if appropriate. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to designate the required action for Tenant to take, or (ii) to commence itself any legal action to eliminate the Substantial Interference, in either case at Tenant's sole cost and expense. Any agreement entered into by Tenant with regard to use of the Premises or Facility shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this subsection and authorizing Landlord to enforce it if Tenant fails to do so.

**5.3 General Use Prohibitions.** Tenant covenants and agrees that in connection with the use and operation of the Premises and Facility, and any portion thereof (including without limitation parking areas and pedestrian and bicycle paths), Tenant will not:

A. Use or permit the use of any reasonably objectionable advertising medium including any loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Facility in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Facility (provided, however, that nothing herein shall be deemed to prohibit the installation and use of a public address system for security purposes, or for the use of a reasonable level of music for outdoor dining areas or plaza areas), and will keep all mechanical apparatus free of unreasonable vibration and noise which may be transmitted beyond the interior of the Facility;

B. Permit undue accumulations of garbage, trash, rubbish or any other refuse;

C. Create, cause, maintain or permit any nuisance (as the same may be defined by applicable Law) in, on or about the Premises or Facility;

D. Commit or suffer to be committed any waste in, on or about the Premises or Facility;

E. Use or allow the Premises or Facility to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument affecting the Premises;

F. Cause or permit any insurance coverage on the Premises or Facility to become void or voidable or make it impossible to obtain any required insurance at commercially reasonable rates;

G. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Facility or to any adjacent public or private property or improvements;

H. Permit any auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale to be conducted thereon, or the posting of any sign or advertisement regarding any such activity; or

I. Violate any Law, ordinance or regulation applicable to the Premises or Facility.

**5.4 Non-Discrimination.** Tenant covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Facility or any portion thereof, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, users or customers in the Premises, the Facility, or any portion thereof. Tenant shall refrain from restricting the use, occupancy, rental or sublease of the Premises, the Facility, or any portion thereof on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry of any person. All subleases and contracts made relative to the Premises, the Facility, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination clause:

A. **In subleases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises, the Facility thereon, or any part thereof, herein leased."

B. **In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, source of income, age, physical or mental handicap, medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises, the Facility or any portion thereof, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises, the Facility thereon, or any part thereof."

**5.5 General Standards of Maintenance.** Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises and the Facility as depicted in Exhibit A. This includes the restaurant building, trash enclosure, covered walkway, support

pilings, paths of travel, landscape areas, a four-foot landscape strip around the southwest bend of the drive aisle measured from the back of the paving, and the westernmost parking stalls on the Premises adjacent to the pedestrian pathway and riprap, as shown in red in Exhibit A. Tenant covenants and agrees that not less frequently than once every ten years, Tenant shall slurry seal and restripe the loading areas and parking stalls on the Premises without cost to Landlord..All portions of the Premises, the Facility, and the Non-Exclusive Use Areas shall be maintained in first-class condition and repair, subject only to normal wear and tear. Tenant's compliance with the Maintenance Standards shall be judged by a comparative standard with the custom and practice generally applicable to comparable first-class restaurant facilities located within the San Francisco Bay Area. To accomplish such maintenance, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section 5.5. All maintenance work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations for the performance of maintenance. All Maintenance work in the Non-Exclusive Use Areas shall be reviewed and approved by the Landlord in advance of completion. When parking lot or street closures are necessary, notice shall be given 7 days in advance. Landlord shall review and authorize work, if appropriate, 72-hours in advance of work commencement.

**5.6** **Parking Lot.** Tenant understands they have non-exclusive use of the adjacent parking lot. After the tenant completes the parking lot reconstruction as provided in Exhibit C, Landlord and Tenant agree to share costs for parking lot pavement and striping maintenance, with the Tenant paying 40%, and the Landlord paying 60% of maintenance costs. Maintenance shall be mutually agreed upon prior to the commencement of work. . Tenant shall be fully responsible for repair and maintenance of the landscaping and lighting in the parking lot. Tenant understands they have non-exclusive use of the adjacent parking lot. Improvements to the parking lot shall be subject to Landlord's prior consent, review, and all other applicable requirements for Alterations as set forth in this Ground Lease. Improvements, maintenance, or repairs by Tenant to the parking lot shall not confer on Tenant any exclusive possession or ownership interest in such areas or assets. Tenant agrees that the parking lot shall remain open and accessible for use by the City and by the public at all times and for no charge. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all demands, liabilities, claims, actions, damages, costs and expenses, including reasonable attorneys' fees, arising from allegations of a dangerous condition of public property associated with the parking lot, light fixtures, and/or landscaping maintained by Tenant.

**5.7** **Governmental Requirements.** Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 6.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, 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, and with all requirements of any board or fire insurance underwriters or other similar bodies, now or hereafter adopted, enacted or made applicable, (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 or Facility or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Premises or Facility or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Facility or any portion thereof as a source of adverse environmental impacts or effects.

**5.8 Landlord Access Rights.** During the Term of this Ground Lease, Landlord and its designated representatives shall have the right, but not the obligation, to enter the Premises and Facility for the purpose of constructing, maintaining, replacing or adding underground utility facilities, including but not limited to water mains, sanitary sewer mains, storm drain mains, gas mains, telephone and electrical distribution facilities and fire alarm circuits. Landlord shall replace at its cost such surface improvements constructed by Tenant as may be disturbed by such construction, maintenance, replacement or addition to the condition of such improvements as of the time such disturbance occurred. If as a result of the foregoing work by Landlord or its designated representatives, Tenant is unable to operate its business in the Premises and Facility or any portion thereof as a result of being denied access to the Premises or Facility or any stoppage or interruption in any of the basic services to be provided by Landlord hereunder, Tenant is entitled to a pro rata abatement of Base Rent to the extent to such denial of access or stoppage or interruption interferes with the normal conduct of Tenant's business.

**5.9 Use of Berkeley Waterfront Property; Public Trust.**

For purposes of this Ground Lease, "**Berkeley Marina**" means the Premises and all other lands subject to the State Tidelands Grant (also referred to as "**State Grant Lands**"). "Berkeley Marina," includes the areas bound by the following:

- On the south by a westerly extension of Channing Way
- On the north by the north edge of Cesar Chavez Park, and a westerly extension thereof
- On the west by a north-south line through the end of the Municipal Fishing Pier
- On the east by the east edge of Cesar Chavez Park, and by the west edge of the Meadow area
- of Eastshore State Park and a southerly extension thereof.

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

B. Landlord at all times shall have the right and privilege of making such changes in and to the Berkeley Waterfront (other than the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, landscaping, toilets, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to unreasonably effect changes that would materially and adversely affect access or lines of sight to the Premises, except temporarily during periods of construction. Any changes or additions by Landlord to the Berkeley Waterfront shall be performed in such a manner so as not to unreasonably interfere with Tenant's use of the Premises and shall not change in a material, adverse way the access to the Premises. If as a result of the foregoing work by Landlord or its designated representatives, Tenant is unable to operate its business in the Premises and Facility or any portion thereof as a result of being denied access to the Premises or Facility or any stoppage or interruption in any of the basic services to be provided by Landlord hereunder, Tenant is entitled to a pro rata abatement of Base Rent to the extent to such denial of access or stoppage or interruption interferes with the normal conduct of Tenant's business. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning the

Berkeley Waterfront, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

C. Landlord at all times shall have the sole and exclusive management and control of the Berkeley Waterfront, including, without limitation, the right to lease, license or permit the use of space within the Berkeley Waterfront to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

D. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's principals, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises and Facility, and for the safety of those using the Premises and Facility pursuant to this Ground Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for the Berkeley Waterfront or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. To induce Landlord to provide such security, if any, as Landlord in its sole discretion deems reasonable, appropriate and economically feasible, Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. Landlord shall not be obligated to provide any public liability or property damage insurance for the benefit of Tenant or any other person or entity, each such party being responsible for its own insurance.

#### **5.10 Public Trust Tidelands Requirements.**

A. Tenant acknowledges that the Premises are located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to Chapter 347 of the California Statutes of 1913, as amended (the "**Grant**"), subject to the conditions, restrictions, limitations, rights, powers, and duties reversionary rights and other rights created or reserved in the Grant. Tenant agrees that, notwithstanding anything in this Ground Lease to the contrary, Tenant shall use the Facility and Premises consistently with and in a manner that shall not result in a violation of the Grant or of provisions of the Berkeley City Charter, the California Constitution or other applicable Laws.

B. Landlord reserves to itself and 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 Tenant's access to or use of the Premises or Facility. Landlord may make changes in any utility system serving the Facility or Premises as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. Any interference to Tenant's use of the Facility or Premises shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. No such work shall invalidate or affect this Ground Lease or give Tenant any claim against Landlord for abatement of Rent or loss of business as a result thereof unless the work continues for more than three (3) days in which event Tenant shall be entitled to a pro rata abatement of Base Rent thereafter until completion of such work. In the event the installation or maintenance of utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Facility, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks,

the same shall be repaired by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such utility easements, except to the extent they result from the negligence or willful misconduct of Tenant.

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

**5.12 Regulatory Approvals Generally.** Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

**5.13 Covenants Regarding Improvements.** Tenant acknowledges and agrees that the Improvements will be maintained as follows:

A. Restaurant Building. Tenant has and shall continue to provide and install at the Restaurant all furniture, fixtures, and accessories necessary for the operation of a first-class restaurant and cocktail lounge. Tenant shall maintain in good condition all aspects of the building, including but not limited to building systems and structural elements.

B. Pilings. Tenant acknowledges that restaurant building is situated over the water, and is supported by pilings in the Bay. Tenant will maintain these pilings in good condition and provide periodic assessment and maintenance to assure they remain in good condition.

C. Landscaping. Such landscaping as may be reasonably required to provide an attractive development consistent with a first class restaurant. This includes landscaping inside the Premises, as well as in the Non-Exclusive Use Areas, as depicted in Exhibit A and described in section 5.6.

D. Non-Exclusive Use Areas. Non Exclusive Use Areas, including the adjacent parking lot, are depicted in Exhibit A. Tenant acknowledges that the adjacent parking lot is outside the leased premises, is shared with the Public, and Marina slip holders. Tenant acknowledges that Tenant has non-exclusive use of the parking lot and associated improvements, and that Tenant is responsible for maintenance of the landscaping and lighting in the Non-Exclusive Use Areas in good condition, as described in section 5.6.



**ARTICLE 6.  
CONDITION OF PROPERTY**

**6.1                    Landlord’s Disclaimers and Tenant’s Acknowledgements.** The Premises are being leased to Tenant in their current, existing, “AS-IS” condition. Except as expressly set forth in this Ground Lease, Landlord makes no representations or warranties as to any matters concerning the Premises or Facility, including without limitation: (i) matters relating to soils, subsoils, geology, the presence or absence of fill, groundwater, drainage, and flood zone designation; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises or Facility; (iii) the development potential of the Premises or Facility, or their uses, habitability, merchantability, or fitness, suitability, value or adequacy for any particular purpose, (iv) the zoning or other legal status of the Premises or Facility or any other public or private restrictions on their use, (v) the adequacy, condition, repair status, or remaining useful life of the Facility’s electrical, plumbing, HVAC, utility, mechanical or safety systems (“**Facility Systems**”), (vi) the adequacy, condition, repair status, or remaining useful life of the Facility’s roof, walls, foundation, pilings, or other structural components, any other structures within the Premises, the Non-ExclusiveUse Areas parking lot, the drive aisle and associated parking stall, loading stalls, pathways, and landscaping, and drive aisle between Seawall Drive and the restaurant (vii) the compliance of the Premises or Facility with Hazardous Materials Laws, covenants, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity, (viii) the presence or removal of Hazardous Materials (as defined in Section 6.2) or wastes on, under or about the Premises or Facility; or (ix) the compliance of the Premises or Facility under any other Laws, including without limitation the ADA and other Disability Laws. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, decorate or paint the Premises or Facility, repave the adjacent parking lot in the , Non-Exclusive Use Area, construct or install any improvements or Alterations (as defined in Section 7.2), repair or replace any Facility Systems, or otherwise alter or improve the Premises, Facility, or any portion thereof. By entering onto the Premises or Facility, Tenant represents and confirms that it is familiar with the existing legal and physical condition of the Premises and Facility, fully approves the same, and acknowledges that except as expressly provided in this Ground Lease Landlord has made no representation or warranty regarding the condition thereof. Tenant acknowledges and agrees that Tenant is leasing the Premises and accepting the Premises and Facility on the basis of Tenant’s own investigation, and will act only upon information obtained by it directly from such investigation and from materials or records from independent third parties. Tenant assumes the risk that adverse physical and environmental conditions may not have been revealed by its own investigation, that below-ground improvements or facilities may still be located under the Premises, and that Hazardous Materials may subsequently be discovered upon, under or about the Premises. Tenant further acknowledges that neither Landlord, nor its officers, elected officials, agents, employees, or representatives (“**Landlord’s Parties**”) have made any representation or warranty of any kind in connection with any matter relating to the condition, value, fitness, or suitability of the Premises, Facility or other improvements thereon, upon which Tenant has relied directly or indirectly for any purpose.

**6.2                    Hazardous Materials.**

A.     General Compliance. Tenant shall, at its sole cost and expense, comply with all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force (collectively, “**Hazardous Materials Laws**”)

concerning the management, use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous 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. “**Hazardous Materials**” include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof. Except for routine substances which are used in the normal and customary operation of a restaurant for the Permitted Use, including such substances technically constituting Hazardous Materials, neither Tenant nor Tenant's Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises or the Facility. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged on or under the Premises or the Facility to be removed from the Premises and Facility and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazardous Materials Laws. Tenant shall immediately notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant, (iii) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or (iv) any claim made or threatened by any person against Landlord, Tenant, the Premises, or the Facility or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Facility or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide to Landlord in a timely manner copies of all workplans and subsequent reports submitted to the governmental agency with jurisdiction over such action.

B. Tenant's Indemnification. Except to the extent caused by Landlord's sole negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in, on, under, about, or emanating from the Premises or the Facility, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises or the Facility, caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials in violation of Tenant's obligations under this Ground Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials.

**ARTICLE 7.  
CONSTRUCTION AND LIENS**

**7.1                    Improvements.**

A. Construction. Tenant shall construct or cause to be constructed the improvements described in Exhibit C (“**Improvements**”) within the time and in the manner set forth in Exhibit C. Except as otherwise provided in this Section 7.1, Tenant shall diligently prosecute, complete, and accomplish the Improvements without cost or expense to Landlord, by licensed contractors, in compliance with all applicable Laws and permits, and in a first-class and workmanlike manner, as provided in Exhibit C and this Article 7.

B. Timely Completion. Tenant shall take all steps necessary to enable it to commence, and will commence the construction of the Improvements and will diligently prosecute and complete maintenance and improvements necessary to maintain the Facility, Premises, and Non-Exclusive Use Areas in Exhibit C good condition. In the event Tenant fails to improve or maintain the Premises, Facility, or Non-Exclusive Use Areas to maintain good condition, and does not cure such failure within 30 days of receipt of written notice from Landlord of such failure (or, if such failure cannot be cured within that 30 day period, Tenant has failed to commence the cure within 30 days and thereafter diligently and continuously pursue such cure to completion), at Landlord’s election, exercisable in its reasonable discretion, this Ground Lease shall terminate, and be null and void, and of no further force or effect.

**7.2 Alterations on Premises, Facility, or Non-Exclusive Use Areas.**

Any construction, reconstruction, alterations, additions, or improvements or remodeling, in, on, or about the Facility, the Premises or the Non-Exclusive Use Areas undertaken by or on behalf of Tenant from and after the Commencement Date (including without limitation the Improvements, “**Alterations**”) shall be governed by this Ground Lease. All Alterations, including exterior elevations and color thereof, and all such other improvements, shall be architecturally and aesthetically compatible and harmonious with the Facility, Premises, and Non-Exclusive Use Areas Berkeley Marina and any other buildings and improvements thereon to create a uniform general plan for the entire Berkeley Marina. Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design, and shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord’s prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord (except by Tenant Improvement Allowance, as applicable), by licensed contractors, and in a first-class and workmanlike manner.

A. Alterations, Other than Minor Alterations. Except with Landlord’s prior written consent, which may be granted or denied in Landlord’s reasonable discretion, Tenant shall not make or cause to be made any Alterations except for Minor Alterations as set forth below. If Tenant at any time following the Commencement Date desires to undertake any Alterations (other than Minor Alterations), Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. Failure of the Landlord to approve or disapprove such plans and specifications within such 30-day period shall be deemed to be Landlord’s disapproval.

B. Minor Alterations. Tenant shall have the right without Landlord's consent (but subject to all other provisions of this Ground Lease and upon 30 days prior written notice to Landlord), to undertake nonstructural alterations or remodeling of the Facility not visible from the outside or affecting exterior appearance and not altering the preexisting location of the Facility on the Premises, not exceeding \$150,000 individually or \$300,000 in cumulative costs during the Term of this Ground Lease ("**Minor Alterations**"). Notwithstanding the foregoing, and regardless of the cost thereof, Landlord's prior consent is required for any Alteration involving utility work, or attachment or any fixture or equipment to the Facility.

**7.3** Construction Standards. Unless expressly provided otherwise in this Article (or for the Improvements Exhibit C), the following standards shall apply to the design and construction of all Alterations under this Ground Lease.

A. Insurance. Tenant's designers, contractors and subcontractors shall maintain in force workman's compensation and such other employee, liability and property insurance as is customary for similar construction projects, and Tenant's designers, contractors and subcontractors shall also maintain in force professional liability insurance as is customary for similar construction projects. Other than worker's compensation and professional liability insurance, Landlord and Landlord Parties shall be named as additional insureds on all such insurance and Tenant shall provide certificates of insurance confirming such additional insured status prior to commencement of any Alterations work other than Minor Alterations.

B. Utility Work. Any work performed by or on behalf of Tenant or any occupant or sublessee to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other occupants and users of the Berkeley Marina.

C. Contracts, Plans and Specifications. With the exception of Minor Alterations, all contracts with any architect, other design professional or any general contractor for the Alterations shall provide, in form and substance reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder, and Landlord shall be furnished with any such agreement, together with the further agreement of the parties thereto, that if this Ground Lease is terminated due to Tenant's default, Landlord may use any plans and specifications to which Tenant is then entitled pursuant to any such contract without payment of any further sums to any party thereto.

D. Permits. To the extent that any Alterations require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("**BCDC**") and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

E. Construction Safeguards. Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by Tenant, all necessary safeguards for the protection of workers and the public.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent, such requirements are applicable to Alterations. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by

applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty to Landlord, shall forfeit \$200 for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

G. Landlord's Rights. Nothing herein shall limit any Landlord right under this Ground Lease, including without limitation those under Sections 5.9 and 5.10 above.

H. Completion. Upon completion of any Alterations (including Minor Alterations), Tenant shall deliver to Landlord two sets of final as-built plans and specifications, and copies of all permits, for the applicable work.

I. Tenant Costs. Except as otherwise expressly provided in this Ground lease, all Alterations shall be without cost or expense to Landlord.

**7.4** Protection of Landlord. Nothing in this Ground Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials in connection with any Alterations by any contractor, subcontractor, laborer or materialman, nor as giving Tenant or any other person any right, power or authority to act as agent of, or to contract for or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against the Premises or Facility. Landlord shall have the right at all reasonable times to post, and keep posted, on the Facility and the Premises any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Facility from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations to be done on or about the Facility or Premises to enable Landlord to post such notices. In addition, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, prior to commencement of any Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

**7.5** Liens and Stop Notices. Tenant shall keep the Premises and Facility free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Premises or Facility, Tenant shall within 30 days of such recording or service:

A. Pay and discharge the same;

B. Affect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Facility and the Premises; or

C. Otherwise obtain or effect the release thereof.

**7.6 Notice.** Should any claims of lien be filed against the Premises or Facility thereon, or any action be commenced affecting the title to such property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

## **ARTICLE 8. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY**

**8.1 Ownership of Facility During Term.** During the Term, the Facility and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Facility and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Facility is real property.

**8.2 Ownership of Improvements at Termination or Expiration.** Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Facility and any Alterations (save and except any of Tenant's proprietary items or those which contain any of Tenant's intellectual property) shall, without compensation to Tenant, become Landlord's property free and clear of all claims to or against them by Tenant or any third person, and Tenant shall defend, indemnify and hold Landlord harmless against any and all claims, liability and losses arising from such claims or from Landlord's exercise of the right conferred by this Section 8.2.

**8.3 Removal and Ownership of Personal Property at Termination or Expiration.** Parties agree that all attached, wired, plumbed, affixed, or mounted furniture, fixtures and equipment, including stoves, hoods, refrigeration, and other booths, bars, and kitchen equipment which are located in the Premises on the date of this Lease shall revert to City ownership at the termination of the Term. Should Tenant purchase and install replacements for any item listed above during the Term of this Lease, then at Tenant's election, Tenant may remove such item(s) at the termination of the Term. At the expiration or sooner termination of the Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property. Tenant shall be entitled to remove from the Premises, at Tenant's sole cost and expense, at the expiration or sooner termination of the Term, all of Tenant's personal property, inventory, books and records, artwork, and any of Tenant's proprietary items or those which contain any of Tenant's intellectual property, Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this section.

A. Tenant may, from time to time during the Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Facility. Tenant shall repair all damage caused by any such removal.

B. Any personal property owned by Tenant and not removed by Tenant prior to the expiration or earlier termination of the Term shall be deemed to be abandoned by Tenant

and shall, without compensation to Tenant, become the Landlord's property, free and clear of all claims to or against them by Tenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

**ARTICLE 9.  
UTILITIES**

Tenant shall be solely responsible for contracting for, and shall promptly pay all charges for telephone, computers and cable lines, wiring, materials, security, heat, air conditioning, water, gas, sewer, electricity, refuse, sewage, garbage, pest control services, and any other utility service supplied to the Facility, the Premises or any portion thereof, or any other improvements located thereon ("**Utilities**"). Tenant shall indemnify, defend and hold Landlord harmless from and against any and all demands, liabilities, claims, actions, damages, costs and expenses, including reasonable attorneys' fees, arising out of or connected with the provision and payment of the Utilities.

**ARTICLE 10.  
INSURANCE AND INDEMNITY**

**10.1 General Insurance Requirements.**

A. During the entire Term of this Ground Lease, Tenant shall provide the following forms and amounts of insurance with respect to the Facility and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance in All-Risk form, with vandalism and malicious mischief endorsements, covering the Facility and the Premises against loss or damage in an amount equal to not less than 100% of the replacement cost of the Facility, including all Alterations and fixtures, with such commercially reasonable deductible as may be approved by Landlord in its reasonable discretion; provided however, Tenant maintains a deductible or self-insured retention of \$500,000.00 and the same is approved by Landlord. Such insurance shall include coverage for cost of demolition and increased cost of construction by reason of changes in applicable ordinances and laws and shall not contain a co-insurance clause.

2. Business Interruption Insurance on an "all risk" basis which will provide recovery for a minimum of 12 months of Tenant's continuing Rent obligations, (including without limitation Percentage Rent which likely would have been payable in the absence of the interruption).

3. Broad Form Commercial General Liability Insurance protecting Tenant against claims for bodily injury, personal injury and property damage based upon, or arising out of, the ownership, use, occupancy or maintenance, directly or indirectly, of the Premises, Facility, or Non-Exclusive Use Areas and all areas appurtenant thereto. Such insurance shall be written on an "occurrence" policy form providing single limit coverage in an amount not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in the amount of \$5,000,000. Tenant shall add Landlord and its officers, agents, employees, and representatives (together, "**Landlord Parties**") as additional insureds by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Landlords of Premises" endorsement and coverage shall also be extended to include

damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. Tenant shall provide a "per location" endorsement on its liability policy or policies that provides that the general aggregate and other limits apply separately and specifically to the Premises and Facility.

4. Auto Liability Insurance endorsed for all owned and non-owned vehicles in the initial amount of \$2,000,000, combined single limit.

5. Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California.

6. Lender Insurance. Any additional policy of insurance required by any lender providing permanent financing for the Facility or any Alterations.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage by more than 50% for any five-year period.

C. General. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. The commercial general liability and automobile liability policies hereunder shall name Landlord and Landlord Parties as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord or City, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsement shall be furnished by Tenant to Landlord prior to the Commencement Date, and prior to each anniversary thereof. If Tenant fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance.

**10.2 Indemnity.** To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including attorneys' fees, arising out of or connected with: (i) a default by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Facility, the Premises, the improvements thereon including any Alterations, or any portion thereof, by Tenant or Tenant's Parties, other than those attributable to the sole negligence or willful misconduct of Landlord or Landlord Parties; and (iii) the release, use, generation, discharge,



storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises in violation, or alleged violation, of any Laws, which occurs at any time during the Term. The indemnity obligation in clause (iii) above shall include any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease.

**ARTICLE 11.  
DAMAGE OR DESTRUCTION**

**11.1            Restoration.**

A.     Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Facility or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Facility, shall (except as otherwise provided in Sections 11.1.B or 11.2, below) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Provided however, Rent shall abate during any period of time after the occurrence of such casualty if Tenant can no longer operate its business in the Facility. Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Facility and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Facility, so damaged or destroyed. Subject to the rights of any Ground Leasehold Mortgagee (as defined in Section 14.2 below) Tenant also covenants that all insurance proceeds will be deposited with the Insurance Trustee and applied to the repair, reconstruction and/or replacement described herein. Tenant's failure to make such full repair, restoration and replacement under any conditions in which it was elected or required so to do shall constitute a default by Tenant under this Ground Lease.

B.     Facility Uninsured Damage. Notwithstanding the provisions of Section 11.1.A, if, during the Term, (i) the Facility is totally destroyed or rendered inaccessible or if the remaining portion of the Facility is rendered unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease, and (ii) the cost of restoration exceeds 50% of the then replacement value of the Facility as reasonably determined by Landlord, Tenant can elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Landlord's determination of the restoration cost and replacement value. The Facility shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's business in the Facility could not be operated at an economically feasible level. If Tenant elects to terminate this Ground Lease, Landlord in Landlord's sole and absolute discretion may, within 90 days after receiving Tenant's notice to terminate, elect to pay the difference between 90% of the replacement value of the Facility and the actual cost of restoration, in which case Tenant shall restore the Facility. Promptly following Landlord's election to contribute, Landlord shall deposit the amount of its contribution with the Insurance Trustee provided for in subsection C below. If Tenant elects to terminate this Ground Lease and Landlord in its sole and absolute discretion does not elect to contribute toward

the cost of restoration as provided in this Subsection 11.1.B, this Ground Lease shall terminate as of the 91st day following Tenant's notice.

C. Establishment of Insurance Trust and Disbursement Procedures. Except as may otherwise be required by any Ground Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to a builder's control company, title company, or bank selected by the mutual agreement of the parties ("**Insurance Trustee**"). To the extent Landlord in its sole and absolute discretion elects to contribute to the restoration costs as provided in subsection B above, Landlord shall deposit with the Insurance Trustee its contribution toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

1. The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Facility and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

3. If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration, Tenant shall deposit the amount of the deficiency with the Insurance Trustee within ten (10) business days after request by the Insurance Trustee indicating the amount of the deficiency.

4. Any undisbursed funds after compliance with the provisions of this Subsection 11.1.C shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

5. All actual costs and charges of the Insurance Trustee shall be paid by Tenant.

6. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, the parties shall substitute a new trustee in the place of the designated Insurance Trustee.

7. Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this Subsection 11.1.C.

**11.2 Right to Terminate Upon Destruction Near the End of the Term.**

If, during the last year of the Term, the Facility is totally or partially destroyed, and if the cost

of restoration exceeds 20% of the replacement cost of the Facility immediately before the damage or destruction, Tenant may elect to terminate this Ground Lease, provided that Tenant complies with all of the following conditions:

- A. Tenant gives Landlord written notice of the damage or destruction within 30-days after the event causing such damage or destruction;
- B. Tenant is not in default under this Ground Lease;
- C. Tenant transfers to Landlord all insurance proceeds resulting from the casualty, net of any cost incurred by Tenant in collecting such insurance proceeds and/or in complying with the provisions of Subsection 11.2.E below and net of the portion of such proceeds that are payable to any Ground Leasehold Mortgagee pursuant to the Ground Leasehold Mortgage; and
- D. Tenant delivers possession of the Premises, the Facility and all other improvements located on the Premises to Landlord and quitclaims to Landlord all of Tenant's right, title and interest therein.
- E. If Tenant so elects to terminate this Ground Lease under this Section, then Tenant shall, at its expense, promptly remove all debris and put the Facility, the Premises and all improvements thereon in a safe condition. Following Tenant's satisfactory performance of the foregoing requirements, this Ground Lease shall terminate and the parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied and those obligations which by their terms survive expiration or termination of this Ground Lease.

**11.3** Waiver. The provisions of this Article 11 shall govern the rights of the parties in the event of any full or partial destruction of the Facility and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Facility.

**11.4** Determination of Extent of Destruction, Interference with Use. For purposes of this Article 11, the extent of destruction of the Facility shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors acceptable to Landlord by the full replacement cost of the Facility, as reasonably determined by Landlord.

**11.5** Procedures for Repair and Restoration. In the event of any damage or destruction, Tenant shall promptly give Landlord written notice of such damage or destruction and the date on which such damage or destruction occurred. Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Facility which have been destroyed or damaged. Tenant shall commence and complete or cause to be commenced and completed, in a good and workmanlike manner and in accordance with Article 7, the reconstruction or repair of any part of the Facility damaged or destroyed, after Landlord has approved Tenant's plans, drawings, specifications, construction schedule and permits for such reconstruction or repair.

**ARTICLE 12.  
CONDEMNATION**

**12.1           Definitions.**

A.       **“Condemnation”** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a condemnor, and (2) a voluntary sale or transfer to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B.       **“Date of taking”** means the date the condemnor has the right to possession of the property being condemned.

C.       **“Award”** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D.       **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

**12.2           Parties’ Rights and Obligations to be Governed by Ground Lease.** If during the Term there is any taking of all or any part of the Premises, the Facility or any other improvements on the Premises or any interest in this Ground Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 12.

**12.3           Total Taking.** If the Premises or Facility is totally taken by condemnation, this Ground Lease shall terminate on the date of taking.

**12.4           Effect of Partial Taking.** If a portion of the Facility or Premises or any other improvements thereon are taken by condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Facility is rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Facility or the Premises shall be deemed unsuitable for Tenant’s continued use if, with a reasonable amount of reconstruction, Tenant’s business in the Facility could not be operated at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the date of taking. Failure to properly exercise the election provided for in this Section 12.4 will result in this Ground Lease continuing in full force and effect. Provided however, if the Ground Lease continues in effect as aforesaid, the Base Rent shall be equitably abated based on the remaining area of the Facility or the Premises bears to the pre-condemnation area of the Facility or the Premises.

**12.5           Restoration of Facility.** If in Tenant’s judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the award allocable to the Facility (but not any portion allocable to the Premises) as is necessary to restore or to add on to the Facility so that the area and approximate layout of the Facility will be substantially the same after the date of taking as it was before the date of taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Facility, the remaining provisions of this Article 12 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or

reconstruction of the Facility and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 30 days of written notice from the Landlord to Tenant, this Ground Lease may be terminated by the Landlord.

**12.6**                    **Waiver of CCP Section 1265.130.** Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

**12.7**                    **Award.** If all or any portion of the Premises is taken in connection with a condemnation, the entire portion of the award allocable to the Premises shall belong to Landlord. Subject to the provisions of Section 12.5, and subject to the rights of any Ground Lease Mortgagee, if all or any portion of the Facility or any other improvements on the Premises is taken in connection with a condemnation, the award for the Facility or such other improvements shall belong to Landlord, except as hereinafter provided. Tenant, or any subtenant, as applicable, shall be entitled to receive only: (a) the value of any leasehold improvements, merchandise, personal property, and furniture, fixtures and equipment owned by Tenant or its subtenant that are taken in connection with such condemnation; and (b) loss of Tenant's or its subtenant's business goodwill, if agreed to be paid by the condemning authority or awarded by a court. Neither Tenant nor any subtenant shall have any right to receive any amount on account of any loss of any other interest in this Ground Lease, including without limitation any so-called "leasehold bonus value" or other amount due to differences between the Rent payable hereunder and the then current fair market rental value of Tenant's interest in this Ground Lease. Nothing in this Section 12.7 shall be deemed a waiver or surrender by Tenant or any subtenant of any right to receive relocation assistance under Government Code Section 7260, et seq., or compensation for moving of personal property under Code of Civil Procedure Section 1263.260.

**ARTICLE 13.**  
**BRAND QUALITY, ASSIGNMENT AND SUBLETTING**

**13.1**                    **Brand Name and Quality.**

- A. Tenant shall continue to operate the Restaurant as Skates on the Bay.
- B. Tenant shall continue the first-class business reputation Skates on the Bay currently has in the restaurant industry, and operate a restaurant at the same or better level of quality as at lease commencement.
- C. Tenant shall provide the City with advance notice in the event that a brand name change or quality change is requested. The request shall include the reason for the request, along with supporting documentation that the proposed concept, name, and quality will continue to facilitate a first class, high quality, full-service restaurant that meets a community need, and is of a similar price point and revenue-generation standard to Skates on the Bay. The City shall have 3 months to review the proposal, request additional information, however City's approval shall not be unreasonably withheld, conditioned or delayed.

**13.2**                    **Assignment.**

A. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Facility or any part thereof (collectively an “assignment”) without Landlord’s written consent, which shall not unreasonably be withheld, conditioned or delayed. The merger of Tenant with any other entity or the assignment or transfer of any controlling or managing ownership or beneficial interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises, shall constitute an “assignment” hereunder. Tenant agrees that it shall not be unreasonable for Landlord to condition its approval upon, among other things, the proposed assignee having a financial net worth, according to a current financial statement prepared by a certified public accountant, which is equal to or greater than that of Tenant at the date of execution of this Lease or at the time of assignment, whichever is higher, upon the proposed assignee having a reputation for and experience and qualifications in operating and maintaining restaurant properties comparable to the Facility, and upon the proposed assignee having a first-class business reputation. In evaluating the acceptability of the net worth of a proposed assignee, Landlord may require that the assignee’s net worth be sufficient to carry out the performance of Tenant’s obligation under this Ground Lease. Subject to the foregoing, Landlord agrees that it will not withhold its consent to Tenant’s assignment of its interest in this Ground Lease if Tenant demonstrates to Landlord’s reasonable satisfaction that such assignee has a net worth equal to or exceeding that of Tenant as of the Effective Date or the assignment date (whichever is greater), has a reputation for and at least five years’ experience and qualifications in operating and maintaining at least three similar restaurants of comparable quality, has a first-class business reputation in the restaurant industry, and will provide a restaurant that serves the community well. Tenant shall promptly provide Landlord with any information reasonably requested by Landlord relating to the identity of any proposed assignee, the nature of such assignee’s business and the proposed assignee’s financial responsibility. Landlord’s consideration should be limited to the proposed assignee’s financial condition, its business experience and reputation, and the standard of operation of its existing restaurants, in determining whether to grant consent to the assignment.

B. Notwithstanding Subsection 13.1.A above, Landlord’s consent is not required for any assignment to an Affiliate of Tenant (as defined below), as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the assignment or assignee); and (ii) the assignee assumes in writing all of Tenant’s obligations under this Ground Lease. For purposes of this Section, “**Affiliate**” means an entity which controls, is controlled by or under common control with Tenant. For the purposes of this definition, “control” means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity’s day-to-day affairs. Notwithstanding Subsection 13.1.A above, Landlord’s consent is not required for (A) a transfer of any ownership interest in connection with a proposed public offering by Tenant or an Affiliate or parent or holding company; or (B) the merger or consolidation with or the sale of substantially all of the assets of Tenant or Tenant’s parent to a third party who shall assume Tenant’s obligations under this Lease; in such event, Tenant shall notify Landlord in writing of the occurrence of either of the foregoing events, and shall provide a true and correct copy of the assignment and assumption agreement, together with such other documentation supporting or evidencing said event as may be reasonably requested by Landlord.

C. No partial assignments of this Ground Lease shall be permitted. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord’s consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 13.1.

D. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment, or if Tenant shall request the consent of Landlord for any other act Tenant proposes to do, then Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with each such request.

**13.3 Subleases.** Tenant shall not sublease all or any portion of the Facility or the Premises without Landlord's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

**ARTICLE 14.**  
**TENANT DEFAULTS AND LANDLORD'S REMEDIES**

**14.1 Defaults by Tenant.** Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than 10 days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained, and should such other default continue for 30 days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than 30 days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

C. Tenant fails to have timely Commenced Construction or achieved substantial completion of the Improvements as required by Section 2.2; or

D. Tenant abandons or substantially suspends the Improvements prior to completion thereof and such default is not cured within 30 days of written notice from Landlord to Tenant; or

E. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Facility, the Premises, or any other improvement constructed thereon in violation of the Ground Lease; or

F. Except as otherwise expressly permitted in this Ground there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control; or

G. Tenant fails to pay promptly when due each and every installment of principal and interest on any private loan encumbering Tenant's interest in this Ground Lease or any improvements on the Premises for which Tenant is responsible, and such failure continues beyond (i) the expiration of any applicable grace or cure period, and (ii) the date by which Tenant must make payment to cure any notice of default received from the holder of such private loan; or

H. Any Ground Leasehold Mortgagee or any other holder of any private loan encumbering Tenant's interest in this Ground Lease, or any improvements on the Premises initiates a foreclosure of the deed of trust by which such loan is secured, and Tenant fails to cause such foreclosure proceedings to be dismissed prior to the earlier to occur of (i) the trustee under

the deed of trust giving notice of the trustee's sale, or (ii) within 30 days of Tenant's receipt of written notice from Landlord..

**14.2 Remedies.** Subject to the rights of any Ground Leasehold Mortgagees permitted under Article 15, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant thirty (30) days prior written notice of termination. Thirty days after the giving of such notice, all of Tenant's rights in the Premises, Facility and any other improvements located thereon, shall terminate. On the 30<sup>th</sup> day immediately following delivery of the notice of termination, Tenant shall surrender and vacate the Premises, including the Facility and any other improvements located thereon, leaving them in broom-clean condition; and, subject to Subsection 14.2.B, below, respecting the right of certain subtenants to remain, Landlord may reenter and take possession of the Premises and Facility and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Facility, or any part or parts thereof for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Facility and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination.

C. Even though Landlord may have relet all or any portion of the Premises, including the Facility and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

**14.3 Damages.** Should Landlord elect to terminate this Ground Lease, Landlord shall be entitled to recover from Tenant, as damages:

A. The worth at the time of the award of the unpaid Rent that had been earned at the time of termination of this Ground Lease;

B. The worth at the time of the award of the amount by which the unpaid Rent that would have been earned after the date of termination of this Ground Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

C. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term of this Ground Lease after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and



D. Any other amount (and court costs) necessary to compensate Landlord for all detriment proximately caused by Tenant's default, including costs of alterations and improvements in connection with reletting.

E. Computing Worth at the Time of Award. The "worth at the time of the award," as used in Subsections 14.3.A and 14.3.B, is to be computed by allowing interest at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution. The "worth at the time of the award," as referred to in Subsection 14.3.C, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent.

F. Landlord shall mitigate its damages by making reasonable efforts to relet the Premises on reasonable terms, including engaging a listing broker to market the Leased Premises and publishing the space as "available" in real estate databases commonly used by commercial brokers in the San Francisco/Berkley, CA market. Landlord may relet for a shorter or longer period of time than the Term and make any necessary repairs or alterations. If Landlord relets for a period of time shorter or longer than the current Term or at a lower rental rate than the Base Rent herein, then Tenant shall be liable for any lost Rent and expenses related to the new lease limited to leasing commissions, and reasonable tenant improvements, however, the cost of the leasing commissions and tenant improvements shall be amortized over the entire reletting term so that Tenant shall only be liable for such costs and expenses allocated to the remaining term of the Lease.

**14.4 Landlord's Right to Cure Tenant's Default.** Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant.

## **ARTICLE 15. MORTGAGEE PROTECTION PROVISIONS**

**15.1 Ground Leasehold Mortgage Authorized.** In addition to the mortgagee under the Existing Ground Leasehold Mortgage, as provided and defined in this Article, Tenant may mortgage or otherwise encumber Tenant's interest in this Ground Lease to an "Institutional Investor" under one or more Ground Leasehold Mortgage(s) and assign this Ground Lease as security for such mortgage(s). The Ground Leasehold Mortgage(s) shall affect only Tenant's interest in this Ground Lease and shall be subject to all of the terms and provisions of this Ground Lease. Landlord's fee interest shall not be encumbered or subordinated.

**15.2 Notice to Landlord.** If Tenant shall mortgage Tenant's interest in this Ground Lease to an Institutional Investor, and if the holder of such Ground Leasehold Mortgage shall provide Landlord with notice of such Ground Leasehold Mortgage, together with a true copy of such Ground Leasehold Mortgage, the note and all other documents relating to such Ground Leasehold Mortgage, and the name and address of the holder, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Article 15 shall apply with respect to such Ground Leasehold Mortgage. In the event of any assignment of a Ground Leasehold Mortgage, or in the event of a change of address

of the holder thereunder or of an assignee of such holder, notice of the new name and address shall be provided to Landlord. Tenant shall thereafter also provide Landlord from time to time with a copy of each amendment or other modification or supplement to such instruments. All recorded documents shall be certified as true and correct copies of official records by the Alameda County Recorder and all nonrecorded documents shall be accompanied by a certification by Tenant or the holder that such documents are true, complete, and correct copies of the originals.

**15.3**                    **Definitions.** As used in this Article 15:

A.        **“Institutional Investor”** means any lender which has assets in excess of \$100 Million at the time the Ground Leasehold Mortgage or similar loan is made.

B.        **“Ground Leasehold Mortgage”** includes a mortgage, deed of trust or other security instrument authorized in favor of an (except as provided in Section 15.3) either (i) an Institutional Investor by which Tenant’s interest in this Ground Lease are mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation, or (ii) the Existing Ground Leasehold Mortgage.

C.        **“Existing Ground Leasehold Mortgagee”** or **“Mortgagee”** shall refer to a holder of a Ground Leasehold Mortgage either (i) under with respect to which the notice provided for by Section 15.2 has been given and received and as to which the provisions of this Article 15 are applicable or (ii) under the Existing Ground Leasehold Mortgage.

**15.4**                    **Consent of Ground Leasehold Mortgagee Required.** No cancellation, surrender or modification of this Ground Lease shall be effective as to any Ground Leasehold Mortgagee unless consented to in writing by such Ground Leasehold Mortgagee.

**15.5**                    **Notice to Ground Leasehold Mortgagee.** With respect to any Ground Leasehold Mortgage, whenever Landlord shall deliver any notice to Tenant with respect to any default by Tenant hereunder, Landlord shall at the same time deliver a copy of such notice to each Ground Leasehold Mortgagee authorized by this Ground Lease. No notice of default shall be effective as to the Ground Leasehold Mortgagee unless such notice is given. Each Ground Leasehold Mortgagee shall (insofar as the rights of Landlord are concerned) have the right, at its option, within 60 days after the receipt of the copy of the notice, to cure or remedy or commence to cure or remedy any such default. In the event possession of the Facility or the Premises, or any portion thereof, is required to effectuate such cure or remedy, the Ground Leasehold Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within 60 days after receipt of the copy of the notice, diligently and continuously pursues such proceedings to completion, and, after obtaining possession, diligently and continuously completes such cure or remedy. The provisions of Section 15.7 below shall apply if, during such 60-day termination notice period, the Ground Leasehold Mortgagee shall

A.        Notify Landlord of such Ground Leasehold Mortgagee’s desire to nullify such notice, and

B.        Pay or cause to be paid all Rent, and other payments then due and in arrears as specified in the termination notice to such Ground Leasehold Mortgagee and which may become due during such 60-day period, and

C. Comply, or in good faith, with diligence and continuity, commence to comply, with all nonmonetary requirements of this Ground Lease then in default and reasonably susceptible of being complied with by such Ground Leasehold Mortgagee; provided, however, that in the event such Ground Leasehold Mortgagee shall commence foreclosure proceedings within such 60-day period, such Ground Leasehold Mortgagee shall not be required during such 60-day period to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Ground Lease junior in priority to the lien of the Ground Leasehold Mortgage held by such Ground Leasehold Mortgagee.

D. Any notice to be given by Landlord to a Ground Leasehold Mortgagee pursuant to any provision of this Article 15 shall be deemed properly addressed if sent to the Ground Leasehold Mortgagee who served the notice referred to in Section 15.2 at the address stated in such notice unless notice of a change of mortgage ownership has been given to Landlord pursuant to Section 15.2.

**15.6 Ground Leasehold Mortgagee Foreclosure.** If Landlord shall elect to terminate this Ground Lease by reason of any default of Tenant and the Ground Leasehold Mortgagee shall have proceeded in the manner provided for by Section 15.5, the specified date for termination of this Ground Lease as fixed by Landlord in its termination notice shall be extended for a period of six months, provided that such Ground Leasehold Mortgagee shall, during such six-month period:

A. Pay, or cause to be paid, Rent (including the Base Rent, Percentage Rent, and any other monetary obligations of Tenant under this Ground Lease) as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Ground Lease; and

B. If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Ground Lease by foreclosure of the Ground Leasehold Mortgage or other appropriate means and prosecute the same to completion with diligence.

If, at the end of such six-month period, such Ground Leasehold Mortgagee is diligently complying with this Section 15.6, this Ground Lease shall not then terminate, and the time for completion by such Ground Leasehold Mortgagee of its proceedings shall continue so long as such Ground Leasehold Mortgagee is enjoined or stayed and thereafter provided such Ground Leasehold Mortgagee continues to meet its obligations under Subsection 15.6.A above, and proceeds to complete steps to acquire or sell Tenant's interest in this Ground Lease by foreclosure of the Ground Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 15.6, however, shall be construed to extend this Ground Lease beyond the Initial Term (or, if applicable, any then-effective Extension Term), nor to require a Ground Leasehold Mortgagee to continue such foreclosure proceedings after the default has been timely cured. If the default shall be timely cured and the Ground Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Ground Lease shall continue in full force and effect as if Tenant had not defaulted under this Ground Lease.

**15.7 Purchaser at Foreclosure.** If the Ground Leasehold Mortgagee is complying with Section 15.6, upon the acquisition of the entirety of Tenant's interest in this Ground Lease by such Ground Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge or extinguishment of any lien, charge or encumbrance against Tenant's interest in this Ground Lease which is junior in priority to the

lien of the Ground Leasehold Mortgage held by such Ground Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Ground Lease), this Ground Lease shall continue in full force and effect as if Tenant had not defaulted under this Ground Lease. Any such purchaser, including the Ground Leasehold Mortgagee or the transferee under any instrument of assignment or transfer in lieu of the foreclosure of the Ground Leasehold Mortgage, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment.

**15.8** **Ground Leasehold Mortgagee's Right to Sell.** If such Ground Leasehold Mortgagee acquires title to Tenant's interest in this Ground Lease pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings, such Ground Leasehold Mortgagee, upon acquiring Tenant's interest in this Ground Lease, may sell and assign the combined entirety of Tenant's interest in this Ground Lease only on such terms and to such persons and organizations as are reasonably acceptable to Landlord. If such Ground Leasehold Mortgagee's proposed transferee is acceptable to Landlord, in the exercise of Landlord's commercially reasonable discretion, then from and after the date of such sale and assignment the Ground Leasehold Mortgagee shall be relieved of all obligations under this Ground Lease as if such transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Ground Lease.

**15.9** **Holder Not Obligated to Construct Improvements.** The holder of any Ground Leasehold Mortgage authorized by this Ground Lease shall not be obligated by the provisions of this Ground Lease to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Ground Lease shall be deemed to or be construed to permit or authorize any such Ground Leasehold Mortgagee to devote the Facility or the Premises to any uses or to construct any improvements thereon or therein other than those uses and improvements provided for and authorized by this Ground Lease.

**15.10** **Right of Landlord to Cure Ground Leasehold Mortgage Default.** If a Ground Leasehold Mortgage default or breach by Tenant occurs prior to completion of the Improvements, and the Ground Leasehold Mortgagee has not exercised its option to cure the default, Landlord may cure the default following prior notice thereof to Tenant. In such event, Tenant shall be liable for, and Landlord shall be entitled to reimbursement from Tenant of, all costs and expenses incurred by Landlord associated with and attributable to the curing of the Ground Leasehold Mortgage default or breach. Landlord shall also be entitled to record a lien against Tenant's interest in this Ground Lease to the extent of such incurred costs and disbursements. Any such lien shall be subject and subordinate to all prior Ground Leasehold Mortgages and encumbrances.

## **ARTICLE 16. MISCELLANEOUS**

**16.1** **Holding Over.** If Tenant shall hold over in the Facility or on the Premises after the expiration of the Term hereof with the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental 1/12th of the amount which is 125% of the highest amount of total Annual Rent paid by Tenant to Landlord during the Term.

**16.2**            **Attorneys' Fees.** In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

**16.3**            **Quiet Possession.** Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Term hereof without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord.

**16.4**            **Force Majeure.** Except as to the payment of Rent, subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; lack of reasonable availability of labor or materials; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, or to complete the Improvements shall not constitute grounds of force majeure delay pursuant to this Section 16.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Commencement Date.

If, at any time during the Term, fifty percent (50%) or more of the indoor dining room portion of the Premises cannot be utilized as a seated indoor dining restaurant for more than three (3) days as a result of any local, state, or federal order, regulation, law, directive or other mandate (each a "Government Order"), then Base Rent payable thereafter shall abate commencing as of the date on which such Government Order takes effect, and expiring on the date on which such Government Order is lifted. In the event that the Government Order has not ceased within 180 days from the first date on which the Government Order takes effect, Tenant shall have the right to elect to terminate this Lease at any time thereafter upon written notice to Landlord at any time after the expiration of such 180 day period, and both parties shall be relieved of all further obligations hereunder except for those obligations which expressly survive any termination hereof.

**16.6**            **Notices.** Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for

whom intended, as indicated in the Basic Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

**16.7**            **Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

**16.8**            **Surrender.** Upon the expiration or sooner termination of the Term of this Ground Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Landlord the Facility, the Premises and any improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

**16.9**            **Binding.** Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

**16.10**           **Landlord's Right to Enter Premises and Facility.** Landlord and its authorized representatives shall have the right to enter the Premises and Facility at all reasonable times, after giving Tenant 24 hours prior written notice (except in emergency in which case no notice shall be required), for any purpose, including: to determine whether the Premises, the Facility, or any other improvements on the Premises is in good condition and whether Tenant is complying with its obligations under this Ground Lease; to do any necessary maintenance and to make any restoration to the Facility or any other improvements upon the Premises that Landlord has the right or obligation to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Ground Lease; and to do any act or thing necessary for the safety or preservation of the Facility and the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street.

A.        Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises and Facility as provided in this Section other than any property damage, bodily injury, or death caused by the sole active negligence or willful misconduct of Landlord, its agents, employees or contractors.

B.        Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this section but only if Landlord's exercise of such rights does not prevent Tenant from operating its business in the Premises in the ordinary course.

**16.11**           **Disclaimer of Partnership.** The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the Improvements or in the conduct of Tenant's business or otherwise.

**16.12**            **Memorandum.** Landlord and Tenant shall execute a Memorandum of this Ground Lease or any amendment or modification thereof for recordation in the official records of the County of Alameda, California, in substantially the form attached hereto as Exhibit C.

**16.13**            **Quitclaim.** At the expiration or earlier termination of the Term, Tenant shall execute, acknowledge and deliver to Landlord within 15 days after Landlord's written demand to Tenant, any quitclaim deed or other document reasonably required by Landlord or any reputable title company to remove the cloud of this Ground Lease from the Premises and confirm Landlord's title to the Facility.

**16.14**            **Interpretation.** The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Agreement, 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 Agreement shall be interpreted as though prepared jointly by both parties.

**16.15**            **Severability.** If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

**16.16**            **Computation of Time.** The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**16.17**            **Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

**16.18**            **Time of Essence.** Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

**16.19**            **Nonliability of Landlord's Officials and Employees.** No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground

Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease.

**16.20**            **Assignment by Landlord.** Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent, provided any such assignee shall assume in writing all of Landlord's obligations under this Lease, and shall provide written notice to Tenant of any such assignment, and the notice and payment addresses of such assignee.

**16.21**            **Applicable Law.** The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Ground Lease.

**16.22**            **Agent for Service of Process.** Tenant expressly agrees and understands that if it is not a resident of this State, or is an association or partnership without a member or partner resident of this State, or is a foreign corporation or company, then Tenant shall file with Landlord a designation of a natural person residing in the County of Alameda, State of California, giving his or her name, residence, and business address as Tenant's agent for the purpose of service of process in any court action between Tenant and Landlord arising out of or based upon this Ground Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such Tenant. Tenant further expressly agrees, covenants and stipulates that if for any reason service of such process upon such agent is not possible, or Tenant fails to maintain such an agent, then in such event Tenant may be personally served with such process out of the State of California, and that such service shall constitute valid service upon such Tenant; and it is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

**16.23**            **Covenants and Conditions.** Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

**16.24**            **Integration.** This Ground Lease, together with all exhibits and attachments hereto, constitute the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein.

**16.25**            **Estoppel Certificates.** From time to time, Tenant shall execute and deliver to Landlord within 20 days of request a certificate certifying (i) that this Ground Lease is unmodified and in full force and effect or, if there has been any modification, that this Ground Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which Rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee or other party. If Tenant fails to execute and deliver any such certificate within ten business days after Landlord's written request, such



failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance. In the event that Tenant requests Landlord to execute a certificate pursuant to this 16.25, then Tenant shall pay Landlord's reasonable attorneys' fees and consultant costs incurred in connection with each such request in an amount not to exceed \$1,500, which amount shall be increased by annual CPI adjustments.

**16.26**            **Amendments to this Ground Lease.** Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms included herein. Tenant shall pay Landlord's reasonable attorneys' fees and third-party costs incurred in connection with any amendment requested by or on behalf of Tenant. No amendment shall be effective unless in writing and signed by the parties hereto.

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

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

1.        Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
2.        Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

**16.29                    Non-Discrimination Against Persons With Disabilities.**

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

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

**16.30                    Conflict of Interest Prohibited.**

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

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

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

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

**16.32                    Required Accessibility Disclosure.**

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

B. "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

**16.33 Oppressive States.**

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

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

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

C. Tenant's failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to Article 14. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

**16.34 Berkeley Living Wage Ordinance (LWO).**

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

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased

Premises, 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 Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Article 14 herein.

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

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

E. Tenant's failure to comply with this Section shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to Article 14.

F. 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.

**16.35 Berkeley Equal Benefits Ordinance (EBO).**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes 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 Ground Lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Article 14.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to Article 14.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that

can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

**16.36** **Berkeley Marina Zone Worker Retention Ordinance.** As a "Marina Zone Business" (as defined in the Berkeley Marina Zone Worker Retention Ordinance, B.M.C. Chapter 13.25 "Marina Zone Ordinance"), Tenant shall comply with such Ordinance. Without limiting the foregoing, during the Ground Lease Term, Tenant shall cause any "New Operator" (as defined in the Marina Zone Ordinance) to comply with such Ordinance.

**16.37** **Pests and Pesticide Management.** All use of pesticides on or about the Premises shall be in compliance with the City of Berkeley's Pest/Pesticide Management Policy.

**16.38** **Berkeley Sanctuary City Ordinance. .**

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 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.

**16.39** **Audit.** In addition to any other Landlord audit right herein, the City Auditor's Office, or its designee, may conduct an audit of Tenant's financial and compliance records maintained in connection with the operations and services performed under this Ground Lease, and with the payments made under this Ground Lease. In the event of such audit, Tenant agrees to make all such financial and compliance records available to the Auditor's Office, or to its designee. City agrees to provide Tenant an opportunity to discuss and respond to any findings before a final audit report is filed.

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

**16.41 Survival.** The provisions of Sections 4.3 (Real Property Taxes), 4.4 Assessments, 5.5 (General Standards of Maintenance), 5.7 (Governmental Requirements), 6.2 (Hazardous Materials), 7.2 (Alterations on Premises), 7.5 (Liens and Stop Notices), 10.2 (Indemnity), 16.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

**16.42 Union Workers.** Tenant is not obligated to hire union workers and nothing in Landlord's labor agreements requires Tenant to hire union workers. So long as Tenant occupies the Premises, Landlord agrees it will not enter into any agreement(s) requiring Tenant to hire union workers

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

*[Signature Page Follows]*

**TENANT:**

NFS UNLIMITED, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Steven L. Scheinthal  
Vice President

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a public body corporate and politic

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

Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Farimah Brown, City Attorney

**Registered by:**

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

**Attest:**

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

**TENANT INFORMATION**

Tax Identification No. 84-3132280  
Incorporated: Yes  
Certified Woman Business Enterprise: No  
Certified Minority Business Enterprise: No  
Certified Disadvantaged Business Enterprise: No  
City Business License No. \_\_\_\_\_, or  
Exempt pursuant to B.M.C. Section \_\_\_\_\_

EXHIBIT A  
SITE MAP



Exhibit A: Site Map  
100 Seawall Drive

Key: Facility Leased Premises. Non-Exclusive Use Areas. 4 foot landscape area from back of curb

Dated: January 2022 | 100 Seawall Drive Lease | Exhibit A



EXHIBIT B

MEMORANDUM OF GROUND LEASE

And When Recorded Mail To:

City of Berkeley  
2180 Milvia Street, 4th Floor  
Berkeley, CA 94704

Attn: City Clerk

(Space Above This Line for Recorder's Use Only)  
[Exempt from recording fee per Gov. Code § 27383]

**MEMORANDUM OF GROUND LEASE**

CITY OF BERKELEY, a public body corporate and politic, as Landlord, has leased to NFS UNLIMITED, LLC, a Texas limited liability company, as Tenant, the real property described described in Exhibit A attached hereto and incorporated herein by this reference (the “Premises”).

1. Landlord previously leased to Tenant the Premises upon the terms, covenants, conditions, limitations and restrictions contained in that certain unrecorded Lease between Landlord and Manning's Inc. as “Lessee,” dated March 23, 1979, as subsequently amended, assigned and subleased (together, the “**Prior Ground Lease**”). Notice of the Prior Ground Lease is provided by that certain \_\_\_\_\_ dated \_\_\_\_\_, 19\_\_ and recorded in the Official Records of Alameda County as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 19\_\_ (the “**Prior Ground Lease Memorandum**”). The prior Ground Lease granted to Tenant the right to use and occupy the Premises until \_\_\_\_\_, 20\_\_.

2. Landlord and Tenant have now entered into that certain unrecorded Ground Lease dated as of \_\_\_\_\_, 2022 (the “**Ground Lease**”), pursuant to which Landlord has leased the Premises to Tenant. The Ground Lease grants to Tenant the right to continue to use and occupy the Premises until \_\_\_\_\_, 2032. There are two (2) options to extend the term of the Ground Lease for five years each (total 10 years). If Tenant properly exercises all options, the term of the Ground Lease could extend until \_\_\_\_\_, 2042.

3. This Memorandum of Ground Lease supersedes and replaces the Prior Ground Lease Memorandum; and this Memorandum of Ground Lease shall provide record notice of the existence of the Ground Lease with respect to the Premises and of Tenant’s rights with respect thereto.

***[Signature Page Follows]***

**TENANT:**

NFS UNLIMITED, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Steven L. Scheinthal  
Vice President

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF BERKELEY, a public body corporate and politic

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

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF TEXAS )  
 ) SS.  
COUNTY OF HARRIS )

On \_\_\_\_\_, 2022 before me, \_\_\_\_\_, Notary Public, personally appeared Steven L. Scheinthal, who proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT C**  
**IMPROVEMENTS**

Tenant agrees to complete the following improvements within the Initial Term of this Lease. Cost of these improvements may be eligible for credit against annual rent, as provided in section 3.3.C of the lease.

- **Roof:** Tenant shall replace the building roof. Landlord acknowledges that work is expected to start in 2022, and may be completed prior to this lease execution. Landlord agrees that this work will be eligible for credit against annual rent, as provided in section 3.3.C of the Lease.
- **Parking lot reconstruction:** The parking lot adjacent to the restaurant shall be reconstructed by tenant. This work includes mobilization, traffic control, Storm Water Pollution Prevention Plan, asphalt concrete paving (3 inches), Aggregate Base (9 inches), Pavement marking and striping, curb and gutter, C3 Storm Water Treatment, concrete walkway, trash enclosure relocation and improvements, Americans with Disabilities Act (ADA) curb ramps, construction testing, permits, and similar, construction contingencies, design, construction management and inspection. The parking lot and path of travel adjacent to the restaurant in the Non-Exclusive Use Area depicted in Exhibit A shall be maintained by the tenant for the duration of this lease term and option term, in a manner consistent with section 5.6.
- **Accessibility Improvements:** The following accessibility improvements to will be made in accordance with Table C-1, below:

**Table C-1: Accessibility Improvements**

ADA Accessibility Survey Report for the Berkeley Marina - Recommendations appropriate for Skates to fund | 2021

| Record Number | Category | Description | Sub Description                             | Item                                   | Finding                                                                  | On Site Finding                                                                                                            | Recommendation                                       | Recommended Value                                                                                                            | Deviation              | Measure Units | Costing Info                                          | Estimated Cost | Code Reference                      |
|---------------|----------|-------------|---------------------------------------------|----------------------------------------|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------|-------------------------------------------------------|----------------|-------------------------------------|
| 88446         | Photo 1  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Left Accessible Space  | ISA is Faded or Damaged                                                  | ISA marking is faded and not viewable.                                                                                     | Faded or Damaged                                     | Repaint the ISA marking in the parking space.                                                                                | See Recommendation     |               | Re-stripe existing parking space                      | \$117.00       | ADA 502, CA 11B-502.6               |
| 88442         | Photo 1  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Left Accessible Space  | Outline is Faded, Damaged or Missing                                     | The accessible parking space outline is faded,                                                                             | Faded or Damaged                                     | Re-stripe the existing parking space marked as accessible to define the                                                      | See Recommendation     |               | Re-stripe existing parking space                      | \$350.00       | ADA 502, 502.2, CA 11B-502.2        |
| 88443         | Photo 1  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Left Accessible Space  | Parking Space Width                                                      | The accessible parking space does not meet the                                                                             | 98.00 inches                                         | Re-stripe the accessible parking space.                                                                                      | At least 108.00 inches | -10.00 inches | Re-stripe existing parking space                      | \$350.00       | ADA 502, 502.2, CA 11B-502.2        |
| 88444         | Photo 1  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Left Accessible Space  | Parking Space Slope                                                      | The surface of the accessible parking space has a slope                                                                    | 3.70 percent                                         | Pave the parking lot to provide a level surface.                                                                             | Up to 2.08 percent     | 1.62 percent  | Repave surface to correct slope and re-stripe         | \$3,800.00     | ADA 502, 502.4, CA 11B-502.4        |
| 88445         | Photo 1  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Left Accessible Space  | Access Aisle                                                             | There is an accessible parking space designated in the parking lot.                                                        | No Access Aisle                                      | Provide a compliant access aisle at the parking space. Parking spaces shall each                                             | See Recommendation     |               | Paint ground markings and install a post mounted sign | \$370.00       | ADA 502, 502.3, 502.3, CA 11B-502.2 |
| 88449         | Photo 2  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Right Accessible Space | International Symbol of Access (ISA) is Faded or                         | ISA marking is faded and not viewable.                                                                                     | Faded or Damaged                                     | Repaint the ISA marking in the parking space.                                                                                | See Recommendation     |               | Re-stripe existing parking space                      | \$117.00       | ADA 502, CA 11B-502.6               |
| 88447         | Photo 2  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Right Accessible Space | Parking Space Width                                                      | The accessible parking space does not meet the minimum requirements for width.                                             | 98.00 inches                                         | Re-stripe the accessible parking space.                                                                                      | At least 108.00 inches | -10.00 inches | Re-stripe existing parking space                      | \$350.00       | ADA 502, 502.2, CA 11B-502.2        |
| 88448         | Photo 2  | Parking     | Parking Lot Next to Seawall Drive           | Next to Skates, Right Accessible Space | Access Aisle                                                             | There is an accessible parking space designated in the parking lot. There is no access aisle located at the parking space. | No Access Aisle                                      | Provide a compliant access aisle at the parking space. Parking spaces shall each provide an access aisle that may be shared. | See Recommendation     |               | Paint ground markings and install a post mounted sign | \$370.00       | ADA 502, 502.3, 502.3, CA 11B-502.2 |
| 88414         | Photo 3  | Curb Ramps  | Curb Ramp Next to Skates Restaurant - Right | Appurtenances                          | Utilities, gratings or other appurtenances are located on the curb ramp. | Not Compliant                                                                                                              | Provide a compliant curb ramp free of appurtenances. | See Recommendation                                                                                                           |                        |               | Install curb ramp                                     | \$1,440.00     | ADA 406, CA 11B-406, PROWAG R204    |
| Total:        |          |             |                                             |                                        |                                                                          |                                                                                                                            |                                                      |                                                                                                                              |                        |               | Total:                                                | \$7,264.00     |                                     |



Exhibit C - Improvements





Office of the City Manager

CONSENT CALENDAR  
March 8, 2022

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

RECOMMENDATION

Adopt a resolution authorizing the following updates to the T1 Phase 1 list of approved projects:

1. Add the following project - Streets: West Street (adjacent to Strawberry Creek Park) from Addison to End.
2. Change the phase of the following project - Parks: Aquatic Park Tide Tubes Cleanout, (add "Construction").
3. Remove the following:
  - A. Projects added in October 2020:
    - i. Streets:
      - a. Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard;
      - b. Cedar Street from 6th Street to San Pablo Avenue;
      - c. Center Street from Martin Luther King Jr. Way to Shattuck Ave;
      - d. Dohr Street from Ashby Avenue to Prince Street;
      - e. Rose Street from Le Roy Avenue to La Loma Avenue;
      - f. Santa Fe Avenue from Gilman Street to Cornell Avenue/Page St;
      - g. Shasta Road from Grizzly Peak Boulevard to east City limit; and
      - h. West Street from Bancroft Way to Dwight Way.
    - ii. Parks: James Kenney Park Play and Picnic Area
  - B. Projects added in July 2019:
    - i. Green Infrastructure:
      - a. Heinz Avenue near RR tracks;
      - b. Jones Street between Fourth St and RR tracks;
      - c. Ninth Street at Codornices Creek;
      - d. Evaluation of Sacramento Street center median; and
      - e. Tenth Street at Codornices Creek.

- C. Projects from the original approved list:
- i. Streets: Bancroft from Shattuck to Milvia

#### FISCAL IMPACTS OF RECOMMENDATION

There are minimal fiscal impacts from these changes, which involve a clean-up of the existing Measure T1 list of projects. The West Street (Addison to End) street paving was added with existing contingency to complete the Strawberry Creek Park project. The Aquatic Park project included construction, and this change corrects that omission. The streets and park projects added in October 2020 were completed with other funding sources. The 5 green infrastructure projects added in July 2019 could not be completed due to funding and permitting constraints. The street segment Bancroft from Shattuck to Milvia is moving forward with separate funding under the Southside complete streets project.

#### CURRENT SITUATION AND ITS EFFECTS

As Phase 1 of the T1 bond program nears completion with the last two projects currently in construction – Marina Streets and the North Berkeley Senior Center – there are several final adjustments needed to the approved project list. These updates are needed to ensure that the final approved list includes only those projects that were completed with T1 funding, and to remove those that were completed with other funding sources.

*Added project:* Paving of West Street (Addison to End) was added with existing contingency to complete the street segment adjacent to the Strawberry Creek Park Play Structure funded by T1.

*Changed phase:* The Aquatic Park Tide Tubes project was intended to include all phases through construction. This change corrects that omission.

#### *Removed projects:*

In [October 2020](#), as a precaution to ensure that the City met our deadline of spending 85% of bond proceeds within 3 years, Council authorized the addition of multiple street segments, as well as the James Kenney Park Play and Picnic Area Project.<sup>1</sup> These projects were fully funded with separate sources and were in construction at the time, providing staff the opportunity to allocate Measure T1 funds if needed. The T1 program ultimately met that 85% deadline without needing to include these projects. Because these projects were not allocated T1 funds, they now need to be removed from the T1 list.

In [July 2020](#), Council authorized the removal of the King School Park Bioswale project and addition of 12 alternate green infrastructure projects. As planned, all 12 projects

---

<sup>1</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/10\\_Oct/Documents/2020-10-13\\_Item\\_06\\_Measure\\_T1\\_Phase\\_1\\_Project\\_List.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_06_Measure_T1_Phase_1_Project_List.aspx).



were evaluated at the time, with the intent of prioritizing those that could go to construction based on timing and feasibility. Of the 12, construction of 7 were completed with T1 funding. The remaining 5 listed above were not pursued due to permitting and funding constraints.<sup>2</sup>

The street segment on Bancroft between Shattuck and Milvia, approved by Council in the original T1 list in [June 2017](#), was incorporated into the Southside Complete Streets Project. It is moving forward via separate funding in next fiscal year.<sup>3</sup>

Section 4.5 of the [Measure T1 Policies and Procedures manual](#) states the following: “When changes need to be made at the program-level, such as adding/removing a project or changing the project’s level of completion, staff will review these options with the Lead Commissions and seek Council’s approval to revise the approved list. This process is intended to ensure that any change to the approved Measure T1 project list is made with community input, Commission oversight, and Council approval.” The recommended changes in this report were reviewed the Parks, Recreation and Waterfront Commission on February 9, 2022 and the Public Works Commission on February 3, 2022.

## BACKGROUND

In November 2016, Berkeley voters approved [Measure T1](#) – a \$100 million dollar general obligation bond to repair, renovate, replace or reconstruct the City’s aging existing infrastructure, including facilities, streets, sidewalks, storm drains, and parks. Measure T1 passed with 86.5% of the vote.<sup>4</sup>

From December 2016 through June 2017, the City undertook a robust public process to gather input on the proposed projects. In addition to three Measure T1 Workshops for the general public, the Parks & Waterfront and Public Works Commissions invited and received input from the public and other City Commissions. They submitted a [joint report to Council in June 2017](#)<sup>5</sup> detailing their recommendations. The City Manager incorporated this input and submitted a [final recommended list of projects](#).<sup>6</sup> Council adopted this list and proposed plan for implementing Phase 1 of the T1 bond program on June 27, 2017.

<sup>2</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/07\\_Jul/Documents/2019-07-23\\_Item\\_22\\_Authorizing\\_the\\_modification\\_of\\_the\\_Measure\\_T1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_22_Authorizing_the_modification_of_the_Measure_T1.aspx).

<sup>3</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/2017-06-27%20Resolution%2068,076%20Adopt%20the%20Final%20List%20of%20Projects%20for%20Implementation%20in%20Phase%201%20of%20Measure%20T1.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2017-06-27%20Resolution%2068,076%20Adopt%20the%20Final%20List%20of%20Projects%20for%20Implementation%20in%20Phase%201%20of%20Measure%20T1.pdf).

<sup>44</sup> See <https://www.cityofberkeley.info/MeasureT1/>.

<sup>5</sup> See [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf).

<sup>6</sup> See [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/06\\_June/Documents/2017-06-27\\_Item\\_49\\_Implementing\\_Phase\\_1.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-27_Item_49_Implementing_Phase_1.aspx).

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

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

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

On October 18, 2020, Council approved Resolution No. 69,581-N.S., authorizing the following additions to the Measure T1 Phase 1 project list with no additional funding: James Kenney Park play area (ages 2-5, and 5-12) and picnic area; Euclid Street (at Rose Garden); Cedar Street from 6th Street to San Pablo Avenue; Center Street from Martin Luther King Jr. Way to Shattuck Avenue; Rose Street from Le Roy Avenue to La Loma Avenue; Santa Fe Avenue from Gilman Street to Cornell Avenue/ Page Street; Shasta Road from Grizzly Peak Boulevard to east City limit; Arcade Avenue from Fairlawn Drive to Grizzly Peak Boulevard; Dohr Street from Ashby Avenue to Prince Street; and West Street from Bancroft Way to Dwight Way.

#### ENVIRONMENTAL SUSTAINABILITY

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

#### RATIONALE FOR RECOMMENDATION

These adjustments are needed to clean up the final Phase 1 list, to align the approved list of projects with actual T1 expenditures.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700  
Liam Garland, Director, Public Works, Project Manager, 981-6437

Updates to the Measure T1 Phase 1 Project List

CONSENT CALENDAR  
March 8, 2022

**Attachments:**

**1: Resolution**

Exhibit A: Updates to the Measure T1 Phase 1 Project List

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

UPDATES TO THE MEASURE T1 PHASE 1 PROJECT LIST

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

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

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

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

WHEREAS, since the current Phase 1 list has not been revised to reflect the above changes; and

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

WHEREAS, the revised list was reviewed by the Parks, Recreation and Waterfront Commission on February 9, 2022 and the Public Works Commission on February 3, 2022.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Measure T1 Phase 1 Project List be updated to reflect the projects listed in Exhibit A.

Exhibit A: Updates to the Measure T1 Phase 1 Project List

## Exhibit A

## Phase 1 Measure T1- Revised List of Projects (March 8, 2022)

| <b>Facilities/Buildings</b>                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------|
| <b>Adult Mental Health Services Center</b> - Planning, Design, and Construction                                          |
| <b>Frances Albrier Community Center</b> - Planning                                                                       |
| <b>Live Oak Community Center</b> - Planning, Design and Construction                                                     |
| <b>North Berkeley Senior Center</b> - Planning, Design and Construction                                                  |
| <b>Old City Hall, Veterans Building and Civic Center Park</b> - Planning                                                 |
| <b>Restrooms - Citywide Needs Assessment</b> - Planning                                                                  |
| <b>Restrooms - Strawberry Creek Park Restroom Replacement</b> - Planning, Design, and Construction                       |
| <b>Tom Bates (Gilman) Fields North Field House / Restroom</b> - Planning                                                 |
| <b>Willard Club House Renovation</b> - Planning                                                                          |
| <b>City Wide Safety Improvements</b>                                                                                     |
| <b>Berkeley Health Clinic - Electrical</b> - Planning                                                                    |
| <b>Corporation Yard - Roof &amp; Electrical</b> - Design and Construction                                                |
| <b>Marina Corp Yard - Electrical</b> - Design and Construction                                                           |
| <b>Public Safety Bldg - Mechanical + HVAC</b> - Planning                                                                 |
| <b>Parks Improvement Projects</b>                                                                                        |
| <b>Aquatic Park Tide Tubes Clean Out</b> - Planning, Permitting and Construction                                         |
| <b>Berkeley Municipal Pier</b> - Planning                                                                                |
| <b>Berkeley Rose Garden Drainage</b> - Planning and Design                                                               |
| <b>Berkeley Rose Garden Pathways, Tennis Courts</b> - Planning, Design and Construction                                  |
| <b>Citywide Irrigation System</b> - Planning, Design and Construction                                                    |
| <b>Codornices Creek at Kains Avenue</b> - Planning, Design and Construction                                              |
| <b>Grove Park Phase 2 - Field Improvements</b> - Planning, Design and Construction                                       |
| <b>Play Structure Replacement - George Florence Park (2)</b> - Planning, Design, and Construction                        |
| <b>Play Structure Replacement (Ages 5-12) - San Pablo Park</b> - Planning, Design, and Construction                      |
| <b>Play Structure Replacement (Ages 2-5) - San Pablo Park</b> - Planning, Design, and Construction                       |
| <b>Play Structure Replacement (Ages 5-12) - Strawberry Creek Park</b> - Planning, Design, and Construction               |
| <b>San Pablo Park Tennis Courts</b> - Planning, Design and Construction                                                  |
| <b>Tom Bates (Gilman) Fields Artificial Turf Replacement</b> - Planning, Design, and Construction                        |
| <b>Green Infrastructure</b>                                                                                              |
| <b>Page Street - near RR Tracks</b> - Planning, Design and Construction                                                  |
| <b>Channing Way near RR Tracks</b> - Planning, Design and Construction                                                   |
| <b>Dwight Way - near RR Tracks</b> - Planning, Design and Construction                                                   |
| <b>Grayson Street near RR Tracks</b> - Planning, Design and Construction                                                 |
| <b>Piedmont Avenue Median</b> - Planning, Design and Construction                                                        |
| <b>Piedmont Avenue Traffic Circle</b> - Planning, Design and Construction                                                |
| <b>Ward Street</b> - Planning, Design and Construction                                                                   |
| <b>Street asphalt repaving segments</b>                                                                                  |
| <b>2nd Street - Delaware to Addison</b> - Planning                                                                       |
| <b>Adeline Street -Derby to Ashby</b> - Planning, Design, and Construction                                               |
| <b>Euclid Street @ Rose Garden</b> - Planning, Design and Construction                                                   |
| <b>Hearst Street - Milvia to Henry</b> - Planning, Design, and Construction                                              |
| <b>Marina Streets - Lower University Ave / Marina Blvd / Spinnaker Way Renovation</b> - Planning, Design, & Construction |
| <b>Monterey Avenue - Alameda to Hopkins</b> - Planning, Design, and Construction                                         |
| <b>Ward Street - San Pablo to Acton</b> - Planning, Design, and Construction                                             |
| <b>West Street - Allston to Strawberry Creek Park</b> - Planning, Design and Construction                                |





Office of the City Manager

CONSENT CALENDAR

March 8, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Donation: Memorial Bench at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle, DragonMax Founder and Coach.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2022.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Racing Canoe Center (BRCC), Sandra Oliver, and Susan McKay, wish to donate a memorial bench in memory of Roger Garfinkle, DragonMax Founder and Coach, to be placed at the Berkeley Marina in front of M-Dock with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 510-981-6635

Attachments:

1: Resolution



RESOLUTION NO. \_\_\_\_\_ -N.S.

DONATION: MEMORIAL BENCH AT THE BERKELEY MARINA IN FRONT OF M-DOCK IN MEMORY OF ROGER GARFINKLE

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the Berkeley Racing Canoe Center (BRCC), Sandra Oliver, and Susan McKay, wish to donate a memorial bench in memory of Roger Garfinkle, DragonMax Founder and Coach, to be placed at the Berkeley Marina in front of M-Dock with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2022.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Berkeley Marina in front of M-Dock in memory of Roger Garfinkle is hereby accepted.





Office of the Director  
of Police Accountability

13

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council  
From: Katherine J. Lee, Interim Director of Police Accountability  
Subject: Ratification of Police Accountability Board's Standing Rules

RECOMMENDATION

Ratify Standing Rules of the Police Accountability Board, revised in consideration of Mayor Arreguin's proposed amendments.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Police Accountability Board ("Board") first presented its Standing Rules for ratification at the December 14, 2021 Council meeting. On that date, the Council referred the item back to the Board with the revisions submitted at the meeting by Mayor Arreguin. (Attachment 1.)

Subsequently, the Police Accountability Board considered the Mayor's proposed amendments and, with some relatively minor changes, approved revised Standing Rules, which are now submitted for Council's review and ratification. (See Attachment 2 [redlined] and Attachment 3 [clean].)

BACKGROUND

The Police Accountability Board is independent of the City Manager and answerable directly to the City Council. Article XVIII, Section 125 of the City Charter sets forth duties and obligations of the Board with respect to how the Board operates and its subject matter jurisdiction.

City Charter Article XVIII, Section 125 (13)(e) states that, unless otherwise specified, rules of procedure governing the conduct of the Board must comply with the Commissioners' Manual. The Board's Standing Rules elaborate upon some of the procedural rules of the Commissioners' Manual, such as those governing the election of a Chair and Vice-Chair, submission of agenda items, and meeting procedures. Additionally, the Board's Standing Rules establish procedures for powers granted under the City Charter, such as review of Departmental policies, appointment of members of the public to subcommittees, and commendations of Berkeley Police Department personnel.

The amendments suggested by Mayor Arreguin address concerns about Police Accountability Board subcommittees, found in Section J of the Standing Rules.

Most of the Mayor's amendments in Section J.1. expand the mechanism by which public members of subcommittees are recruited and appointed, requiring widely publicizing the opportunity to serve on subcommittees and establishing a pool of interested and qualified applicants. The Chair must endeavor to appoint public subcommittee members in a way that reflects the diversity of our community. The Board is wholly supportive of these revisions.

Other amendments proposed by the Mayor concern the timing of appointments and term of public subcommittee members. Those proposals are more appropriate for standing subcommittees, however, and the Board's subcommittees are ad hoc in nature. Among their characteristics, Board subcommittees are established by the Board for a finite purpose as the need arises, and terminate in one year unless the Board extends the subcommittee's term. Therefore, the Board suggests deleting the annual appointment requirement in Section J.1. and the one-year term for public subcommittee members in Section J.4. This will allow public members to be appointed at or around the time that Board subcommittees are established, and serve terms corresponding to the life of the subcommittee. Furthermore, as Board subcommittees have a life of only one year unless reauthorized, and Section J.4. requires reappointment of public members at the time of reauthorization, public subcommittee members may serve no longer than one year without being subject to reappointment.

Another amendment proposed by the Mayor deletes some language in Section J.3. about subcommittees convening if they are not a majority of subcommittee members present. As this may have been confusing, the Board is agreeable to deleting the language. Also, the Board supports the addition of Section J.8., repeating Charter language prohibiting public member access to confidential information.

Finally, a few additional, minor edits that do not affect the substance of the Standing Rules have been made.

The Board voted unanimously at its January 26, 2022 meeting to approve the Mayor's proposed amendments to its Standing Rules, as further revised and appearing as Attachments 2 and 3. Moved/Second: Calavita/Harris; Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, Ramsey; Noes – none; Abstentions – none; Absent – none.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### RATIONALE FOR RECOMMENDATION

The City Charter directs the Police Accountability Board to adopt rules of procedure that are subject to ratification by the City Council.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Katherine J. Lee, Interim Director of Police Accountability, Office of the Director of Police Accountability, 510-981-4950.

Attachments:

- 1: Supplemental Agenda Material for the December 14, 2021 Council meeting, Item #48, submitted by Mayor Arreguin
- 2: Police Accountability Board Standing Rules, approved January 26, 2022 (redlined)
- 3: Police Accountability Board Standing Rules, approved January 26, 2022 (clean)



Office of the Mayor

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** December 14, 2021

**Item Number:** # 48

**Item Description:** Ratification of the Police Accountability Board's Standing Rules

**Supplemental/Revision Submitted By:** Mayor Arreguin

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

According to Article XVIII, Section 125 (13)(c) of the City Charter, “The [Police Accountability] Board shall establish rules of procedure governing the conduct of business, which shall be subject to ratification by the City Council.”

On October 27, 2021 the PAB adopted permanent rules which are now before the City Council for ratification.

Mayor Arreguin is proposing amendments to Section J, “Appointment of Members of the Public to Subcommittees” to require an application process for members of the public to serve on Board subcommittees and other changes regarding the conduct of Board subcommittees.

Since the Board is currently without permanent standing rules, the “good of the City” requires acceptance of this Supplemental material so that the Council can consider these amendments and ratify permanent rules tonight. Standing rules are necessary for the orderly conduct of the Police Accountability Board, which was created by the voters in November 2020 and has been meeting since July 2021.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



## Police Accountability Board Standing Rules

Approved Oct. 27, 2021

### Including Mayor's Proposed Amendments

#### A. PURPOSE

These Standing Rules are established by the Police Accountability Board to ensure transparency and efficiency of our operations.

#### B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

#### C. AGENDA ITEMS – REGULAR MEETINGS

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date.

#### D. COMMUNICATIONS

Individual Board members shall submit communications to be included in the agenda packet to the Board secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed via email and/or hard copy at the meeting. If communications are received after 3:00 p.m. on the meeting day, the Board secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

#### E. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the maker of the motion an additional minute to speak before putting the matter to a vote.



3. A pending motion may be modified by a “friendly amendment”; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert’s Rules of Order.

*F. PUBLIC COMMENT*

1. Public comment shall be agendized near the beginning and at the end of each Board meeting. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

*G. POLICY COMPLAINTS AND REVIEWS*

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on a form provided by the Office of the Director of Police Accountability, and is considered a “policy complaint.”
  - a) Policy complaints should be reviewed by staff and brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
  - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.
2. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
3. a) For policy complaints or policy reviews, Board members shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as a whole Board, assigning a Board member to research the issue, asking staff to investigate or research the issue, or establishing a

subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

- b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

#### *H. REGULAR MEETINGS*

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The Board shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at a location or locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

#### *I. ELECTIONS*

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
  - a) The presiding Chair declares the nomination process open.
  - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
  - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
  - a) Additional nominations shall occur in accordance with section I.1.
  - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
  - c) Board members pose questions to each candidate.
  - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
    - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.
    - ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.

- iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign "heads" and "tails."
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

**J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES**

1. In accordance with the City Charter, the Chair may appoint members of the public to subcommittees to which they have applied to through an open application process in which they have expressed an interest. Candidates for the Board subcommittees must complete and file an application form with the Office of the Director of Police Accountability. Subcommittee vacancies shall be widely advertised and publicly posted. The Board will launch an initial application process to solicit interest from Berkeley residents who wish to serve on Board subcommittees. After the initial application period, the Board will accept applications on a rolling basis and make such appointments annually. Such appointments are subject to approval of the Board. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; **b) must submit an application detailing their interest and qualifications** -and ~~bc)~~ present themselves at a Board meeting before or at the time of the appointment and speak on the public record on their intent to serve and what they will bring to the subcommittee work and deliberations. The Chair shall endeavor to appoint members to subcommittees in a manner that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for Board subcommittees, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board members must constitute a majority of membership of any subcommittee, ~~but a subcommittee may convene and conduct business even if Board members are not a majority of subcommittee members present. However, a~~ quorum of voting members must be present to convene a meeting.
4. The term of appointment for members of the public appointed to subcommittees ~~shall be one year and members can serve consecutive terms shall not exceed the life of the subcommittee.~~ If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the Board.

5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.
- 7.8. In accordance with the City Charter, policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

#### K. MUTUAL AID AGREEMENTS

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the compendium of agreements made between the BPD and other law enforcement entities. The Board or the subcommittee may determine which agreements to review.

#### L. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL

1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The Board secretary shall agendize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
  - a) Exceptional valor, bravery, or heroism;
  - b) Superior handling of a difficult situation;
  - c) An action or performance that is above and beyond typical duties;
  - d) Extraordinary compassion, empathy, or kindness.

Police Accountability Board  
Standing Rules  
10.27.2021

5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###



## Police Accountability Board Standing Rules

Approved Oct. 27, 2021

Including Mayor's Proposed Amendments 12-14-21

And DPA's further revisions 1-26-22

### A. PURPOSE

These Standing Rules are established by the Police Accountability Board to ensure transparency and efficiency of our operations.

### B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

### C. AGENDA ITEMS – REGULAR MEETINGS

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date.

### D. COMMUNICATIONS

Individual Board members shall submit communications to be included in the agenda packet to the Board secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed via email and/or hard copy at the meeting. If communications are received after 3:00 p.m. on the meeting day, the Board secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

### E. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the

maker of the motion an additional minute to speak before putting the matter to a vote.

3. A pending motion may be modified by a “friendly amendment”; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert’s Rules of Order.

*F. PUBLIC COMMENT*

1. Public comment shall be agendized near the beginning and at the end of each Board meeting. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

*G. POLICY COMPLAINTS AND REVIEWS*

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on [a](#) form provided by the Office of the Director of Police Accountability, and is considered a “policy complaint.”
  - a) Policy complaints should be reviewed by staff and brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
  - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.
2. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
3. a) For policy complaints or policy reviews, Board members shall then determine

how to proceed. Possible actions include, but are not limited to: considering the issue as a whole Board, assigning a Board member to research the issue, asking staff to investigate or research the issue, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

- b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

#### *H. REGULAR MEETINGS*

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The Board shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at a location or locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

#### *I. ELECTIONS*

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
  - a) The presiding Chair declares the nomination process open.
  - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
  - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
  - a) Additional nominations shall occur in accordance with section I.1.
  - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
  - c) Board members pose questions to each candidate.
  - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
    - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.



- ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
  - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign “heads” and “tails.”
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
  4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

#### **J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES**

1. In accordance with the City Charter, the Chair may appoint members of the public to policy subcommittees to which they have applied through an open application process in which they have expressed an interest. Candidates for the Board subcommittees must complete and file an application form with the Office of the Director of Police Accountability. Subcommittee vacancies shall be widely advertised and publicly posted. The Board will launch an initial application process to solicit interest from Berkeley residents who wish to serve on Board subcommittees. After the initial application period, the Board will accept applications on a rolling basis and make such appointments annually. Such appointments are subject to approval of the Board. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; b) must submit an application detailing their interest and qualifications -and ~~b)~~ present themselves at a Board meeting before or at the time of the appointment and speak on the public record on their intent to serve and what they will bring to the subcommittee work and deliberations. The Chair shall endeavor to appoint members to subcommittees in a manner that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for Board subcommittees, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board members must constitute a majority of membership of any subcommittee, ~~but a subcommittee may convene and conduct business even if Board members are not a majority of subcommittee members present. However, a~~ quorum of voting Board members must be present to convene a meeting.
4. The term of appointment for members of the public appointed to subcommittees ~~shall be one year and members can serve consecutive terms shall not exceed the life of the subcommittee and members can serve consecutive terms.~~ If a subcommittee must be reauthorized, any members of the public serving on the

subcommittee must be reappointed by the Chair, subject to the approval of the Board.

5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.
- 7.8. In accordance with the City Charter, policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

#### K. MUTUAL AID AGREEMENTS

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the compendium of agreements made between the BPD and other law enforcement entities. The Board or the subcommittee may determine which agreements to review.

#### L. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL

1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The Board secretary shall agendize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
  - a) Exceptional valor, bravery, or heroism;
  - b) Superior handling of a difficult situation;

- c) An action or performance that is above and beyond typical duties;
  - d) Extraordinary compassion, empathy, or kindness.
5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
  6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###



## Police Accountability Board Standing Rules

Approved Oct. 27, 2021

Including Mayor's Proposed Amendments 12-14-21  
And DPA's further revisions 1-26-22

### A. PURPOSE

These Standing Rules are established by the Police Accountability Board to ensure transparency and efficiency of our operations.

### B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Board, except that the Board may not adopt rules that conflict with the enabling Charter amendment (Measure II) or the Commissioners' Manual.

### C. AGENDA ITEMS – REGULAR MEETINGS

Individual Board members shall submit agenda items to the Board secretary by 12:00 noon one week before the meeting date.

### D. COMMUNICATIONS

Individual Board members shall submit communications to be included in the agenda packet to the Board secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed via email and/or hard copy at the meeting. If communications are received after 3:00 p.m. on the meeting day, the Board secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

### E. MEETING PROCEDURES

1. Items shall be introduced by the Board member or staff member who proposed the item. The Chair shall then allow an initial period for discussion by recognizing Board members in rotation to ensure that each Board member has the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of two minutes to speak each time they are given the floor.
2. After a motion on the item is made and seconded, the Chair will recognize the maker of the motion, and then the seconder, to speak. After that, the Chair will recognize Board members in rotation, giving each Board member the opportunity to speak before a Board member is allowed to speak again. Board members are allowed a maximum of one minute to speak each time they are given the floor, and must confine their remarks to the merits of the motion. The Chair may give the

maker of the motion an additional minute to speak before putting the matter to a vote.

3. A pending motion may be modified by a “friendly amendment”; that is, by a proposed amendment that is accepted by the maker and seconder of the motion.
4. Action on a motion may be by either voice or general consent. In either case, the Chair shall repeat, or ask the Board secretary to repeat, the motion before the action.
5. Guest speakers who are not on the agenda may address the Board only by general consent, or upon a formal motion.
6. None of these procedural rules shall supersede the procedures set forth in Robert’s Rules of Order.

*F. PUBLIC COMMENT*

1. Public comment shall be agendized near the beginning and at the end of each Board meeting. The Chair, subject to the consent of the Board, may determine the time limit for each speaker and the total number of speakers.
2. Before an agenda item is heard, the Chair or Vice-Chair may poll members of the public present to determine if a significant number of them wish to speak on a particular agenda item. If so, the Chair or Vice-Chair may move that public comment on that item can be heard just before the item.

*G. POLICY COMPLAINTS AND REVIEWS*

1. A request for the Board to review a BPD policy, practice, or procedure may be initiated by a member of the public by filing a policy complaint on a form provided by the Office of the Director of Police Accountability, and is considered a “policy complaint.”
  - a) Policy complaints should be reviewed by staff and brought to the Board for discussion and action within 30 days of filing or the next regular meeting of the Board if the 30 days has expired.
  - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Board members may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Board. The Board may accept the policy complaint upon a majority vote.
2. The Board may initiate a review of a BPD policy, practice, or procedure upon a majority vote.
3. a) For policy complaints or policy reviews, Board members shall then determine

how to proceed. Possible actions include, but are not limited to: considering the issue as a whole Board, assigning a Board member to research the issue, asking staff to investigate or research the issue, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Board.

- b) The full Board may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action. Upon conclusion, a policy complaint shall be formally closed by a majority vote of the Board.

#### *H. REGULAR MEETINGS*

Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The Board shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.

Regular meetings shall commence at 7:00 p.m., and shall be held at a location or locations as may be determined by the Board, or virtually via teleconference when allowed by an emergency order.

#### *I. ELECTIONS*

1. Elections shall be held during the second January meeting of each year. During the Board meeting preceding the election meeting, the nomination of the Chair will precede the nomination of the Vice-Chair, and the following nomination process will be followed for each office:
  - a) The presiding Chair declares the nomination process open.
  - b) A Board member nominates another Board member or themselves. A Board member must be present in order to be nominated and may decline the nomination.
  - c) The nomination is seconded (the nomination fails if there is no second).
2. At the second January meeting of the year, the following election process will be followed for each office:
  - a) Additional nominations shall occur in accordance with section I.1.
  - b) Each nominee is allowed two (2) minutes to express their reason for seeking the position. A nominee may decline this opportunity.
  - c) Board members pose questions to each candidate.
  - d) The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:
    - i. If there is only one nominee for a position, the presiding Chair may seek or move a vote by acclamation.

- ii. If a tie occurs among nominees, the presiding Chair will conduct a second round of voting, including any additional nominations.
  - iii. If a clear winner is still not identified after a second round of voting, the presiding Chair will conduct a coin toss to break the tie and determine a winner. The Board secretary will assign “heads” and “tails.”
3. The Board secretary will record the maker and the second of the nomination motion as well as the total votes and results per office.
4. The outgoing Chair and Vice-Chair will be given the opportunity to make 2-minute departing statements after the election process takes place. The newly-elected Chair and Vice-Chair will assume their positions at the end of the meeting.

**J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES**

1. In accordance with the City Charter, the Chair may appoint members of the public to policy subcommittees to which they have applied through an open application process. Candidates for the Board subcommittees must complete and file an application form with the Office of the Director of Police Accountability. Subcommittee vacancies shall be widely advertised and publicly posted. The Board will launch an initial application process to solicit interest from Berkeley residents who wish to serve on Board subcommittees. After the initial application period, the Board will accept applications on a rolling basis. Such appointments are subject to approval of the Board. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; b) submit an application detailing their interest and qualifications and c) present themselves at a Board meeting before or at the time of the appointment and speak on the public record on their intent to serve and what they will bring to the subcommittee work and deliberations. The Chair shall endeavor to appoint members to subcommittees in a manner that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for Board subcommittees, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.
2. Members of the public appointed to subcommittees are non-voting members and may not be selected to be the subcommittee Chair
3. Board members must constitute a majority of membership of any subcommittee. A quorum of Board members must be present to convene a meeting.
4. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee and members can serve consecutive terms. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the Board.

5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the Board, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a Board meeting.
8. In accordance with the City Charter, policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

#### *K. MUTUAL AID AGREEMENTS*

The Board shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the compendium of agreements made between the BPD and other law enforcement entities. The Board or the subcommittee may determine which agreements to review.

#### *L. COMMENDATIONS OF BERKELEY POLICE DEPARTMENT PERSONNEL*

1. The Board regularly receives copies of communications praising Berkeley Police Department (BPD) personnel for noteworthy service; these commendations are both external (from members of the public) and internal (from fellow BPD or City of Berkeley employees). This process shall be used when the Board desires to bestow additional recognition upon those BPD personnel, or when a Board member on his or her own initiative wants the Board to recognize BPD personnel.
2. The Board may commend or otherwise honor with a special award or recognition an individual sworn officer or civilian employee of the BPD, or a group of officers and/or employees of the BPD, such as a team or division.
3. The Board secretary shall agendize commendations the Board receives from the BPD periodically, as received. A Board member wishing to initiate a commendation or other honor from the Board shall submit the proposal to the Board secretary for placement on the Board agenda in accordance with Section C of these rules. The proposal shall include the name of the person or group to be honored, and a description of the noteworthy action.
4. For the Board to issue a commendation or other honor, the BPD officer, employee, or group must be found to have performed an extraordinary service or performed in an extraordinary manner that meets one or more of the following criteria:
  - a) Exceptional valor, bravery, or heroism;
  - b) Superior handling of a difficult situation;
  - c) An action or performance that is above and beyond typical duties;
  - d) Extraordinary compassion, empathy, or kindness.



Police Accountability Board  
Standing Rules  
10.27.2021

5. A motion to commend or otherwise honor BPD personnel shall include the act or incident giving rise to the honor and describe how it meets the above criteria. The motion must receive a majority of affirmative votes of Board members present at the meeting to pass.
6. Following the meeting, the Board secretary shall communicate the Board's action in writing to the City Council, and shall also forward the commendation to the Chief of Police, with a request that the commendation or other honor be placed in the personnel file of each sworn officer or civilian employee commended.

###





Office of the Mayor

14

CONSENT CALENDAR

March 8, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmembers Terry Taplin (Co-Sponsor), Ben Bartlett (Co-Sponsor), and Rigel Robinson (Co-Sponsor)

Subject: Support of SB 922

RECOMMENDATION

Adopt a Resolution in support of SB 922 (Wiener), which would permanently exempt transportation-related projects from CEQA. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Scott Wiener and Nancy Skinner, and Assemblymember Buffy Wicks.

BACKGROUND

The California Environmental Quality Act (CEQA) requires an assessment of environmental impacts of certain proposed projects before approval. Certain projects, such as increasing services on rail lines, are exempt. Under SB 288, signed into law in September 2020, additional transportation projects including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations also became exempt. However, most of these exemptions are set to expire on January 1, 2023, with bicyclist project exemptions expiring on January 1, 2030. In July 2020, the City Council voted to send a letter of support for SB 288 (Attachment 3).

In recent years, Berkeley has updated its Bike Plan and Pedestrian Plan, while also pursuing efforts to improve transportation safety such as Vision Zero. Not only do these plans aim to improve safety and accessibility, but they also double as helping us achieve goals outlined under the Climate Action Plan and Vision Zero. Transportation accounts for approximately 60% of Berkeley's greenhouse gas emissions, so advancing projects that promote sustainable forms of transportation are critical to reducing our carbon footprint. SB 288 has allowed for the acceleration of such projects that aim to meet and implement these goals. If SB 288 is allowed to sunset, it risks placing delays on these projects.

SB 922, introduced by State Senator Scott Wiener, would extend the exemptions outlined in SB 288 indefinitely.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The transportation sector comprises 60 percent of Berkeley's greenhouse gas emissions. Ensuring the acceleration of sustainable infrastructure investments, which promote walking, biking, and taking public transit, is aligned with the goals put forth in the City's Climate Action Plan.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 922
- 3: Council Item in Support of SB 288

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

IN SUPPORT OF SB 922

WHEREAS, transportation accounts for 60% of greenhouse gas emissions produced in Berkeley; and

WHEREAS, advancing projects that support alternative modes of transportation such as public transit, bicycling, and walking are vital to both increasing accessibility and safety and reducing our carbon footprint; and

WHEREAS, the City of Berkeley has recently updated its Bike Plan and Pedestrian Plan, and is moving forward with Vision Zero and Vision 2050; all of these programs and plans call for increased transportation infrastructure to reduce reliance on vehicles and improve safety; and

WHEREAS, the California Environmental Quality Act (CEQA) requires an assessment of environmental impacts of certain proposed projects before approval, with some transportations exempt, which was greatly expanded under SB 288; and

WHEREAS, SB 288, supported by the Berkeley City Council and signed into law in September 2020, has most of its provisions expire in January 2023, and exemptions to certain bicycle programs expiring in January 2030, which would risk delaying future transportation projects aimed at achieving the goals outlined in Berkeley's aforementioned policies; and

WHEREAS, SB 922, introduced by State Senator Scott Weiner, would extend the CEQA exemptions for transportation projects under SB 288 indefinitely.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 922.

BE IT FURTHER RESOLVED that a copy of the Resolution be sent to Governor Gavin Newsom, State Senators Scott Wiener and Nancy Skinner, and Assemblymember Buffy Wicks.

.

**SENATE BILL**

**No. 922**

---

---

**Introduced by Senator Wiener**

February 3, 2022

---

---

An act to amend Sections 21080.20 and 21080.25 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 922, as introduced, Wiener. California Environmental Quality Act: exemptions: transportation-related projects.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA, until January 1, 2030, exempts from its requirements bicycle transportation plans for an urbanized area for restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and related signage for bicycles, pedestrians, and vehicles under certain conditions.

This bill would extend the above exemption indefinitely. The bill would also repeal the requirement that the bicycle transportation plan is for an urbanized area and would extend the exemption to an active transportation plan or pedestrian plan, or for a feasibility and planning study for active transportation, bicycle facilities, or pedestrian facilities.

CEQA exempts from its requirements certain projects located in an urbanized area, including transit prioritization projects, as defined, and projects for pedestrian and bicycle facilities or for the institution or increase of new bus rapid transit, bus, or light rail services on public or highway rights-of-way. For those exempted projects exceeding \$100,000,000 in 2020 United States dollars, CEQA, except as provided, requires the lead agency to complete and consider the results of a project business case and a racial equity analysis, as specified, and would require the lead agency, before exempting a project from CEQA, to hold at least 3 noticed public meetings in the project area, as provided. CEQA requires the lead agency, before granting an exemption for projects under the above provisions, to certify that those projects will be carried out by a skilled and trained workforce, except as provided. If the lead agency determines to carry out a project exempt under the above provisions, CEQA requires the lead agency to file a notice of exemption with the Office of Planning and Research and the county clerk of the county in which the project is located. Existing law repeals the above-described exemption on January 1, 2023.

This bill would extend the exemption indefinitely. The bill would revise and recast the exemption to, among other things, repeal the requirement that the exempted projects are located in an urbanized area, extend the exemption by revising the definition of transit prioritization projects, and require projects for the institution or increase of new bus rapid transit, bus, or light rail service to be located on a site that is wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau. The bill would revise the requirements for the project business case and racial equity analysis and noticed public meetings to apply to exempted projects exceeding \$100,000,000 and would additionally require the lead agency to complete an analysis of residential displacement and suggest anti-displacement strategies, designs, or actions for those projects for which at least 50% of the project or projects' stops and stations are located in an area at risk of residential displacement and will have a maximum of 15-minute peak headways. The bill would provide that the lead agency may make the skilled and trained workforce certification concurrent with the granting of the exemption and would provide that the certification requirement is not required under specified circumstances.

The bill would specify that the revision made by this measure to the exemption for projects for the institution or increase of new bus rapid

transit, bus, or light rail service may apply to projects for which a notice of exemption is filed before January 1, 2023. The bill would, for projects exempted by the above-described provisions for which a notice of exemption was filed before January 1, 2023, authorize the lead agency to either certify that the project will be completed by a skilled and trained workforce after the granting of the exemption or exempt those projects from the certification requirement if the lead agency demonstrates compliance with certain conditions.

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

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Transit and sustainable transportation are critical to achieving  
4 California’s ambitious environmental goals. Transportation makes  
5 up 40 percent of the state’s emissions of greenhouse gases. To  
6 encourage people to drive less, the state must continue to build  
7 high-quality transit, bicycle lanes, and pedestrian-friendly  
8 infrastructure. Bringing down our transportation emissions by  
9 providing more sustainable options is essential for limiting global  
10 warming and avoiding the most devastating climate impacts.

11 (b) California has invested billions of dollars in reducing the  
12 environmental impacts stemming from the transportation sector,  
13 including almost \$4,000,000,000 as part of the fiscal year 2021–22,  
14 to convert the state’s light- and heavy-duty vehicle fleet to zero  
15 emission, including its transit vehicles.

16 (c) Additionally, on July 12, 2021, the Transportation Agency  
17 adopted the Climate Action Plan for Transportation Infrastructure.  
18 The plan outlines how the state will prioritize sustainable  
19 transportation projects in all discretionary funding decisions. The  
20 plan builds on Executive Order N-19-19 and Executive Order  
21 N-79-20 signed by Governor Newsom in 2019 and 2020,  
22 respectively, targeted at reducing emissions of greenhouse gases  
23 in transportation to reach the state’s ambitious climate goals.

24 SEC. 2. Section 21080.20 of the Public Resources Code is  
25 amended to read:

26 21080.20. (a) This division does not apply to *an active*  
27 *transportation plan, a pedestrian plan, or a bicycle transportation*



SB 922

— 4 —

1 ~~plan for an urbanized area~~ for the restriping of streets and  
 2 highways, bicycle parking and storage, signal timing to improve  
 3 street and highway intersection operations, and the related signage  
 4 for bicycles, pedestrians, and ~~vehicles.~~ *vehicles, or for a feasibility*  
 5 *and planning study as described in Section 15262 of Title 14 of*  
 6 *the California Code of Regulations.*

7 (b) Before determining that a project *described in subdivision*  
 8 *(a)* is exempt pursuant to this section, the lead agency shall hold  
 9 noticed public hearings in areas affected by the ~~bicycle~~  
 10 ~~transportation plan~~ *project* to hear and respond to public comments.  
 11 Publication of the notice shall be no fewer times than required by  
 12 Section 6061 of the Government Code by the public agency in a  
 13 newspaper of general circulation in the area affected by the  
 14 proposed project. If more than one area will be affected, the notice  
 15 shall be published in the newspaper of largest circulation from  
 16 among the newspapers of general circulation in those areas.

17 (c) If a local agency determines that a project is not subject to  
 18 this division pursuant to this section and it determines to approve  
 19 or carry out that project, the notice shall be filed with the Office  
 20 of Planning and Research and the county clerk in the county in  
 21 which the project is located in the manner specified in subdivisions  
 22 (b) and (c) of Section 21152.

23 ~~(d) This section shall remain in effect only until January 1, 2030,~~  
 24 ~~and as of that date is repealed.~~

25 SEC. 3. Section 21080.25 of the Public Resources Code is  
 26 amended to read:

27 21080.25. (a) For purposes of this section, the following  
 28 definitions apply:

29 (1) “Affordable housing” means any of the following:

30 (A) Housing that is subject to a recorded covenant, ordinance,  
 31 or law that restricts rents or sales prices to levels affordable, as  
 32 defined in Section 50052.5 or 50053 of the Health and Safety  
 33 Code, to persons and families of moderate, lower, or very low  
 34 income, as defined in Section 50079.5, 50093, or 50105 of the  
 35 Health and Safety Code, respectively.

36 (B) Housing that is subject to any form of rent or price control  
 37 through a public entity’s valid exercise of its police power.

38 (C) Housing that had been occupied by tenants within five years  
 39 from the date of approval of the development agreement by a  
 40 primary tenant who was low income and did not leave voluntarily.

1 (2) “Bicycle facilities” includes, but is not limited to, bicycle  
2 parking, bicycle sharing facilities, and bikeways as defined in  
3 Section 890.4 of the Streets and Highways Code.

4 (3) “High occupancy vehicle” means a vehicle with two or more  
5 occupants.

6 ~~(2)~~

7 (4) “Highway” means a way or place of whatever nature,  
8 publicly maintained and open to the use of the public for purposes  
9 of vehicular travel. “Highway” includes a street.

10 (5) “Local agency” means a public transit operator, city, county,  
11 city and county, special district, joint powers authority, local or  
12 regional transportation agency, or congestion management agency.

13 ~~(3)~~

14 (6) “New automobile capacity” means any new lane mileage  
15 of any kind other than sidewalks or bike lanes.

16 (7) “Part-time transit lanes” means designated highway  
17 shoulders that support the operation of transit vehicles during  
18 specified times.

19 ~~(4)~~

20 (8) “Project labor agreement” has the same meaning as defined  
21 in paragraph (1) of subdivision (b) of Section 2500 of the Public  
22 Contract Code.

23 (9) “Public transit operator” has the same meaning as in  
24 Section 99210 of the Public Utilities Code.

25 ~~(5)~~

26 (10) “Skilled and trained workforce” has the same meaning as  
27 provided in Chapter 2.9 (commencing with Section 2600) of Part  
28 1 of Division 2 of the Public Contract Code.

29 ~~(6)~~

30 (11) “Transit lanes” means street design elements that delineate  
31 space within the roadbed as exclusive to transit use, either full or  
32 part time.

33 ~~(7)~~

34 (12) “Transit prioritization projects” means any of the following  
35 transit project types on ~~highways~~: highways or in the public  
36 right-of-way:

37 ~~(A) Signal coordination.~~

38 ~~(B) Signal timing modifications.~~

39 ~~(C) Signal phasing modifications.~~

SB 922

— 6 —

1 (A) Signal and stop sign changes, such as signal coordination,  
 2 signal timing modifications, signal modifications, or the installation  
 3 of traffic signs.

4 ~~(D)~~

5 (B) The installation of wayside technology and onboard  
 6 technology.

7 ~~(E)~~

8 (C) The installation of ramp meters.

9 ~~(F)~~

10 (D) The installation of dedicated transit lanes, transit queue  
 11 jump or bypass lanes, or ~~very high occupancy~~ high-occupancy  
 12 vehicle lanes, and shared turning lanes, lanes and turn restrictions,  
 13 the narrowing of lanes to allow for dedicated transit lanes or  
 14 transit reliability improvements, or the widening of existing transit  
 15 travel lanes by removing or restricting street parking.

16 (E) Transit stop changes, including, but not limited to, the  
 17 installation of transit bulbs and the installation of transit boarding  
 18 islands.

19 (F) Pedestrian improvements, including, but not limited to,  
 20 widening sidewalks, pedestrian bulbs and pedestrian refuge  
 21 islands, and other improvements that increase pedestrian access  
 22 to transit.

23 ~~(8) “Very high occupancy vehicle” means a vehicle with six or~~  
 24 ~~more occupants.~~

25 (b) This division does not apply to any of the following projects:

26 (1) Pedestrian and bicycle facilities, including new facilities.  
 27 For purposes of this paragraph, “bicycle facilities” include, but  
 28 are not limited to, bicycle parking, bicycle sharing facilities, and  
 29 bikeways as defined in Section 890.4 of the Streets and Highways  
 30 Code, facilities, within the public right-of-way.

31 (2) Projects that improve customer information and wayfinding  
 32 for transit riders, bicyclists, or ~~pedestrians~~ pedestrians within the  
 33 public right-of-way.

34 (3) Transit prioritization projects.

35 (4) On highways with existing public transit service or that will  
 36 be implementing public transit service within six months of the  
 37 conversion, a project for the designation and conversion of general  
 38 purpose lanes to bus-only lanes or highway shoulders to bus-only  
 39 part-time transit lanes, for use either during peak congestion hours  
 40 or all day.

1 (5) A project for the institution or increase of new bus rapid  
 2 transit, bus, or light rail service, including the construction of  
 3 ~~stations, stations or terminals~~, on existing public rights-of-way or  
 4 existing highway rights-of-way, whether or not the right-of-way  
 5 is in use for public mass transit. *The project shall be located on a*  
 6 *site that is wholly within the boundaries of an urbanized area or*  
 7 *urban cluster, as designated by the United States Census Bureau.*

8  
 9 (6) A project to construct or maintain infrastructure *or facilities*  
 10 to charge or refuel zero-emission transit ~~buses, vehicles~~, provided  
 11 the project is carried out by a public transit agency ~~that is subject~~  
 12 ~~to, and~~ in compliance with, the State Air Resources Board's  
 13 Innovative Clean Transit regulations (Article 4.3 (commencing  
 14 with Section 2023) of Chapter 1 of Division 3 of Title 13 of the  
 15 California Code of Regulations) *or any regulations identified by*  
 16 *the State Air Resources Board's 2020 Mobile Source Strategy,*  
 17 *adopted on October 28, 2021,* and the project is located on property  
 18 owned by the ~~transit local agency or within an existing public~~  
 19 ~~right-of-way.~~ *right-of-way or on property owned by a public or*  
 20 *private utility.*

21 (7) The maintenance, repair, relocation, replacement, or removal  
 22 of any utility infrastructure associated with a project identified in  
 23 paragraphs (1) to (6), inclusive.

24 (8) A project that consists exclusively of a combination of any  
 25 of the components of a project identified in paragraphs (1) to (7),  
 26 inclusive.

27 (9) A project carried out by a ~~city or county~~ *local agency* to  
 28 ~~reduce or eliminate minimum parking requirements.~~ *requirements*  
 29 *or institute parking maximums, remove or restrict parking, or*  
 30 *implement transportation demand management requirements.*

31 (c) Except as provided in subdivision ~~(e); (f)~~, a project exempt  
 32 from this division under this section shall meet all of the following  
 33 criteria:

34 (1) A ~~public~~ *local agency* is carrying out the project and is the  
 35 lead agency for the project.

36 ~~(2) The project is located in an urbanized area.~~

37 ~~(3) The project is located on or within an existing public~~  
 38 ~~right-of-way.~~

39 (4)

1 (2) The project ~~shall~~ *does* not add physical infrastructure *or*  
2 *striping* that increases new automobile capacity on existing  
3 rights-of-way except for minor modifications needed for the  
4 efficient and safe movement of transit vehicles, such as extended  
5 merging lanes. The project shall not include the addition of any  
6 auxiliary lanes.

7 ~~(5)~~

8 (3) The construction of the project shall not require the  
9 demolition of affordable housing units.

10 ~~(6)~~

11 (d) (1) For a project exceeding one hundred million dollars  
12 ~~(\$100,000,000) in 2020 United States dollars; (\$100,000,000)~~, a  
13 project exempt from this division under this section shall also meet  
14 all of the following:

15 (A) The project is incorporated in a regional transportation plan,  
16 sustainable communities strategy, general plan, or other plan that  
17 has undergone a programmatic-level environmental review  
18 pursuant to this division within 10 years of the approval of the  
19 project.

20 (B) The project's construction impacts are fully mitigated  
21 consistent with applicable law.

22 (C) (i) The lead agency shall complete and consider the results  
23 of a project business case and a racial equity analysis. The Office  
24 of Planning and Research may set standards for the project business  
25 case and the racial equity analysis or delegate that authority to  
26 metropolitan planning organizations.

27 (ii) The project business case required under this subparagraph  
28 shall set forth the rationale for why the project should be  
29 implemented to solve a problem or address an opportunity, outline  
30 strategic goals and objectives of the project, evaluate other options  
31 to achieve the project's objectives, describe the economic costs  
32 and benefits of the project, describe the financial implications of  
33 the project, and establish what is required to deliver and operate  
34 the project.

35 (iii) The racial equity analysis required under this subparagraph  
36 shall identify the racial equity impacts of the project, identify who  
37 will benefit from and be burdened by the project, and, where  
38 significant or disproportionate impacts exist, suggest strategies,  
39 designs, or actions to mitigate those impacts.

1 (D) The lead agency shall hold noticed public meetings as  
2 follows:

3 (i) Before determining that a project is exempt pursuant to this  
4 section, the lead agency shall hold at least three noticed public  
5 meetings in the project area to hear and respond to public  
6 comments.

7 (ii) At least one of the three public meetings shall review the  
8 project business case and the racial equity analysis. The review of  
9 these documents does not inhibit or preclude application of this  
10 section.

11 (iii) The lead agency shall conduct at least two noticed public  
12 meetings annually during project construction for the public to  
13 provide comments.

14 (iv) The public meetings held pursuant to clauses (i) to (iii),  
15 inclusive, shall be in the form of either a public community  
16 planning meeting held in the project area or in the form of a  
17 regularly scheduled meeting of the governing body of the lead  
18 agency.

19 (E) The lead agency shall give public notice of the meetings in  
20 subparagraph (D) to the last known name and address of all the  
21 organizations and individuals that have previously requested notice  
22 and shall also give the general public notice using at least one of  
23 the following procedures:

24 (i) Publication of the notice in a newspaper of general circulation  
25 in the area affected by the project. If more than one area will be  
26 affected, the notice shall be published in the newspaper of largest  
27 circulation from among the newspapers of general circulation in  
28 those areas.

29 (ii) Posting of the notice onsite and offsite in the area where the  
30 project is located.

31 (iii) Posting of the notice on the lead agency’s internet website  
32 and social media accounts.

33 (2) *In addition to the requirements of paragraph (1), for a*  
34 *project described in that paragraph for which at least 50 percent*  
35 *of the project or project’s stops and stations are located in an area*  
36 *that is at risk of residential displacement and that will have a*  
37 *maximum of 15-minute peak headways, the local agency shall*  
38 *complete an analysis of residential displacement and suggest*  
39 *anti-displacement strategies, designs, or actions.*

40 (d)

1 (e) (1) (A) Except as provided in subdivision ~~(e)~~, (f), in  
 2 addition to the requirements of subdivision (c), before *or*  
 3 *concurrent with* granting an exemption under this section, the lead  
 4 agency shall *take an action at a public meeting of its governing*  
 5 *board to certify that the project will be completed by a skilled and*  
 6 *trained workforce.*

7 (B) *Subparagraph (A) does not apply if the lead agency has an*  
 8 *existing policy or certification approved by its governing board*  
 9 *that requires the use of a skilled and trained workforce to complete*  
 10 *the project if the lead agency is a signatory to a project labor*  
 11 *agreement that will require the use of a skilled and trained*  
 12 *workforce on the project.*

13 (2) (A) Except as provided in subparagraph (B), for a project  
 14 that is exempted under this section, the lead agency shall not enter  
 15 into a construction contract with any entity unless the entity  
 16 provides to the lead agency an enforceable commitment that the  
 17 entity and its subcontractors at every tier will use a skilled and  
 18 trained workforce to perform all work on the project or a contract  
 19 that falls within an apprenticeship occupation in the building and  
 20 construction trades in accordance with Chapter 2.9 (commencing  
 21 with Section 2600) of Part 1 of Division 2 of the Public Contract  
 22 Code.

23 (B) Subparagraph (A) does not apply if any of the following  
 24 requirements are met:

25 (i) The lead agency has entered into a project labor agreement  
 26 that will bind all contractors and subcontractors performing work  
 27 on the project ~~or the lead agency has contracted~~ to use a skilled  
 28 and trained workforce and the entity has agreed to be bound by  
 29 that project labor agreement.

30 (ii) The project or contract is being performed under the  
 31 extension or renewal of a project labor agreement that was entered  
 32 into by the lead agency before January 1, 2021.

33 (iii) ~~The lead agency has~~ *entity contracted to perform the project*  
 34 *entered into a project labor agreement that will bind the lead agency*  
 35 *entity and all its subcontractors at every tier performing the project*  
 36 *or the lead agency has contracted* to use a skilled and trained  
 37 workforce.

38 ~~(e)~~

39 (f) Subdivisions (c) and ~~(d)~~ (e) do not apply to a project  
 40 described in paragraph (9) of subdivision (b).

1     ~~(f)~~

2     (g) If the lead agency determines that a project is not subject to  
3 this division pursuant to this section, and the lead agency  
4 determines to carry out that project, the lead agency shall file a  
5 notice of exemption with the Office of Planning and Research and  
6 the county clerk of the county in which the project is located in  
7 the manner specified in subdivisions (b) and (c) of Section 21152.

8     ~~(g) This section shall remain in effect only until January 1, 2023,~~  
9 ~~and as of that date is repealed.~~

10    (h) (1) *The amendments made to paragraph (5) of subdivision*  
11 *(b) by the measure adding this paragraph may apply to projects*  
12 *for which a lead agency has filed a notice of exemption under this*  
13 *section before January 1, 2023.*

14    (2) *For projects for which a lead agency has filed a notice of*  
15 *exemption under this section before January 1, 2023,*  
16 *notwithstanding subdivision (d), as it read on December 31, 2022,*  
17 *the lead agency may certify that the project will be completed by*  
18 *a skilled and trained workforce after the granting of the exemption*  
19 *under this section or the lead agency may demonstrate compliance*  
20 *with subparagraph (B) of paragraph (1) of subdivision (e).*

O





CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
DISTRICT 7

CONSENT CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Rigel Robinson and Councilmember Ben Bartlett  
Subject: Support for SB 288: Sustainable Transportation COVID-19 Recovery Act

RECOMMENDATION

Send a letter to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Senate Bill 288, which would exempt specified transportation projects from environmental review under CEQA, including bus rapid transit projects, pedestrian and bicycle facilities, and zero-emission charging stations.

BACKGROUND

The California Environmental Quality Act requires agencies to assess the significant environmental impacts of proposed discretionary projects before approval. Current law exempts certain categories of projects from CEQA requirements, including increases to service on existing rail or highway rights-of-way.

SB 288, introduced by Senator Scott Wiener, would extend the following existing exemptions until 2030: 1) bicycle transportation plans for an urbanized area for restriping of streets and highways, 2) bicycle parking and storage, 3) signal timing to improve street and highway intersection operations, and 4) related signage for bicycles, pedestrians, and vehicles under certain conditions. Additionally, this bill would further exempt projects relating to updated and new transit stations, bus rapid transit lines, safer streets for biking and walking, zero-emission vehicle charging facilities, and repairs for bridge and transit storage facilities.

The environmental benefits of public transit, bicycle, and pedestrian infrastructure are already well-documented. The City of Berkeley Climate Action Plan states that to meet our greenhouse gas reduction goals, “transportation modes such as public transit, walking and bicycling must become the primary means of fulfilling our mobility needs, and remaining motor vehicle use must be far less carbon-intensive.”<sup>1</sup> Recommended actions to achieve this goal include:

- Increasing the safety, reliability, and frequency of public transit.
- Accelerating implementation of the City’s Bicycle and Pedestrian Plans and continuing efforts to make walking and cycling safe, healthy, and enjoyable alternatives to driving.

---

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Climate%20Action%20Plan.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf)

- Creating incentives for low-carbon vehicles such as electric vehicles and plug-in hybrids.

Several other countries, such as Canada and Germany, do not require full environmental impact reviews for sustainable transportation projects since they are presumed to have a positive impact on the environment.<sup>2</sup> Delays in such projects due to CEQA reviews and lawsuits can add years to project timelines, driving up costs and obstructing the rapid infrastructure investments we need to effectively combat climate change.

Accelerating sustainable transportation projects is especially important now, as unemployment skyrockets and transportation agencies and cities across California struggle with strained budgets due to the COVID-19 pandemic. According to the bill text, “investments in building public transit, complete streets, and bicycle lanes are proven job generators and can help California avoid an extreme and prolonged recession by growing and protecting jobs. Studies have shown that complete streets projects create an average of 10 jobs per one million dollars. Investments in public transportation result in an average of 13 jobs per one million dollars spent and have a 5 to 1 economic return.”<sup>3</sup>

SB 288 would put the City of Berkeley on the right track towards economic recovery and meeting our GHG reduction goals. The Council should support the passage of this legislation, and send the attached letter of support to Senator Scott Wiener, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

The transportation sector comprises 60 percent of Berkeley’s greenhouse gas emissions. Ensuring the acceleration of sustainable infrastructure investments, which promote walking, biking, and taking public transit, is aligned with the goals put forth in the City’s Climate Action Plan.<sup>4</sup>

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

#### Attachments:

1: Letter of support

---

<sup>2</sup> <https://sf.streetsblog.org/2020/06/16/bill-would-streamline-transit-bike-and-ped-projects/>

<sup>3</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB288](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB288)

<sup>4</sup> <https://www.cityofberkeley.info/climate/>

2: Bill text

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB288](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB288)

July 28, 2020

The Honorable Scott Wiener  
California State Senate  
State Capitol, Room 5100  
Sacramento, CA 95814

**RE: City of Berkeley's Support for Senate Bill 288**

Dear Senator Wiener,

The Berkeley City Council would like to convey our full support for SB 288, regarding CEQA exemptions for sustainable transportation projects such as updated and new transit stations, bus rapid transit lines, pedestrian and bicycle projects, zero-emission vehicle charging facilities, and repairs for bridge and transit storage facilities.

As California sets out on a long road of economic recovery from the impacts of COVID-19, renewed investment in public transit, pedestrian, and bicycle infrastructure will create much-needed jobs. As the state slowly begins the process of re-opening safely, we must also ensure that polluting vehicle traffic does not bounce back to pre-COVID levels, which would prevent California from reaching its stated goal of reducing greenhouse gas emissions 40 percent below 1990 levels by 2030.

Environmental reviews for public transportation projects that are inherently pro-environment are often lengthy, expensive, and can cause years of delay. Especially at a time when public transit agencies and cities are suffering from reduced ridership and severe budget cuts, these additional costs and delays can render projects infeasible altogether.

California should be fast-tracking such projects, not delaying them. The Berkeley City Council supports SB 288 and thanks you for taking the lead on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks



Office of the Mayor

CONSENT CALENDAR  
March 8, 2022

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín (Author), Councilmember Harrison (Co-Sponsor)

Subject: Opposition to the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative

RECOMMENDATION

Adopt a Resolution to oppose Initiative 21-0042A1, the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative. Send a copy of the Resolution to the League of California Cities.

BACKGROUND

Initiative 21-0042A1, the California Two-Thirds Legislative Vote and Voter Approval for Fee and Charge Increases Initiative, also known by supporters as the deceptively named “Taxpayer Protection and Government Accountability Act” is a proposed California proposition for the November 2022 election.

The proposed proposition would limit the ability of voters and state and local governments to raise revenues for government services. It does so by requiring any new or higher tax be passed by at least two-thirds. It also eliminates voters’ ability to advise how to spend revenues from proposed general tax on same ballot as the proposed tax. All measures passed between January 2022 and November 2022 would be invalidated unless reenacted within 12 months. It also expands the definition of “taxes” to include certain regulatory fees, broadening application of tax approval requirements.

This initiative is based on a proposed 2018 proposition that was ultimately withdrawn by its proponents after it received heavy opposition from local governments, labor and public safety leaders, infrastructure advocates, and businesses. The Berkeley City Council voted unanimously to approve Resolution No. 68,401–N.S., opposing the 2018 revision of this proposition.

FINANCIAL IMPLICATIONS

If the initiative is approved by California voters, it would make it more difficult for local voters to pass measures needed to fund local services and infrastructure

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

If the initiative is approved by California voters, it would impact our ability to raise funds to advance environmental measures outlined in our Climate Action Plan and Vision 2050.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

2: Text of Initiative 21-0041A1

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

IN OPPOSITION OF INITIATIVE 21-0042A1

WHEREAS, an association representing California's wealthiest corporations is behind a deceptive proposition aimed for the November 2022 statewide ballot; and

WHEREAS, the measure creates new constitutional loopholes that allow corporations to pay far less than their fair share for the impacts they have on our communities, including local infrastructure, our environment, water quality, air quality, and natural resources; and

WHEREAS, the measure includes undemocratic provisions that would make it more difficult for local voters to pass measures needed to fund local services and infrastructure, and would limit voter input by prohibiting local advisory measures where voters provide direction on how they want their local tax dollars spent; and

WHEREAS, the measure makes it much more difficult for state and local regulators to issue fines and levies on corporations that violate laws intended to protect our environment, public health and safety, and our neighborhoods; and

WHEREAS, the measure puts billions of dollars currently dedicated to state and local services at risk, and could force cuts to public schools, fire and emergency response, law enforcement, public health, parks, libraries, affordable housing, services to support homeless residents, mental health services, and more; and

WHEREAS, the measure would also reduce funding for critical infrastructure like streets and roads, public transportation, drinking water, new schools, sanitation, and utilities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes Initiative 21-0042A1.

BELL, McANDREWS & HILTACHK, LLP  
ATTORNEYS AND COUNSELORS AT LAW  
455 CAPITOL MALL, SUITE 600  
SACRAMENTO, CALIFORNIA 95814

(916) 442-7757  
FAX (916) 442-7759  
www.bmhjlaw.com

21-0042 Amdt. # 1

January 4, 2022

RECEIVED

JAN 04 2022

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Anabel Renteria  
Initiative Coordinator  
Office of the Attorney General  
State of California  
PO Box 994255  
Sacramento, CA 94244-25550

Re: Initiative 21-0042 - Amendment Number One

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 21-0042 "The Taxpayer Protection and Government Accountability Act." The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

Thank you for your time and attention processing my request.

Sincerely,



Thomas W. Hiltachk



## The Taxpayer Protection and Government Accountability Act

[Deleted codified text is denoted in ~~strikeout~~. Added codified text is denoted by *italics and underline*.]

### Section 1. Title

This Act shall be known, and may be cited as, the Taxpayer Protection and Government Accountability Act.

### Section 2. Findings and Declarations

(a) Californians are overtaxed. We pay the nation's highest state income tax, sales tax, and gasoline tax. According to the U.S. Census Bureau, California's combined state and local tax burden is the highest in the nation. Despite this, and despite two consecutive years of obscene revenue surpluses, state politicians in 2021 alone introduced legislation to raise more than \$234 *billion* in new and higher taxes and fees.

(b) Taxes are only part of the reason for California's rising cost-of-living crisis. Californians pay billions more in hidden "fees" passed through to consumers in the price they pay for products, services, food, fuel, utilities and housing. Since 2010, government revenue from state and local "fees" has more than doubled.

(c) California's high cost of living not only contributes to the state's skyrocketing rates of poverty and homelessness, they are the pushing working families and job-providing businesses out of the state. The most recent Census showed that California's population dropped for the first time in history, costing us a seat in Congress. In the past four years, nearly 300 major corporations relocated to other states, not counting thousands more small businesses that were forced to move, sell or close.

(d) California voters have tried repeatedly, at great expense, to assert control over whether and how taxes and fees are raised. We have enacted a series of measures to make taxes more predictable, to limit what passes as a "fee," to require voter approval, and to guarantee transparency and accountability. These measures include Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010).

(e) Contrary to the voters' intent, these measures that were designed to control taxes, spending and accountability, have been weakened and hamstrung by the Legislature, government lawyers, and the courts, making it necessary to pass yet another initiative to close loopholes and reverse hostile court decisions.

### Section 3. Statement of Purpose

(a) In enacting this measure, the voters reassert their right to a voice and a vote on new and higher taxes by requiring any new or higher tax to be put before voters for approval. Voters also intend that all fees and other charges are passed or rejected by the voters themselves or a governing body elected by voters and not unelected and unaccountable bureaucrats.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to increase transparency and accountability over higher taxes and charges by requiring any tax measure placed on the ballot—

either at the state or local level—to clearly state the type and rate of any tax, how long it will be in effect, and the use of the revenue generated by the tax.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of state government revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a vote of the Legislature and signature of the Governor to ensure that the purposes for such charges are broadly supported and transparently debated.

(d) Furthermore, the purpose and intent of the voters in enacting this measure is also to ensure that taxpayers have the right and ability to effectively balance new or increased taxes and other charges with the rapidly increasing costs Californians are already paying for housing, food, childcare, gasoline, energy, healthcare, education, and other basic costs of living, and to further protect the existing constitutional limit on property taxes and ensure that the revenue from such taxes remains local, without changing or superseding existing constitutional provisions contained in Section 1(c) of Article XIII A.

(e) In enacting this measure, the voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter approval requirements for government revenue increases created by the courts including, but not limited to, *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v. Air Resources Board*, *Schmeer v. Los Angeles County*, *Johnson v. County of Mendocino*, *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Commission*, and *Wilde v. City of Dunsmuir*.

Section 4. Section 3 of Article XIII A of the California Constitution is amended to read:

Sec. 3(a) Every levy, charge, or exaction of any kind imposed by state law is either a tax or an exempt charge.

(b)(1) (a) Any change in state statute law which results in any taxpayer paying a new or higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, and submitted to the electorate and approved by a majority vote, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed. Each Act shall include:

(A) A specific duration of time that the tax will be imposed and an estimate of the annual amount expected to be derived from the tax.

(B) A specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from the tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for "unrestricted general revenue purposes" shall be included in a separate, stand-alone section. Any proposed change to the use of the revenue from the tax shall be adopted by a separate act that is passed by not less than two-thirds of all members elected to each of the two houses of the Legislature and submitted to the electorate and approved by a majority vote.

(2) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, including a measure proposed by an elector pursuant to Article II, include:

(A) The type and amount or rate of the tax;

(B) The duration of the tax; and

(C) The use of the revenue derived from the tax.

(c) Any change in state law which results in any taxpayer paying a new or higher exempt charge must be imposed by an act passed by each of the two houses of the Legislature. Each act shall specify the type of exempt charge as provided in subdivision (e), and the amount or rate of the exempt charge to be imposed.

(d) ~~(b)~~ As used in this section and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed by the State state law that is not an exempt charge, except the following:

(e) As used in this section, "exempt charge" means only the following:

~~(1) a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.~~

~~(1) (2) A reasonable charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the State of providing the service or product to the payor.~~

~~(2) (3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.~~

~~(3) A levy, charge, or exaction collected from local units of government, health care providers or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program, and the revenues of which are primarily used to finance the non-federal portion of Medi-Cal medical assistance expenditures.~~

~~(4) A reasonable charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.~~

~~(5) A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.~~

~~(6) A levy, charge, assessment, or exaction collected for the promotion of California tourism pursuant to Chapter 1 (commencing with Section 13995) of Part 4.7 of Division 3 of Title 2 of the Government Code.~~

~~(f) (e) Any tax or exempt charge adopted after January 1, 2022 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.~~

~~(g) (1) (d) The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction is an exempt charge and not a tax. The State bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor, that the amount is no more than necessary to cover the reasonable costs of the governmental activity and~~

that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by state law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be a factor in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(h) As used in this section:

(1) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(2) "Extend" includes, but is not limited to, doing any of the following with respect to a tax or exempt charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

(3) "Impose" means adopt, enact, reenact, create, establish, collect, increase or extend.

(4) "State law" includes, but is not limited to, any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government. "State law" does not include actions taken by the Regents of the University of California, Trustees of the California State University, or the Board of Governors of the California Community Colleges.

Section 5. Section 1 of Article XIII C of the California Constitution is amended, to read:

Sec. 1. Definitions. As used in this article:

(a) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(b) "Extend" includes, but is not limited to, doing any of the following with respect to a tax, exempt charge, or Article XIII D assessment, fee, or charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

~~(c)~~ (a) "General tax" means any tax imposed for general governmental purposes.

~~(d)~~ "Impose" means adopt, enact, reenact, create, establish, collect, increase, or extend.

~~(e)~~ (b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity, or an elector pursuant to Article II or the initiative power provided by a charter or statute.

~~(f)~~ "Local law" includes, but is not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.

~~(g)~~ (c) "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

~~(h)~~ (d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

~~(i)~~ (e) As used in this article, and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind, imposed by a local government law that is not an exempt charge, ~~except the following:~~

~~(i)~~ As used in this section, "exempt charge" means only the following:

~~(1)~~ A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

~~(1)~~ (2) A reasonable charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the local government of providing the service or product.

~~(2)~~ (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

~~(3)~~ (4) A reasonable charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

~~(4)~~ (5) A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or a local government administrative enforcement agency pursuant to adjudicatory due process, as a result of to punish a violation of law.

~~(5)~~ (6) A charge imposed as a condition of property development. No levy, charge, or exaction regulating or related to vehicle miles traveled may be imposed as a condition of property development or occupancy.

~~(6)~~ (7) An Assessments and property related fees assessment, fee, or charge imposed in accordance with the provisions of subject to Article XIII D, or an assessment imposed upon a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district.

(7) A charge imposed for a specific health care service provided directly to the payor and that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the health care service. As used in this paragraph, a "health care service" means a service licensed or exempt from licensure by the state pursuant to Chapters 1, 1.3, or 2 of Division 2 of the Health and Safety Code.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Section 6. Section 2 of Article XIII C of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) Every levy, charge, or exaction of any kind imposed by local law is either a tax or an exempt charge. All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local ~~law government, whether proposed by the governing body or by an elector,~~ may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) ~~Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).~~ (d) No local ~~law government, whether proposed by the governing body or by an elector,~~ may impose, ~~extend, or increase~~ any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(d) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, include:

(1) The type and amount or rate of the tax;

(2) the duration of the tax; and

(3) The use of the revenue derived from the tax. If the proposed tax is a general tax, the phrase "for general government use" shall be required, and no advisory measure may appear on the same ballot that would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.

(e) Only the governing body of a local government, other than an elector pursuant to Article II or the initiative power provided by a charter or statute, shall have the authority to impose any exempt charge. The governing body shall impose an exempt charge by an ordinance specifying the type of exempt charge

as provided in Section 1(j) and the amount or rate of the exempt charge to be imposed, and passed by the governing body. This subdivision shall not apply to charges specified in paragraph (7) of subdivision (i) of Section 1.

(f) No amendment to a Charter which provides for the imposition, extension, or increase of a tax or exempt charge shall be submitted to or approved by the electors, nor shall any such amendment to a Charter hereafter submitted to or approved by the electors become effective for any purpose.

(g) Any tax or exempt charge adopted after January 1, 2022, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted in compliance with the requirements of this section.

(h)(1) The local government bears the burden of proving by clear and convincing evidence that a levy, charge or exaction is an exempt charge and not a tax. The local government bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor.

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by a local law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind imposed by a local law as being paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be factors in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

Section 7. Section 3 of Article XIII D of the California Constitution is amended, to read:

Sec. 3. Property Taxes, Assessments, Fees and Charges Limited

(a) No tax, assessment, fee, ~~or~~ charge, or surcharge, including a surcharge based on the value of property, shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to described in Section 1(a) of Article XIII and Section 1(a) of Article XIII A, and described and enacted pursuant to the voter approval requirement in Section 1(b) of Article XIII A.

(2) Any special non-ad valorem tax receiving a two-thirds vote of qualified electors pursuant to Section 4 of Article XIII A, or after receiving a two-thirds vote of those authorized to vote in a community facilities district by the Legislature pursuant to statute as it existed on December 31, 2021.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Section 8. Sections 1 and 14 of Article XIII are amended to read:

Sec. 1 Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

(c) All proceeds from the taxation of property shall be apportioned according to law to the districts within the counties.

Sec. 14. All property taxed by state or local government shall be assessed in the county, city, and district in which it is situated. Notwithstanding any other provision of law, such state or local property taxes shall be apportioned according to law to the districts within the counties.

Section 9. General Provisions

A. This Act shall be liberally construed in order to effectuate its purposes.

B. (1) In the event that this initiative measure and another initiative measure or measures relating to state or local requirements for the imposition, adoption, creation, or establishment of taxes, charges, and other revenue measures shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(2) In furtherance of this provision, the voters hereby declare that this measure conflicts with the provisions of the "Housing Affordability and Tax Cut Act of 2022" and "The Tax Cut and Housing Affordability Act," both of which would impose a new state property tax (called a "surcharge") on certain real property, and where the revenue derived from the tax is provided to the State, rather than retained in the county in which the property is situated and for the use of the county and cities and districts within the county, in direct violation of the provisions of this initiative.

(3) If this initiative measure is approved by the voters, but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

C. The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not



declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

D. If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(1) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(2) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(3) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(4) Nothing in this section shall prohibit the proponents of this Act, or a bona fide taxpayers association, from intervening to defend this Act.





Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR  
March 8, 2022

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Taplin (Author), Councilmember Robinson (Co-Sponsor), and Councilmember Wengraf (Co-Sponsor)

SUBJECT: Referral to Implement State Law AB 43 for Reduced Speed Limits on High-Injury Commercial Corridors

RECOMMENDATION

Refer to the City Manager to implement state law AB 43 on:

- High-injury commercial corridors as identified in our Vision Zero Annual Report, 2020-2021<sup>1</sup> in order to allow a reduction in speed limits by 5 miles per hour.
- Any other corridors covered by AB 43, as appropriate, in order to implement reduced prima facie speed limits and identify those corridors for future traffic studies where prima facie limits are presently unsafe.

Upon completion of this referral, we note that a budget allocation would be needed in the amount of \$25,000 to \$50,000 for new speed limit signage. Funding will be requested later (likely for the FY 2023-24 budget) in order to allow time for staff to determine the applicable streets for additional signage.

CURRENT SITUATION AND ITS EFFECTS

***New State Law AB 43 Allows for Reduction of Speed Limits on Streets with a High Percentage of Commercial Activity.*** Assembly Bill 43, signed into law in October 2021, allows cities to take into account the presence of vulnerable pedestrian groups such as seniors, children, people with disabilities and unhoused individuals when setting speed limits and allowing them to reduce speeds on certain types of streets. The law provides for reducing speed limits on non-commercial

---

<sup>1</sup> See City of [Berkeley Vision Zero Annual Report, 2020-2021](#), March 2021

streets beginning June 30, 2024. Beginning January 2022, local jurisdictions may reduce speed limits on a highway contiguous to a business activity district as follows:

- 30 miles per hour speed limit may be reduced by 5 miles per hour to 25 miles per hour; and
- 25 miles per hour may be reduced to 20 miles per hour.<sup>2</sup>

The new speed limits apply only to those streets that comply with the below conditions:

- A maximum of four traffic lanes;
- A maximum posted 30 or 25 miles per hour speed limit immediately prior to and after the business activity district if establishing a 25 or 20 miles per hour speed limit;
- The business activity district meeting the criteria of at least three of the below listed requirements:
  1. 50 percent or more of the fronting property consisting of retail and/or dining commercial uses;
  2. Inclusion of parking spaces along the road;
  3. Traffic signals and stop signs located at intervals of no more than 600 feet;
  4. Marked crosswalks not controlled by a traffic control device.

According to the map shown below, several of our busiest commercial corridors (such as: Gilman, San Pablo, Shattuck, Telegraph and University) are also among our high-injury network of streets. This referral requests staff to consider reducing speeds along those applicable commercial areas in the interest of enhancing public safety and protecting the health and well being of pedestrians inhabiting those areas.

## BACKGROUND

***Berkeley Has Established a Vision Zero Goal.*** In March of 2018, Berkeley adopted a Vision Zero Resolution<sup>3</sup> seeking to end all traffic-related deaths and severe injuries on our streets by 2028. Passage of this resolution officially joined us to the network of cities throughout the country mobilized to address the significant numbers of injuries and fatalities on the nation's roadways, and to pursue safe mobility for all users.<sup>4</sup> By adopting this resolution, Berkeley committed to an equity-focused data driven approach to eliminate traffic fatalities and severe injuries recognized as a result of how our streets are designed and regulated. As such, traffic fatalities and injuries are understood *not* as inevitable, rather preventable through attention to data indicating causes of collisions and designing projects emphasizing safety.

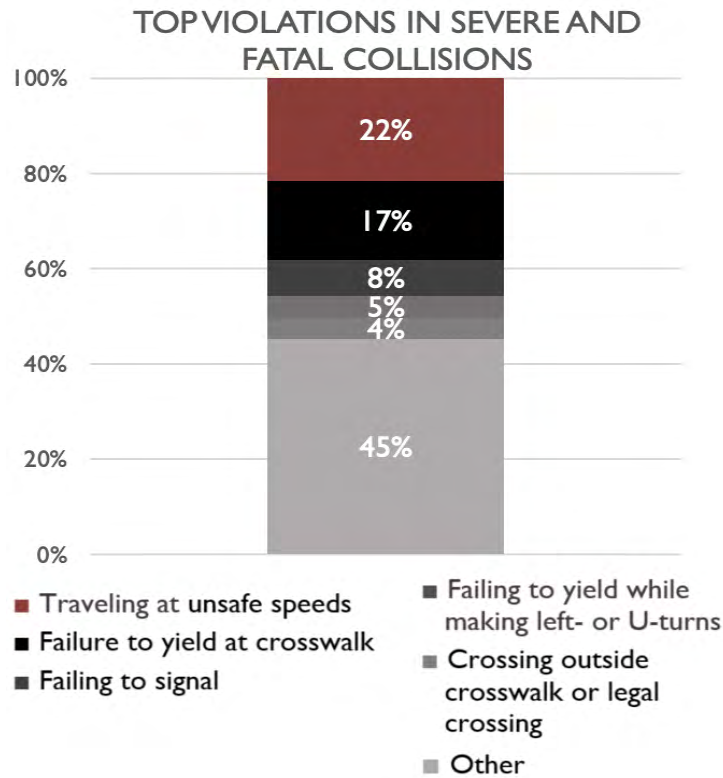
---

<sup>2</sup> See the text for [Assembly Bill No. 43](#), section 22358.9 (a) (1)

<sup>3</sup> See [Resolution No. 68,371-N.S. In Support of Vision Zero](#), adopted March 27, 2018

<sup>4</sup> See the [Vision Zero](#) Website





Source: [City of Berkeley Vision Zero Annual Report 2020-2021](#), p. 5

Studies have shown that the faster a colliding vehicle is traveling, the more damage is done to the struck pedestrian.<sup>5</sup> As speeding is shown as the top violation resulting in severe injuries and deaths on Berkeley streets, reducing speed limits can both save lives and lessen the severity of injury.

**FISCAL IMPACTS**

Staff time to determine which commercial corridors are AB 43 applicable. Funding will be requested later (likely for the FY 2023-24 budget) in order to allow time for staff to determine the applicable streets for additional signage. Costs for new speed limit signs are \$250 per sign, and staff time for installation will need to be budgeted. Budget is unlikely to exceed \$50,000.

**ENVIRONMENTAL IMPACTS**

Safe streets encourage increased pedestrian, bicycle and micro-mobility usage, reducing greenhouse gas emissions from non-electric vehicles. This aligns with the City’s Strategic Plan priority to be a global leader in addressing climate change, protecting the environment, and advancing environmental justice.

<sup>5</sup> See [U.S. Department of Transportation National Highway Traffic Safety Administration: Literature Review on Vehicle Travel Speeds and Pedestrian Injuries](#), October 21, 1999

CONTACT

Rashi Kesarwani, Councilmember District 1

(510) 981-7110







Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison (Author), Mayor Arreguín (Co-Sponsor),  
Councilmember Taplin (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Subject: Adopt a Resolution Supporting Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Berkeley Commission on the Status of Women’s Annual Dues to the Association of California Commissions for Women

RECOMMENDATION

Adopt a Resolution approving the expenditure of \$100 each from Vice Mayor Harrison, Mayor Arreguín, and Councilmember Taplin’s office budgets to the Association of California Commissions for Women to cover the prorated 2021-2022 annual membership dues and full dues for 2022-2023 for the Berkeley Commission on the Status of Women, with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of the aforementioned Mayor and Council office budgets, and providing for prospective “pre-approval” of such dues on an ongoing basis.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Berkeley Commission on the Status of Women has no means to pay for its membership dues to the Association of California Commissions for Women. This resolution provides a short-term and long-term means of paying such dues.

BACKGROUND

In past years the Commission has been affiliated with the statewide organization of commissions. Affiliation fees were waived for the 2020 fiscal year and were cut in half for the 2021 fiscal year. In order to remain a member in good standing, the Commission needs to pay the prorated affiliation fee of \$100 for this year and the entire \$200 fee for next year (see attached). This Resolution also establishes such dues payments as a “pre-approved” expense in future years as part of the Council’s annual resolution pursuant to Resolution No. 70,072-N.S.

The Association of California Commissions for Women provides a voice for women of all races, creeds and economic status throughout the State of California. The benefits of Association membership include collaborating with other commissions on strategic

Adopt a Resolution Supporting Relinquishment of Council Office Budget Funds to the General Fund and Grant of Such Funds for the Berkeley Commission on the Status of Women's Annual Dues to the Association of California Commissions for Women

CONSENT CALENDAR  
March 8, 2022

planning, networking to achieve local commission goals and pursue initiatives, training, leadership, event planning/conventions, and raising awareness of women's Issues.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$300 is available from Office Budget discretionary accounts.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No discernable impact.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

ATTACHMENTS

1. Resolution
2. 2021-2022 ACCW Annual Membership Form

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

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

WHEREAS, Vice Mayor Kate Harrison, Mayor Arreguín and Councilmember Taplin have funds in their office expenditure accounts; and

WHEREAS, a non-profit tax-exempt entity, the Association of California Commissions for Women, requires funds in the amount of \$300 to provide Berkeley's Commission of the Status of Women with the prorated annual membership dues amount for 2021-2022 and the full amount for 2022-2023; and

WHEREAS, the provision of such funds for dues payments would enhance and further facilitate the Commission's ongoing municipal public purpose, including providing Berkeley Commissioners with opportunities to collaborate with other commissions on strategic planning, networking to achieve local commission goals and pursue initiatives, training, leadership, event planning/conventions, and generally raising awareness of women's issues; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$100 each relinquished by Vice Mayor Harrison, Mayor Arreguín and Councilmember Taplin from their Council Office Budget shall be granted to the Association of California Commissions for Women on behalf of Berkeley Commission on the Status of Women to cover dues payments that further the Commission's municipal public purpose.

BE IT FURTHER AND FINALLY RESOLVED that further dues expenses beyond the 2022-2023 period shall be considered "pre-approved" pursuant to Resolution No. 70,072 N.S.



## 2021-2022 Annual Membership Form

<https://www.accwca.com/>

EIN#: 61-2004081

For Fiscal Year July 1, 2021 - June 30, 2022

PLEASE RETURN THIS FORM WITH YOUR COMMISSION'S PAYMENT

*The Association of California Commissions for Women (ACCW) relies on the participation and contributions of each California Commission for Women to sustain its mission, which is to promote viability, strength, and effectiveness of member Commissions within the State of California.*

### CONTACT INFORMATION:

Name of Commission: \_\_\_\_\_ Commission

Email/Telephone: \_\_\_\_\_

Commission Website Address: \_\_\_\_\_ Commission Mailing Address: \_\_\_\_\_

2021-2022 Commission Chair Name: \_\_\_\_\_

Chair Email: \_\_\_\_\_

2021-2022 Commission Vice Chair Name: \_\_\_\_\_

Vice-Chair Email: \_\_\_\_\_

Commission Terms (ex. Fiscal Year or Calendar Year) \_\_\_\_\_

Staff Contact Name/Title: \_\_\_\_\_

Staff Email/Phone: \_\_\_\_\_

ACCW Delegate Name: \_\_\_\_\_

ACCW Delegate Email/Phone: \_\_\_\_\_

### ANNUAL DUES for 2021-2022\* - PRO-RATED for 2021-22. DUE by January 30, 2022

| Regular Membership Fee                           | Full Year membership | Pro-rated 2021-2022 |
|--------------------------------------------------|----------------------|---------------------|
| \$500 - Gold Membership**                        | <b>\$500</b>         | <b>\$250</b>        |
| \$200 - Commission Membership                    | <b>\$200</b>         | <b>\$100</b>        |
| \$150 – College/University Commission Membership | <b>\$150</b>         | <b>\$75</b>         |
| \$50 – Individual Membership                     | <b>\$ 50</b>         | <b>\$25</b>         |

\*Pro-rated membership applies now until June 30, 2022, membership renewals will be due as of July 1, 2022. Pro-rated fees listed are at a 50% discount.

\*\*Gold Membership - premium level

### PAYMENT

Send payment by check:

**ACCW (Association of California Commissions for Women)**

**281 Magnolia Avenue, Vacaville, CA 95688 OR**

Send payment electronically **Pay via Zelle** to ACCW using the email address:

**accwdues@gmail.com**

**ACCW EIN#: 61-2004081**



Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
March 8, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison

Subject: Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season

RECOMMENDATION

Adopt Two Resolutions:

1. Establishing a policy and referring to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.
2. Approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Vice Mayor Harrison, to the San Francisco Mime Troupe, the non-profit fiscal sponsor of 2022 Berkeley Park performances, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Vice Mayor Harrison and any other Councilmembers who would like to contribute.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

The City of Berkeley has a long tradition of supporting theater, artists and the educational and entertainment value associated with live performance and other events. Unfortunately, the arts community has been devastated by the COVID-19 pandemic. Despite important investments through the Berkeley Relief Fund and other policies, smaller and less well-funded organizations are still facing hardships with respect to renewing free outdoor events in Berkeley's parks. At the same time, Park Fees have risen dramatically since the pandemic; according to the San Francisco Mime Troupe, Parks permit fees have nearly tripled since 2019. Until 1999, the City waived Park Fees for free theater performances in Berkeley parks in recognition of their educational, entertainment, and public welfare contributions to the people of Berkeley.

Although it is critical that Berkeley recovers its costs to maintain its park and facilitate events, when appropriate, it is also critical the City recognize and facilitate the contribution of less well-off arts organizations to Berkeley's civic and artistic culture and

Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season

CONSENT CALENDAR  
March 8, 2022

fabric. For example, within the indoor context, the City of Berkeley has already provided millions worth of rent to help the Berkeley Repertory Theater and additional COVID-19 deferments of building permit, inspection, connection, and impact fees for arts workforce housing and workshop space. Freight and Salvage, Shotgun Players, and Aurora Theatre Company have also received city grants and assistance. It is critical that the City recognize the contributions of its outdoor theater and arts organizations as well.

It is therefore in the public interest to establish a policy and refer to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on due consideration of their benefits to public welfare, non-profit status, and means.

### BACKGROUND

It has come to the attention of the Council that the COVID-19 pandemic and increasing fees for Berkeley parks events have imperiled the ability for certain arts and other organizations that contribute greatly to Berkeley fabric, culture, and wellbeing to continue to provide free performances and events.

For example, the San Francisco Mime Troupe (SFMT) is currently considering whether to indefinitely suspend all future free theater (with voluntary donations) performances within Berkeley parks. SFMT is an historic democratically run, worker-owned, multi-ethnic, multi-generational, multi-cultural, gender-balanced, and 501(c)3 nonprofit theater of social justice. Their mission is to create and produce theater that presents a working-class analysis of the events that shape our society, that exposes social and economic injustice, that demands revolutionary change on behalf of working people, and to present this analysis before the broadest possible audience with artistry and humor. Due to the pandemic, the SFMT have not performed in Berkeley since 2019 but had planned to restart performances this year.

The Troupe has a long tradition of offering free theater for audiences across San Francisco Bay Area parks City Parks, including Berkeley, from July 4th through Labor Day. Until 1999, the City waived Park Fees for free San Francisco Mime Troupe performances in Berkeley parks, including Live Oak, Cedar Rose and Willard. Substantially increased fees since 2019 will make Berkeley performances cost prohibitive. Park Fees are established pursuant to BMC 6.46, and while the ordinance provides exemptions for an "indigent person," it does not appear that there is such a comparable or similar waiver process for organizations. Fees were last updated as part of Resolution N.S. 69,892 in May 2021, and range from \$180 to \$1000 per event (not including insurance requirements) depending on the number of participants and resident status. At the same time, SFMT is not eligible for certain city grants that would help soften the blow of the increased permit fees.

The purpose of Berkeley's park system is to provide residents of Berkeley and visitors alike with *free access* to recreation, peaceful relaxation, entertainment and other benefits. The public park system stands in direct contrast to private alternatives.

Adopt Resolutions Referring to the City Manager to Establish a Policy of Reducing or Waiving Park Fees for Free, Permitted Outdoor Theater, Arts Events, and Other Events Based on Objective Public Welfare Criteria and Relinquishing Council Funds to Support the San Francisco Mime Troupe's Payment of Park Fees for Its 2022 Free Outdoor Performance Season

CONSENT CALENDAR  
March 8, 2022

It is in the public interest to pass a resolution referring to the City Manager to create a process to reduce or waive City Park Fees for free and permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.

It is also in the public interest for Councilmembers to relinquish office funds to the SFMT to help cover fees for their 2022 park performances. Even though the new fee reduction and waiver policy will hopefully assist organizations such as SFMT, the organization has to plan its performances and permits in advance and cannot wait for the development and adoption of such policy.

#### FISCAL IMPACTS OF RECOMMENDATION

Current fees range from \$180 to \$700 per event. The exact financial impact cannot be determined until staff develop objective criteria for which organizations qualify for reduced or waived fees. Any reduction in fees should be considered within the context of the value of free events to the people of Berkeley and associated patronage of local Berkeley businesses and City services.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Outdoor performances can be a low-carbon activity as compared to other forms of indoor and outdoor entertainment.

#### CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

#### ATTACHMENTS

1. Resolution 1
2. Resolution 2

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

RESOLUTION REFERRING TO THE CITY MANAGER TO ESTABLISH A POLICY OF  
REDUCING OR WAIVING PARK FEES FOR FREE AND PERMITTED OUTDOOR  
THEATER, ARTS EVENTS, AND OTHER EVENTS BASED ON OBJECTIVE PUBLIC  
WELFARE CRITERIA

WHEREAS, the City of Berkeley has a long tradition of supporting and encouraging free theater, artistic, and other events, and the educational and entertainment value associated with live performance and outdoor spaces; and

WHEREAS, unfortunately, the arts community has been devastated by the COVID-19 pandemic; and

WHEREAS, park fees have risen substantially in recent years, threatening the viability of ongoing free and permitted outdoor theater, arts, and other events sponsored by non-profit organizations of limited means; and

WHEREAS, although it is important that Berkeley recovers its costs to maintain its parks and facilitate events, when appropriate, it is also critical the City recognize and facilitate the contribution of less well-off arts organizations to Berkeley's civic and artistic culture and fabric; and

WHEREAS, the public park system stands in direct contrast to private alternatives with a purpose of providing residents of Berkeley and visitors alike with free and relatively low-carbon access to recreation, peaceful relaxation, entertainment and other benefits.

NOW, THEREFORE BE IT RESOLVED, by the Council of City of Berkeley that it refers to the City Manager to create a process to reduce or waive City Park Fees for free, permitted outdoor theater, arts events, and other events as appropriate based on objective consideration of their benefits to the public welfare, including but not limited to educational content, non-profit status, and means.



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

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

WHEREAS, Vice Mayor Kate Harrison has funds in her office expenditure account; and

WHEREAS, a non-profit tax exempt entity, the San Francisco Mime Troupe, seeks funds in the amount of at least \$500 to provide the following public services to educate and entertain Berkeley audiences through outdoor theater performances in Berkeley parks; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of supporting and encouraging free theater, art, and community interaction through free educational outdoor performances open to all Berkeley residents and visitors; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$500 per office shall be granted to the San Francisco Mime Troupe to fund municipal public purpose services of free educational theater in Berkeley's public parks.





Sophie Hahn  
City Council District 5

**CONSENT CALENDAR**

March 8, 2022

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

**From:** Councilmembers Sophie Hahn and Ben Bartlett (Co-Authors),  
Councilmember Kate Harrison (Co-Sponsor)

**Subject:** Budget Referral: Grant Writing Services

**RECOMMENDATION**

Refer \$300,000 to the FY 2022-2023 budget process to expand the City's capacity to seek and obtain grants and launch funded projects by hiring or contracting for writing and RFP/grant/program administration support.

**BACKGROUND**

Berkeley is an innovative City, pursuing ambitious programs and initiatives with the vigor and vision of a much larger jurisdiction. Innovation requires a significant investment of City resources and staff time. In addition, Berkeley has aging infrastructure and longstanding initiatives that require additional funding to achieve success. To support these efforts and increase revenues, the City has access to Federal, State, County, Regional, and, in some instances, private funds.

Currently, grant-writing and application responsibilities are distributed across City departments, which independently seek new grant opportunities and submit applications. While the City does receive many awards, the application process can be time consuming for Staff, who are stretched more thinly than ever due to pandemic response and staffing shortages. At the same time, with the current Federal administration's massive new investments, State of California surpluses, and significant philanthropic initiatives by private foundations, unprecedented monies are being made available to address a wide variety of needs in our community.

In addition to grant writing, extra support can be deployed to assist with the preparation of RFPs related to grant-funded and other initiatives, and with reports and other grant and program-related requirements, to expedite implementation and administration of new projects for which funds have been received and/or allocated by the City Council.

[On October 3, 2017, Council approved a referral for the City Manager to](#) issue a request for information (RFI) to explore grant writing services from specialized municipal grant-writing firms, and report back to Council. On [May 14, 2019 the City Manager reported back to Council](#) the results of the City's RFI process. On July 27, 2021, [the City Council directed the City Manager to move forward to establish needs and select a firm or firms to supplement the City's grant writing capacity](#), and provide a budget referral in time to be considered for the November 2021 AAO update, such that a new firm or firms could be in place by January of 2022.

To date, no additional support for grant writing and grant/program launch and administration has been obtained. This item refers to the upcoming budget process funds to obtain grant writing and program launch/administration support via the hiring of an individual with grant-writing, RFP, and grant/program administration expertise, or the hiring of one or more outside consultants specializing in this work.

#### FINANCIAL IMPLICATIONS

Budget request for \$300,000, to enable the City to move forward to address these longstanding needs. Expenses to be offset by the value of additional grants successfully awarded.

#### CURRENT SITUATION AND ITS EFFECTS

As our Nation and State recover from the COVID-19 crisis, there are a record number of grants available to cities from Federal, State, County, Regional, and private sources. An unexpected surplus in the California budget has resulted in further unprecedented opportunities to obtain funding for a wide range of City of Berkeley priorities. To access these rapidly-developing, highly competitive funds, Berkeley should supplement its ability to write timely, successful grants by bringing in professional grant writing services. Once funds have been obtained, Berkeley could also benefit from help with preparation of RFPs, reports, and other grant/program administration, to ensure funded programs can be launched expeditiously.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CONTACT PERSON

Councilmember Sophie Hahn      Council District 5      510-981-7150



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

20

CONSENT CALENDAR  
 March 8, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Rigel Robinson  
 Subject: Support for AB 1713: Idaho Stop

RECOMMENDATION

Send a letter to Assemblymember Tasha Boerner Horvath, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 1713, which would allow adult bicyclists to proceed through stop signs after yielding the right-of-way to immediate hazards.

BACKGROUND

Assembly Bill 1713 would permit bicyclists 18+ to treat stop signs as yield signs, also known as an “Idaho Stop.” This bill is a revised, narrower version of AB 122, a bill that the City of Berkeley endorsed last year. AB 122 was passed by the Assembly and Senate before being vetoed by Governor Newsom. In his veto message, Newsom wrote that “the approach in AB 122 may be especially concerning for children, who may not know how to judge vehicle speeds or exercise the necessary caution to yield to traffic when appropriate.” The updated bill responds to this concern by limiting the applicability of the provisions to adults only.

Currently, California Vehicle Code requires bicyclists to abide by the same laws as motorists — that is, to come to a full stop at a stop sign, even if the street is completely empty or no vehicles are close enough to constitute an immediate hazard. However, it is much more difficult to stop and restart repeatedly on a human-powered vehicle than it is in a car. For bicyclists who may not be as athletic, or who ride older and more inefficient bikes, this requires a significant exertion of energy and may deter them from biking longer distances. Highlighting the disparate impact of mandatory stop signs on bicyclists, a 2001 UC Berkeley Physics Department study determined that on routes with frequent stops, a person operating a bike must exert five times the energy in order to maintain speed.<sup>1</sup>

The Idaho Stop law, allowing bicyclists to treat stop signs as yield signs, has been in effect in the State of Idaho since 1982. A 2010 UC Berkeley School of Public Health Environmental Science Division study, which compared injury and fatality rates in Idaho with data from structurally similar cities in states still lacking a traffic stop exemption,

<sup>1</sup> <https://nacto.org/wp-content/uploads/2012/06/Fajans-J.-and-M.-Curry.-2001..pdf>

found that these conventions make our streets safer.<sup>2</sup> Quantitative results demonstrated Idaho conditions to be 30.4 percent safer for bicyclists overall, with an immediate 14.5 percent decrease in injuries in the year following the law's implementation. In researchers' interviews with police officers, public officials, bicycle advocacy groups, and the general public, "these inquiries strongly supported adoption of the Idaho Law, and no entity whatsoever identified any negative safety result associated with passage of the law."

Recognizing the safety benefits of such a law and the climate imperative to improve the convenience of bicycling in Berkeley, Council referred to the Transportation Commission in 2019 to consider deprioritizing enforcement of the Idaho Stop convention. Because the City does not have jurisdiction over state vehicle code, AB 1713 is needed to codify the traffic law exemption rather than just deprioritizing enforcement of it.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No impact.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant

#### Attachments:

- 1: Letter of support
- 2: Bill text

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1713](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1713)

---

<sup>2</sup> <http://denver.streetsblog.org/wp-content/uploads/sites/14/2018/02/idaho-law-jasonmeggs-2010version-2.pdf>

March 8, 2022

The Honorable Tasha Boerner Horvath  
Assemblymember, 76th District  
State Capitol, Room 4150  
Sacramento, CA 95814

**RE: City of Berkeley's Support for Assembly Bill 1713**

Dear Assemblymember Tasha Boerner Horvath,

The Berkeley City Council would like to convey our full support for Assembly Bill 1713 to permit bicyclists 18+ to treat stop signs as yield signs, legalizing a common, safe, and energy-conserving maneuver.

The law currently treats bicyclists and motorists the same in this regard, despite it being much more difficult to stop and restart repeatedly on a bicycle. The additional exertion of energy required to come to frequent full stops acts as a deterrent to bicycling, in direct opposition to our climate imperative to encourage more people to bike instead of drive.

In addition, Black people and people of color are disproportionately stopped and cited by law enforcement for vehicle code infractions, including when riding a bike. AB 1713 will provide clarity to the law and prohibit law enforcement from using harmless infractions as pretext to detain and cite, while also decreasing potentially lethal interactions with law enforcement.

The Berkeley City Council supports AB 1713 and thanks you for continuing to push on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner  
Assemblymember Buffy Wicks







Office of the City Manager

ACTION CALENDAR  
March 8, 2022  
(Continued from February 22, 2022)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jennifer Louis, Interim Chief of Police  
Subject: Update on the Implementation of Fair and Impartial Policing Task Force Recommendations

INTRODUCTION

On February 23<sup>rd</sup>, 2021 during a City Council Special Meeting, Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation. Quarterly updates were requested by Council and the last quarterly update was provided on October 19, 2021.

CURRENT SITUATION AND ITS EFFECTS

This report provides a quarterly update on the implementation of the Task Force recommendations, and is one year after the original referral. The Police Department was asked to implement the recommendations provided by the FIP Task Force. Implementation of the FIP Task Force recommendations remains a priority of the Berkeley Police Department. The Professional Standards Division Sergeants Ledoux and Lee are responsible for managing the project of implementing the recommendations.

Implementation of the recommendations has necessitated the amendment of departmental policies and establishment of new protocols. As part of the process, members of BPD have met on several occasions with Council and Mayor representatives, a Police Review Commission and now Police Accountability Board member, FIP Task Force members, and the Police Accountability Board Subcommittee on FIP recommendation implementation. During these meetings, the substance and progress on the implementation of the recommendations were discussed and BPD has been provided feedback and background on the various intentions with each respective recommendation.

The following outlines the specific Task Force recommendations and the respective progress:

### **Implement a New Evidence-Based Traffic Enforcement Model**

#### **Task Force Recommendations:**

- **Focusing the basis for traffic stops on safety and not just low-level offenses &**
- **Minimize or de-emphasize as a lowest priority, stops for low-level offenses**

#### **Implementation:**

Officers have been provided data regarding primary collision factors and have been directed to enforce those violations wherever they are observed. In addition to focusing on enforcement of primary collision factor violations, sworn personnel are also expected to make investigative stops related to criminal intelligence and information brought forth by the community or our investigations. BPD's working group, which is comprised of employees working in every division of the Berkeley Police Department and the City of Berkeley Transportation Division Manager, viewed the primary collision factors and built upon that information by looking further into Berkeley specific collision data as well as the National Highway Traffic Safety Administration data concerning vehicle collisions. The working group has identified a focused set of violations that should be an officer's focus while conducting traffic enforcement to promote a safe environment for pedestrians, bicyclists and vehicles in Berkeley. The Working Group developed a three-prong approach that focuses on primary collision factors, community member reports/observations reported to the Berkeley Police Department and community caretaking. Community caretaking functions consider safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions. The Berkeley Police Department will be trained on this three-prong approach to approaching traffic stops based on traffic safety.

#### **Status:**

Implementation in progress. Training for all sworn personnel has commenced on this approach to enforcement on traffic safety violations. The Traffic Division and the National Highway Traffic Safety Administration continuously collect and provide the Berkeley Police Department with data on primary collision factors and statistics on violations that impact public safety. These data provide officers with current information on what to educate the community on and what violations to focus enforcement on.

**Task Force Recommendation:**

- **Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects.**

**Implementation:**

The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.

Data driven-tools that enable close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders. The Police Department is working on providing these tools to every officer to incorporate into their daily briefings

The Police department is also exploring the feasibility of a system that employs a feedback loop with information flowing both ways. The current system provides the tracking of calls for service with the goal of call analysis for patrol deployment strategies; the feedback loop would provide information back to the Community Services Bureau and provide an accountability measure so strategies can be evaluated.

**Status:**

Implementation in Progress – The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies. The Police Department continues to develop and deploy data-driven tools to enhance a precision-based policing model and approach to enforcement stops. Ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches. Berkeley Police Department will continue to only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria. During this quarter we successfully filled one of the two Council approved data analyst positions. This will allow continued development of the evidence-based approaches.

**Task Force Recommendation:**

- **Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.**

**Implementation:**

Penal code 13519.4 is existing California law that prohibits racial profiling. BPD Policy 401 (Fair and Impartial Policing) also prohibits racial profiling. Section 401.2 explicitly states, “Officers shall not consider race, ethnicity, national origin,

gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities...”

The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.

**Status:**

Recommendation implemented. Ongoing efforts include: BPD will continue to conduct ongoing training in topics such as implicit bias, racial profiling, and procedural justice concepts. BPD will hold all members to Departmental Policies, especially those strictly and clearly prohibiting racial profiling. Further, stops will be information and evidence based. BPD Traffic Bureau will regularly provide data on those primary collision factors that most often result in collisions. BPD data analyst team will continue to analyze these statistics along with crime and location-based information. BPD will work closely and regularly with our Vision Zero partners to use this information to focus enforcement efforts.

**Implement Procedural Justice Reforms**

**Task Force Recommendation:**

- **Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops.**

**Implementation:**

The current Early Warning System was originally issued in 2004 and revised in 2008. The system mandates the monitoring of officer’s behavior and performance to include, but not limited to attendance, complaints, use of force incidents, and other factors. The Early Warning System serves as a program that identifies and address behavior or training issues before they become a disciplinary matter. Amendments are being made to our existing policy to specifically identify additional activity that should be considered when applying this policy.

**Status:**

Implementation in progress. Pursuant to the FIP recommendation and after meeting with the FIP task Force stakeholders, language was added to the current Early Warning System policy to include data around traffic, bicycle, and pedestrian stops as a category that supervisors will consider for early intervention if merited. The new Early Warning System policy is being reviewed by the police union and is in the meet and confer process to ensure that the policy can be properly applied to train, redirect and recognize performance issues and not conflict with disciplinary processes.

**Task Force Recommendation:**

- **Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback.**

**Implementation:**

A revised written consent form has been created and amendments are being made to our existing search and seizure policy to require written consent for all consent searches. Consultation with the Alameda County District Attorney was conducted to ensure that policy changes did not have a detrimental effect on charging or prosecution.

**Status:**

Implementation in progress. The new search and seizure policy is being reviewed by the police union and is in the meet and confer process to consider relevant officer safety concerns. Language in the policy is being drafted to address citizen rights, exigent circumstances as well as officer safety concerns.

**Task Force Recommendation:**

- **Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.**

**Implementation:**

On February 10, 2021, updates were completed on Policy 311. Sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations and departmental goals to build trust and collaborate with the community to address crime and safety concerns.

**Status:**

Recommendation implemented. The update to Policy 311 limits the searches conducted on individuals on supervised release status.

**Task Force Recommendation:**

- **Address Profiling by Proxy (PAB Policy Development, Dispatcher Training).**

**Implementation:**

The Communications Center Operation Manual has been amended to address handling cases involving profiling by proxy. All dispatchers have reviewed the

amended manual and are instructed to be cognizant and screen for profiling by proxy calls.

**Status:**

Recommendation implemented. Berkeley Police Department will continue to educate and train dispatchers on how to identify and address biased based reporting. Officers and supervisors are also expected to screen profiling by proxy calls. The Department as a whole will continue to seek out and train on anti-bias, implicit bias, and profiling by proxy topics to strengthen our ability to identify and address biased based reporting.

**Task Force Recommendation:**

- **Fire racist police officers identified through social media and other media screens.**

**Implementation:**

The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:

*Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states “Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

*PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

The above policies were reviewed in light of the task force recommendations found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person’s race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.

**Status:**

Recommendation implemented, however the Berkeley Police Department is committed to continuing to explore additional lawful methods to identify and

address potentially racist behaviors or actions by our members. If at any time the police department becomes aware of any issues related to these concerns, the matter would be thoroughly investigated and employees will be held accountable.

**Task Force Recommendation:**

- **Require regular analysis of BPD stop, search, and use of force data;**

**Implementation:**

The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City's website. This allows for open and independent analysis and review to foster police accountability and transparency.

ODP is operational and the data is updated approximately every 60 days. BPD is in the process of eliminating the 180-day time range that currently exist to allow for searches several years into the past. BPD is also in the process of expanding the call for service dataset to include all types of calls and creating a user-friendly interface for the system.

A vendor, Global Technologies Group, has been contracted to update the open data portal and work has begun.

**Status:**

Implementation in progress. BPD is committed to transparency and is continuously exploring different ways to provide the public with access to more police data. The anticipated completion date is prior to the summer of 2022, but is dependent on the technological needs and data analyst staffing levels.

**Task Force Recommendations:**

- **Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;**
- **For any individual detained, BPD officers shall provide a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.**

**Implementation:**

In May of 2021, labels were printed for officers to place on the backside of their business cards containing the phone numbers to Internal Affairs and the Police Accountability Board. The label also contains a QR code to the Berkeley Police Department's website containing information on how to file a complaint. Officers were instructed to provide business cards with the labels to all detained

individuals pending new business cards. In addition to the information on how to make a complaint, a link to the ACLU webpage containing information on police-civilian encounters has been added to the Berkeley Police webpage.

**Status:**

Recommendation implemented. All business cards now printed for BPD have the same information as the labels. The QR code and BPD website provide community members with resources on police-civilian encounters. These resources ensure police accountability as well as ways the community can comment on the service BPD has provided.

**Refer the following recommendations summarized below to the Reimagine Public Safety process**

**Task Force Recommendations:**

- **Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins; Conduct a baseline community survey**

**Implementation:**

BPD's participation in work on the Reimagine Public Safety Task Force is ongoing and while no formalized feedback systems are in place at this time, BPD remains responsive to answering questions, providing hands-on experience and discussing opportunities, impacts and effects of recommendations.

A community survey from the Reimagine Public Safety Task Force and National Institute for Criminal Justice Reform (NICJR) has been completed. This survey gauges the community's initial assessment on public safety in Berkeley to include what they thought was top priority, and where city resources were needed for better public safety. The results of this survey have been published. The final report is pending NICJR and Reimagine Task Force review.

**Status:**

Implementation in progress. The Berkeley Police Department is committed to working collaboratively with the Reimagine Public Safety Task Force in accomplishing both recommendations.



**Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway**

**Task Force Recommendation:**

- **BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;**

**Implementation:**

The police department released the requested historical data in December of 2020. Approximately every 60 days BPD stop, arrest, and calls for service data are updated in the Open Data Portal.

**Status:**

Recommendation implemented. The police department is currently working with IT and a vendor to provide the public with access to more police data through the Open Data Portal. Building trust through transparency and allowing for individual analysis of police data is the cornerstone of the police department's work in building community trust and engaging in collaborative problem solving.

**Task Force Recommendation:**

- **Fund and implement a specialized care unit for mental health crises;**

**Implementation:**

The City has contracted with a consulting firm, RDA Consulting, to conduct a feasibility study for a specialized care unit. The study has concluded; refer to below supporting materials for link to the final report from RDA Consulting.

**Status:**

Implementation in progress. The police department will continue to collaborate with the city towards the development of a Specialized Care Unit. While the work to create a Specialized Care Unit continues, three community based contracts managed by the Health, Housing and Community Services Department have been initiated to provide interim services.

**Task Force Recommendation:**

- **Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.**

**Implementation:**

The City's Auditor's report was released which analyzed Computer Aided Dispatch data. Recommendations from this analysis were provided to the Police

Department and findings were referred to the Reimagine Public Safety Task Force.

As part of our continued efforts to collect more complete and comprehensive data, we have added additional disposition codes to our CAD program. Since July 1<sup>st</sup>, 2021, we have begun collecting data on our police contacts with individuals experiencing homelessness and/or mental health crisis. This both addresses the recommendation by the City's Auditors report as well as the ongoing discussions around the need to better harness alternative and sometimes more appropriate resources to address incidents. In response to another recommendation by the City's Auditors report, we are expanding our data sets on the Open Data Portal to encompass more call types and eliminate the 180-day time range that currently exist to allow for searches several years into the past. This allows for the public to access more police data and for the Police Department to be more transparent in order to foster trust with our community.

**Status:**

Implementation in progress. During this quarter we successfully filled one of the two Council approved data analyst positions. One of the analyst tasks will be to conduct an ongoing analysis of police calls and responses. The work that the analyst will conduct will contribute to the police department's precision-based policing model as well as our personnel deployment strategies.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**POSSIBLE FUTURE ACTION**

The Police Department will continue to work toward the full implementation of the Task Force recommendations.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Staff time and additional training time to be determined at a later date.

**CONTACT PERSON**

Jennifer Louis, Interim Chief of Police, (510) 981-5700

Supporting Materials:

1: Berkeley Police Policy 401

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/401%20Fair\\_and\\_Impartial\\_Policing\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/401%20Fair_and_Impartial_Policing(1).pdf)

2: Berkeley Police Policy 311

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/Search\\_and\\_Seizure.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Search_and_Seizure.pdf)

3: California Legislative Information

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN)

4. Berkeley Police Policy 1029

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/1029%20Employee\\_Speech\\_Expression\\_and\\_Social\\_Networking.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1029%20Employee_Speech_Expression_and_Social_Networking.pdf)

5. Berkeley Police Regulation Chapter 2

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/PR%20Ch2\\_08Mar17.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/PR%20Ch2_08Mar17.pdf)

6. Reimagine Task Force and National Institute for Criminal Justice Reform (NICJR) Survey

<https://berkeley-rps.org/wp-content/uploads/2021/10/Berkeley-Community-Engagement-Report-v7.pdf>

7. RDA Consulting Final Report on Specialize Care Unit

[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_Commissions/Berkeley-MH-SCU\\_Final-Recommendations\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Berkeley-MH-SCU_Final-Recommendations_FINAL.pdf)





Office of the City Manager

ACTION CALENDAR  
March 8, 2022  
(Continued from February 22, 2022)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jennifer Louis, Interim Chief of Police  
Subject: 2021 Year End Crime and Collision Data

**INTRODUCTION**

At the request of City Council, the City Manager provides regular reports on crime in Berkeley. This report includes year end crime data for 2021. Also included is 2021 collision data. This information is provided to supplement the October 19<sup>th</sup>, 2021 annual crime report presentation, which only provided data through October 1, 2021.

**CURRENT SITUATION AND ITS EFFECTS**

**CALLS FOR SERVICE**

In 2021 Berkeley Police Department received a total of 60,393 calls for service (CFS). This closely mirrors the call volume for 2020 (60,799), as calls for service have not returned to pre-pandemic levels to date. The seven-year average total CFS number is 71,443.

**CRIME DATA**

**Part One Crimes:**

In 2021, total Part One crime in Berkeley increased by 1.9% overall from the year prior. There were four fewer Part One Violent Crimes and 122 more Part One Property Crimes in 2021. The largest percentage increases in Part One Crimes were seen in

Arson (38.5%), Auto Theft (36.4%), and Sexual Assault (21.3%). Decreases were seen in Homicide, as there were no cases in 2021, as well as Petty Theft.

### Part One Crimes Comparison

|                              | 2020        | 2021        | Change     | Percent Change |
|------------------------------|-------------|-------------|------------|----------------|
| Homicide                     | 5           | 0           | -5         | 100.0%         |
| Sexual Assault               | 47          | 57          | 10         | 21.3%          |
| Robbery                      | 274         | 265         | -9         | -3.3%          |
| Aggravated Assault           | 210         | 210         | 0          | 0.0%           |
| <b>Total Violent Crimes</b>  | <b>536</b>  | <b>532</b>  | <b>-4</b>  | <b>-0.7%</b>   |
| Burglary                     | 797         | 803         | 6          | 0.8%           |
| Theft                        | 3933        | 3736        | -197       | -5.0%          |
| Auto Theft                   | 805         | 1098        | 293        | 36.4%          |
| Arson                        | 52          | 72          | 20         | 38.5%          |
| <b>Total Property Crimes</b> | <b>5587</b> | <b>5709</b> | <b>122</b> | <b>2.2%</b>    |
| <b>Total Part One Crimes</b> | <b>6123</b> | <b>6241</b> | <b>118</b> | <b>1.9%</b>    |

The following chart provides historical crime data for Part One Crimes from 2015 through 2021.

| Year | Homicide | Rape | Robbery | Agg Assault | Burglary | Larceny | Auto Theft | Arson |
|------|----------|------|---------|-------------|----------|---------|------------|-------|
| 2015 | 1        | 44   | 330     | 155         | 1090     | 4099    | 717        | 22    |
| 2016 | 2        | 54   | 361     | 185         | 805      | 3965    | 650        | 24    |
| 2017 | 1        | 83   | 364     | 218         | 843      | 4556    | 621        | 30    |
| 2018 | 1        | 65   | 353     | 167         | 829      | 4004    | 548        | 31    |
| 2019 | 0        | 74   | 369     | 175         | 771      | 4993    | 492        | 17    |
| 2020 | 5        | 47   | 274     | 210         | 797      | 3933    | 805        | 52    |
| 2021 | 0        | 57   | 265     | 210         | 803      | 3736    | 1098       | 72    |

### Gun Violence and Firearm Seizure:

Total numbers of shootings continue to rise in the City of Berkeley. In 2021, there were 52 confirmed shooting incidents versus 40 in 2020. Confirmed shooting incidents include witnessed events as well as loud report calls where shell casings or other

evidence of gunfire is found. In 2021, BPD’s closure rate for shootings was 38% despite the fact that many incidents are heard only or have few witnesses or leads. Forensic and electronic evidence, diligent and detailed investigative efforts, as well as community support sharing information are critical to developing leads and chargeable cases.

| <b>SHOOTINGS</b>     | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> |
|----------------------|-------------|-------------|-------------|-------------|
| <b>TOTAL</b>         | <b>20</b>   | <b>28</b>   | <b>40</b>   | <b>52</b>   |
| <b>Cases Closed</b>  | 11          | 9           | 23          | 20          |
| <b>Cases Charged</b> | 6           | 6           | 15          | 15          |

In 2021 there were a total of 118 firearms recovered by BPD, which was an increase of 38.8%. In 2021, 33 of the firearms seized were ghost guns compared to 6 in 2020 and 8 in 2019.

| <b>FIREARM RECOVERY METHODS</b>      | <b>2019</b> | <b>2020</b> | <b>2021</b> |
|--------------------------------------|-------------|-------------|-------------|
| Patrol response to calls for service | 33          | 36          | 51          |
| Patrol proactive traffic stops       | 25          | 17          | 24          |
| Detective follow-up investigations   | 29          | 32          | 43          |
| <b>TOTAL firearms recovered</b>      | <b>87</b>   | <b>85</b>   | <b>118</b>  |

Robbery:

Total robbery cases remained below pre-pandemic levels. The most notable change during the pandemic was the closing gap between pedestrian and commercial robberies.

| <b>ROBBERY CASES</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> |
|----------------------|-------------|-------------|-------------|-------------|
| Pedestrian           | 229         | 247         | 131         | 119         |
| Commercial           | 108         | 97          | 117         | 118         |
| Home Invasion        | 5           | 4           | 8           | 8           |
| Bank                 | 3           | 2           | 5           | 6           |
| Carjacking           | 10          | 14          | 13          | 14          |
| <b>TOTAL</b>         | <b>355</b>  | <b>364</b>  | <b>274</b>  | <b>265</b>  |

Hate Crimes:

In 2021, there were 42 incidents of hate crimes, up from 12 in 2020. Hate Crime reports continue to be primarily reported as crimes of intimidation (either by using slurs or by leaving graffiti) rather than crimes of violence.

| <b>HATE CRIMES</b>              | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> |
|---------------------------------|-------------|-------------|-------------|-------------|
| Race/Ethnicity/ National Origin | 11          | 5           | 7           | 28          |
| Religion                        | 3           | 1           | 2           | 11          |
| Sexual Orientation              | 3           | 2           | 1           | 3           |
| Gender                          | 1           | 0           | 2           | 0           |
| Disability                      | 0           | 0           | 0           | 0           |
| <b>TOTAL</b>                    | <b>18</b>   | <b>8</b>    | <b>12</b>   | <b>42</b>   |

Property Crimes:

In addition to the Part One Property Crimes data provided above, additional property crime totals were as follows:

|                                   | <b>2019</b> | <b>2020</b> | <b>2021</b> |
|-----------------------------------|-------------|-------------|-------------|
| <b>Catalytic Convertor Thefts</b> | 150         | 523         | 477         |
| <b>Auto Burglary</b>              | 2473        | 1042        | 1021        |

**COLLISION DATA**

In 2021, total collisions increased by 199, or 33.8%, from the year prior. Fatal collisions increased significantly and there were also increases overall in both injury and non-injury collisions.

| <b>COLLISIONS</b>                             | <b>2019</b> | <b>2020</b> | <b>2021</b> |
|-----------------------------------------------|-------------|-------------|-------------|
| Fatal collisions                              | 4           | 2           | 7           |
| Injury collisions (includes fatal collisions) | 521         | 316         | 433         |
| Non-injury collisions                         | 408         | 273         | 355         |
| <b>TOTAL collisions</b>                       | <b>929</b>  | <b>589</b>  | <b>788</b>  |

In 2021, the most common cause of collisions (primary collision factor or PCF) were unsafe speed, unsafe turn and right of way violations. In 2021, bicycles were involved in 93 of the injury collisions and pedestrians were involved in 62. The at fault party was found to be the bicyclist in 58 collisions and the pedestrian in 5 collisions. Of the 7 collision fatalities in the City of Berkeley in 2021, 5 of the fatalities were pedestrians. In

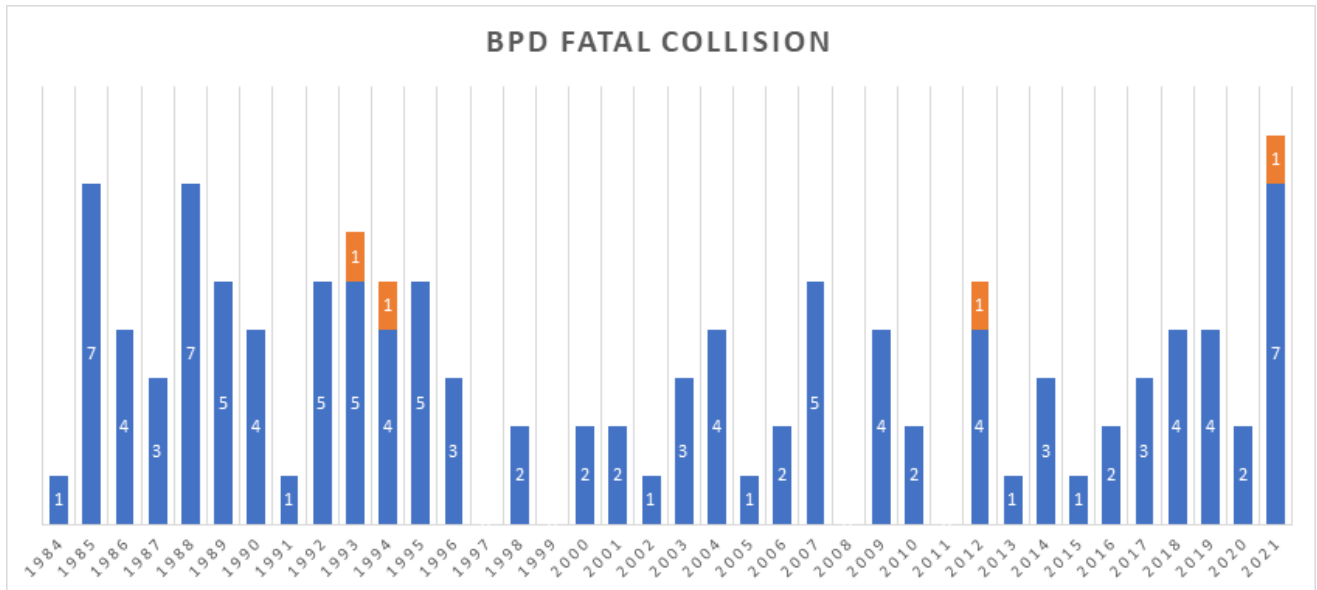


2021, 39 collisions were DUI involved compared to 46 in 2020. Of these 39 DUI collisions, 16 caused serious injuries.

Ashby Avenue and San Pablo Avenue had the largest number of collisions in 2021 followed by Ashby and Shattuck Avenue, and Ashby Avenue and Martin Luther King Jr Way. The top ten intersections where collisions occurred were:

| <b>COLLISION INTERSECTIONS</b> | <b>Collisions</b> |
|--------------------------------|-------------------|
| Ashby Ave / San Pablo Ave      | 14                |
| Ashby Ave / Shattuck Ave       | 12                |
| Ashby Ave / MLK Jr Way         | 9                 |
| University Ave / 6th St        | 9                 |
| University Ave / Sacramento St | 7                 |
| University Ave / MLK Jr Way    | 7                 |
| Sacramento Ave / Cedar St      | 7                 |
| Sacramento St / Dwight Way     | 6                 |
| Eastshore Hwy / Gilman St      | 6                 |
| Cedar St / Shattuck Ave        | 5                 |

The following provides historical data on fatal collisions in the City of Berkeley:



| Total fatal | Number of | Year(s) |
|-------------|-----------|---------|
|-------------|-----------|---------|

| collisions | fatalities |                                            |
|------------|------------|--------------------------------------------|
| 7          | <u>8</u>   | 2021                                       |
| 7          | 7          | 1985 1988                                  |
| 6          | 6          | none                                       |
| 5          | <u>6</u>   | 1993                                       |
| 5          | 5          | 1989, 1992, 1995, 2007                     |
| 4          | <u>5</u>   | 1994, 2012                                 |
| 4          | 4          | 1986, 1990, 2004, 2009, 2018, 2019         |
| 3          | 3          | 1987, 1996, 2003, 2014, 2017               |
| 2          | 2          | 1998,2000, 2001, 2006, 2010, 2016,<br>2020 |
| 1          | 1          | 1984, 1991, 2002, 2005, 2013, 2015         |
| 0          | 0          | 1997,1999, 2008, 2011                      |

The BPD will continue to collect, analyze and report on crime and collision data to understand and guide needs, the effectiveness of enforcement strategies and shape future deployment and resource allocation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

Jen Louis, Interim Chief of Police, 510-981-5900



Office of the City Manager

23

ACTION CALENDAR  
March 8, 2022

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: Request to Adopt a Resolution Approving Exception to the 180-Day Waiting Period to Hire a CalPERS Retired Annuitant in Accordance with Government Code Sections 7522.56 And 21224

RECOMMENDATION

Staff respectfully recommends that the City Council adopt a resolution approving an exception to the 180-day waiting period for hiring a retired annuitant as an extra-help employee in the Department of Health, Housing & Community Services, due to their specialized skills that are necessary to perform work of a limited duration, and to prevent stoppage of public business during the Covid emergency.

FISCAL IMPACTS OF RECOMMENDATION

The cost of this increase will be paid from general fund.

CURRENT SITUATION AND ITS EFFECTS

The Public Employees' Pension Reform Act of 2013 (PEPRA) made substantial changes to public employee pension laws in California. One of those changes requires retired annuitants to be separated from employment for at least 180 days before returning to work for an employer in the same retirement system from which they receive a pension. An exception may be made if the governing body adopts a resolution to waive the waiting period for separation. The waiver allows an employer to hire a retired annuitant to perform work of limited duration, such as the elimination of backlogs, limited term special projects, and work that is in excess of what regular staff can reasonably perform.

The Health, Housing, and Community Services (HHCS) Department holds the responsibilities of an independent local health jurisdiction (LHJ) and is responsible for addressing public health prevention and emergencies as well as protecting the physical health, mental health, and basic needs of those most vulnerable. The department is also responsible for producing, preserving, and supporting affordable housing for Berkeley residents and working with non-profit agencies to support the unhoused population. Since February 2020, the City of Berkeley has been independently responsible for addressing the COVID-19 pandemic; including implementation of Health Officer Orders, creating a new COVID-19 response unit, implementing an array of new

activities to protect the public such as testing, vaccinations, enhanced case investigation, and contact tracing, and managing outbreaks. The City has also supported the development of respite sites for housing the most vulnerable, moved people from respite sites in to permanent housing, decompressed shelters and created new shelter spaces, and enhanced outreach services, food distribution, and toilet and shower availability. While much of this work was conducted through the Emergency Operations Center (EOC), many of the responsibilities resided, and continue to reside, with HHCS. The department's overall responsibilities were further expanded as a variety of State and Federal grants were awarded to the City to support the COVID response, nearly all of which were managed, and continue to be managed, by HHCS's Administrative and Fiscal Team in the Office of the Director; overseen by the HHCS Deputy Director.

In January 2021, HHCS had a vacancy rate of 20%, a Director with less than a year tenure, and was engaged in an active recruitment process for a new Deputy Director due to the pending retirement of the incumbent; a long-time City of Berkeley employee. Due to the enhanced workload brought on to the department by the pandemic, the high vacancy rate, and the need for continuity of expertise, the retiring Deputy Director stepped up to provide continued support to the department by coming back as a retired annuitant at the request of the City of Berkeley, and consistent with Government Code Sections 7522.56 and 21224. With the expanded work of the department due to the ongoing, State-Wide, COVID-19 state of emergency, this function has been critical to ensuring meticulous management of specialized Federal and State healthcare funding streams deployed to protect people from COVID-19, other critical health conditions, and provide care and shelter for the unhoused population. Accordingly, it was necessary to hire the retired annuitant as extra help prior to the end of the 180-day waiting period, due to their specialized skills and to prevent stoppage of public business during the Covid emergency.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### RATIONALE FOR RECOMMENDATION

This recommendation supports the strategic plan priority project to retract and retain a talented and diverse City government workforce.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Donald E. Ellison, Interim Human Resources Director, 510-981-6807.

[Title of Report]

ACTION CALENDAR  
March 8, 2022

**Attachments:**

1: Resolution

2: Notice of Appointment

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

A Resolution Approving Exception to the 180-Day Waiting Period to Hire a CalPERS Retired Annuitant in Accordance with Government Code Sections 7522.56 And 21224

WHEREAS, in compliance with Government (Gov.) Code Section 7522.56 of the Public Employees' Retirement Law, the City Council of the City of Berkeley must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

WHEREAS, Kelly Wallace retired from the City of Berkeley, Health, Housing, and Community Services Department, from the position of Deputy Director of Health, Housing, and Community Services, effective February 2, 2021; and

WHEREAS, Section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is August 1, 2021, without this certification; and

WHEREAS, Gov. Code section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council, the City of Berkeley, and Kelly Wallace certify that Kelly Wallace has not, and will not, receive a Golden Handshake or any other retirement-related incentives; and

WHEREAS, the City of Berkeley hereby ratifies the appointment of Kelly Wallace as an extra-help retired annuitant to perform similar duties to a Deputy Director of Health, Housing, and Community Services, for the City of Berkeley of Health, Housing, and Community Services under Government Code Section 21224, effective February 7, 2021; and

WHEREAS, the entire employment agreement, contract or appointment document between Kelly Wallace and the City of Berkeley has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be place on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

March 8, 2022

WHEREAS, the maximum base salary for this position is \$23,783.07 per month and the hourly equivalent is \$137.21, and the minimum base salary for this position is \$3,177.20 per month and the hourly equivalent is \$18.33; and

WHEREAS, the hourly rate paid to Kelly Wallace will be \$90.07; and

WHEREAS, Kelly Wallace has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Berkeley hereby certifies and ratifies the nature of the appointment of Kelly Wallace as described herein and detailed in the attached employment agreement, and that this appointment was necessary to fill a critically needed role similar to Deputy Director of Health, Housing, and Community Services, for the City of Berkeley by February 7, 2021, due to their specialized skills; to prevent stoppage of public business during the Covid emergency; and to maintain compliance with the deployment of on-going and new State and Federal Resources creative specifically to address COVID-19, including complex health care grants, Medi-Cal, Housing and Urban Development funds, and other specialized funding streams.



Human Resources Dept.  
January 28, 2021

Kelly Wallace

**Subject: Offer of Employment**

Dear Kelly,

It is our pleasure to confirm your offer of employment with the City of Berkeley. Below are the highlights of your employment:

|                                 |                                                                             |
|---------------------------------|-----------------------------------------------------------------------------|
| <b>Classification/Job Title</b> | Retired Annuitant                                                           |
| <b>Employment Type:</b>         | Temporary; Non-benefitted; Not- to exceed 960 hours or Lifting of SIP Order |
| <b>Department/Division:</b>     | Health, Housing and Community Services                                      |
| <b>Hourly Rate:</b>             | <b>\$90.0007</b>                                                            |
| <b>Start Date:</b>              | <b>February 7, 2021</b>                                                     |
| <b>Employee ID Number</b>       | <b>8379</b>                                                                 |
| <b>Union</b>                    | <a href="#">Unrepresented</a>                                               |

Please contact Lisa Warhuus at (510) 981-5404 if you have any questions about your schedule, work location, and details of reporting to work on your first day.

We are excited to have you! If you have any questions, please feel free to reach out at any time.

Sincerely,

Sukari Dixon  
Human Resources Technician

**Please confirm your acceptance of this offer by signing and returning this letter.**

Signature: \_\_\_\_\_

Print Name:

Date: \_\_\_\_\_

cc: Paul Buddenhagen, Deputy City Manager  
Dee Williams-Ridley, City Manager  
Dr. Lisa Warhuus, HHCS  
Shayla Elliott, Human Resources  
Employee Personnel File





# Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

## **City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

## **Records Online**

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF