

AGENDA



BERKELEY CITY COUNCIL MEETING

**Tuesday, April 14, 2020
6:00 PM**

JESSE ARREGUIN, MAYOR
Councilmembers:

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

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

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the April 14, 2020 meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://zoom.us/j/724407089>. 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** and enter Meeting ID: **724 407 089**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. NOTE: Your phone number will appear on the screen.*

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

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

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

Preliminary Matters

Roll Call:

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

1. Adjourn in memory of all the victims of the COVID-19 pandemic.

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." 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.

Recess Items

- 1. Contract: Sonya Dublin Consulting as the External Evaluator for Public Health Division, Tobacco Prevention Program**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract and any amendments with Sonya Dublin Consulting as the External Evaluator for Health, Housing and Community Services Public Health Division's Tobacco Prevention Program, in an amount not to exceed \$93,600, for a term ending June 30, 2021.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 2. Contract: Lind Marine for Removal of Derelict and Abandoned Vessels at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager or her designee during recess to execute a contract and any amendments with Lind Marine for the removal and disposal of derelict and abandoned vessels at the Berkeley Marina in an amount not-to-exceed of \$104,400; and authorize a contingency in the amount of \$38,600.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 3. Contract No. 31900160 Amendment: Affordable Painting Services, Inc. for Additional Painting of Various Park Buildings**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 31900160 with Affordable Painting Service, Inc. for additional painting of various Park buildings by increasing the construction contract amount by \$127,200 for a not-to-exceed amount of \$305,000.
Financial Implications: Marina/Capital Improvement Budget - \$127,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 4. Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-Needed Tree Services**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for an amended total not-to-exceed amount of \$500,000 for a contract term of May 29, 2019 through May 28, 2022.
Financial Implications: Parks Tax Fund and Fire Fuel Abatement Fund - \$300,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Recess Items

- 5. Contract No. 32000019 Amendment: ERA Construction Inc. for Additional Concrete Repair Work in Parks and Along Pathways**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32000019 with ERA Construction Inc. for additional concrete repair work on City parks and pathways by increasing the construction contract amount by \$204,152 for a not-to-exceed amount of \$375,000.
Financial Implications: Various Funds - \$204,152
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 6. Contract: Ghilotti Construction Company, Inc. for Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to: 1. Approve the plans and specifications for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project, Specification No. 19-11294-C; and 2. Waive an inconsequential defect and accepting the bid of the lowest responsive and responsible bidder, Ghilotti Construction Company, Inc.; and 3. 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 Ghilotti Construction Company, Inc., for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project at 1200-1201 Euclid Avenue, Berkeley, CA 94708, in an amount not to exceed \$3,491,917, which includes a contract amount of \$3,174,470 and a 10% contingency in the amount of \$317,447.
Financial Implications: Various Funds - \$3,491,917
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 7. Contract: Vol Ten Corporation DBA Delta Charter for Recreation Division Bus Transportation for Day Camp and Summer Programs**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract with Vol Ten Corporation DBA Delta Charter to provide bus transportation services for Recreation Division Day Camp and summer programs for a not-to-exceed total amount of \$600,000 over a five year period, beginning June 1, 2020 and ending June 1, 2025, contingent upon annual budget appropriations.
Financial Implications: Various Funds - \$600,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Recess Items

8. **Increase of Authorized Funding: Contract No. 8051 for Police Department Substation, 841 Folger Street/3000 Seventh Street**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to increase the amount of funding authorized under Contract No. 8051 by \$250,000 from \$1,995,725.99 to \$2,245,725.99 for rental of the property at 841 Folger Street/3000 Seventh Street.
Financial Implications: Various Funds - \$250,000
Contact: Andrew Greenwood, Chief of Police, (510) 981-5700

9. **Contract No. 31900071 Amendment: Bigbelly Solar Compacting Trash and Recycling Receptacles**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 31900071 for nineteen (19) additional Bigbelly Solar, Inc. manufactured Solar Compacting Trash and Recycling Receptacles for Department of Public Works - Zero Waste Division; increasing the original contract amount by \$162,568.16 for an amended total not-to-exceed amount of \$233,868.16. The contract term remains August 1, 2018 to June 30, 2023.
Financial Implications: Measure D Fund - \$162,568
Contact: Phillip Harrington, Public Works, (510) 981-6300

Consent Calendar

10. **Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106**
From: Mayor Arreguin, and Councilmembers Davila, Harrison, and Bartlett
Recommendation: Adopt second reading of Ordinance No. 7,692-N.S., the Ronald V. Dellums Fair Chance Access to Housing Ordinance.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Consent Calendar

11. **Calling for a Consolidated General Municipal Election for November 3, 2020**

From: City Manager

Recommendation: 1. Adopt a Resolution: a) Calling for a General Municipal Election to be consolidated with the Presidential General Election to be held in Berkeley on November 3, 2020;

b) Requesting that the Alameda County Board of Supervisors consolidate the City of Berkeley General Municipal Election with the Presidential General Election; c) Authorizing certain procedural and contractual actions; and d) Establishing policies for the filing of candidate statements of qualification.

2. Adopt a Resolution establishing policies and timelines for filing ballot measure arguments.

Financial Implications: See report

Contact: Mark Numainville, City Clerk, (510) 981-6900

12. **Minutes for Approval**

From: City Manager

Recommendation: Approve the minutes for the council meetings of February 4, 2020 (special closed, special and special-worksession), February 11, 2020 (special closed and regular) and February 25, 2020 (regular).

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

13. **Donation to the Animal Shelter from the Stephen and Mary Birch Foundation**

From: City Manager

Recommendation: Adopt a Resolution accepting a donation from the estate of Stephen and Mary Birch in the sum of \$5,000.

Financial Implications: Animal Shelter Donation Fund - \$5,000 (Donation)

Contact: Erin Steffen, City Manager's Office, (510) 981-7000

14. **Amendment: FY 2020 Annual Appropriations Ordinance**

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending the FY 2020 Annual Appropriations Ordinance No. 7,682-N.S. for fiscal year 2020 based upon recommended re-appropriation of committed FY 2019 funding and other adjustments in the amount of \$28,565,263 (gross) and \$15,378,568 (net).

Financial Implications: See report

Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

Consent Calendar

15. **Renewal of the North Shattuck Business Improvement District (NSBID)**

From: City Manager

Recommendation: Adopt a Resolution declaring intent to reestablish the NSBID for the ten-year period beginning July 1, 2020 (FY21) and ending June 30, 2030, setting a public hearing for June 16, 2020 on reestablishment of the District, and directing the City Clerk to conduct all necessary proceedings for reestablishment of the NSBID.

Financial Implications: See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

16. **1601 Oxford Interest Rate Reduction**

From: City Manager

Recommendation: Adopt a Resolution: 1. Waiving the Housing Trust Fund Guidelines Section V.B.2 and allowing an interest rate of 1% for Satellite Affordable Housing Associates' (SAHA) 1601 Oxford's development loan; and 2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

Financial Implications: See report

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

17. **Shelter Plus Care Program Renewal Grants**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to receive funds and execute any agreements and amendments resulting from the renewal of the following grants:

1. Four Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD) for up to: a) \$3,305,842 for Tenant-Based Rental Assistance (TBRA) for the period June 1, 2020 through May 31, 2021; b) \$191,491 for sponsor-based rental assistance for the Supportive Housing Network for the period of June 1, 2020 through May 31, 2021, with Resources for Community Development as the project sponsor; c) \$186,380 for sponsor-based rental assistance for the Pathways Project for the period June 1, 2020 through May 31, 2021, with Bonita House, Inc. as the project sponsor; and d) \$2,176,630

in tenant-based rental assistance for the COACH Project grant for the period of January 1, 2021 through December 31, 2021.

2. One grant from the County of Alameda for \$708,195 to provide tenant-based rental assistance to individuals who have HIV/AIDS and other disabilities from March 1, 2020 through February 28, 2021.

In its renewal application to HUD, the City requested to consolidate three of the above grants: 1) Tenant-Based Rental Assistance; 2) Supportive Housing Network and 3) Pathways Project. If approved, the three grants would be consolidated into one with a combine grant amount of up to \$3,683,713.

Financial Implications: See report

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

Consent Calendar

- 18. Lease Agreement with 200 Marina Blvd, LLC for the Doubletree Hotel**
From: City Manager
Recommendation: Adopt first reading of an Ordinance 1. Authorizing the City Manager to execute the Ground Lease with 200 Marina Blvd, LLC, the owner/ground lessee of the Doubletree Hotel located at the Berkeley Marina for a 60-year term effective from May 14, 2020 through December 31, 2080; and 2. Approving a related Capital Contribution Agreement that 200 Marina Blvd, LLC contribute \$3 million to Marina street improvements.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 19. Grant Application: the Surrendered and Abandoned Vessel Exchange (SAVE) grant program of the California Division of Boating & Waterways**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to 1) Apply for and accept a grant in the amount of \$42,000 from the California Division of Boating & Waterways (“DBW”) Surrendered and Abandoned Vessel Exchange (SAVE) grant program for the removal and disposal of anticipated abandoned vessels located at the Berkeley Marina; 2) Execute any amendments thereto; and 3) Authorize a local match contribution of \$4,200.
Financial Implications: \$42,000 (Grant)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 20. Donation: Friends of Marin Circle – the Balustrade Replacement Project**
From: City Manager
Recommendation: Adopt a Resolution accepting a donation from the Friends of Marin Circle in the amount of \$7,500 for replacement of damaged balustrades at the Marin Circle Fountain Walk.
Financial Implications: \$7,500 (Donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 21. Waiver of Annual Marina Berth Fees for Non-Profits**
From: City Manager
Recommendation: Adopt a Resolution:
1. Affirming the determination by City staff and the Parks and Waterfront Commission that four non-profit organizations at the Berkeley Marina (Berkeley Racing Canoe Club (“dragon boats”), Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation) are in full compliance with all aspects of Resolution No. 66,544-N.S.; and
2. Approving the annual waiver of berth fees for the four groups for 2020.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 22. Contract: Robert E. Boyer Construction, Inc. for Berkeley Tuolumne Camp Construction Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the Berkeley Tuolumne Camp Project, Specification No. 20-111361-C; and 2. Rejecting the bid protests of Walsh Construction, the second lowest bidder and F&H Construction, the third lowest bidder against Robert E. Boyer Construction; 3. Accepting the bid of Robert E. Boyer Construction, Inc. as the lowest responsive and responsible bidder for the amount of \$35,290,583; and 4. 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 Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project in an amount not to exceed \$38,819,641 which includes the base bid and a 10% contingency.
Financial Implications: \$38,819,641
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 23. Funding for the East Bay Communities and East Bay Municipal Utility District Joint Exercise of Powers Agreement and Defendants' Side Agreement for the Control of Wet Weather Overflows and Bypasses and Consent Decree Compliance**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to make payments to the Administrative Agency and Financial Agent (East Bay Municipal Utility District) for administering duties in accordance with the terms and conditions of the Joint Exercise of Powers Agreement (JPA) and the Defendants' Side Agreement (DSA) to control the wet weather overflows and bypasses for the 5-year period from FY 2020 through FY 2024 in an amount not to exceed \$1,000,000.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 24. Summary Vacation of Sewer Easement at 2009 Addison Street**
From: City Manager
Recommendation: Adopt a Resolution to summarily vacate a sewer easement at 2009 Addison Street.
Financial Implications: None
Contact: Phillip Harrington, Public Works, (510) 981-6300

Consent Calendar

- 25. Contract: CF Contracting, Inc. for Sacramento Complete Streets Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the Sacramento Complete Streets Improvements Project, (“Project”), Specification No. 20-11379-C; 2. Accepting the bid of CF Contracting, Inc., the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract with CF Contracting, Inc. and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$2,475,200, which includes a contingency of ten percent.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 26. Contract Amendment Contract 10747: Clean Harbors, Inc. for Hazardous Waste Management Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Clean Harbors, Inc. for hazardous waste management, removal, and disposal services for the City of Berkeley, increasing the contract amount by \$300,000 for an amount not-to-exceed \$450,000 and extend the contract term through June 30, 2022
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 27. Contract: Bay Cities Paving & Grading, Inc. for Street Rehabilitation FY 2020 Project**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Street Rehabilitation FY 2020 Project, Specification No. 20-11367-C; accepting the bid of Bay Cities Paving & Grading, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$4,478,909.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300

Consent Calendar

- 28. Contract No. 10552A Amendment: Revel Environmental Manufacturing, Inc. for on-call Storm Water Maintenance Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 10552A with Revel Environmental Manufacturing, Inc. for on-call storm water maintenance services, increasing the current contract by \$100,000 for a total contract amount not to exceed \$600,000 and extend the term of the contract through June 30, 2021.
Financial Implications: Zero Waste Fund 601 - \$100,000
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 29. Contract: National Data & Surveying Services, for On-Call Transportation and Parking Survey Consulting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with National Data & Surveying Services for on-call transportation and parking survey consulting services for the period May 15, 2020 to May 14, 2023 with an option of up to two one-year extensions in the amount not-to-exceed \$240,000.
Financial Implications: See report
Contact: Phillip Harrington, Public Works, (510) 981-6300
- 30. Developing a Mechanism to Facilitate an Improved Homeless Point-In-Time Count**
From: Homeless Commission
Recommendation: The Homeless Commission recommends to Council that Council refer to staff to assign an intern or seek a volunteer affiliation, through an educational institution, to conduct outreach to, and engage with, community stakeholders including homeless advocates and persons who are experiencing or have experienced homelessness, to identify how homeless persons can be more thoroughly counted during the upcoming 2021 Berkeley Homeless Point-In-Time count.
Financial Implications: See report
Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400
- 31. Appointment of Ann Hawkins to the Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt a Resolution approving the appointment of Ann Hawkins to the Mental Health Commission, as a representative of the special public interest (peer) category, for a three year term beginning April 15, 2020 and ending April 14, 2023.
Financial Implications: None
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Council Consent Items

- 32. Budget Referral: \$279,000 to Fund Berkeley Youthworks Participants Commensurate with the Berkeley Minimum Wage**
From: Councilmember Davila (Author)
Recommendation: Budget Referral: Refer to the FY 2020-21 budget process the allocation of \$184,000 for the purpose of funding Youthworks participants at the local minimum wage, which is scheduled to increase in July 2020 to \$15.75 per hour plus the Consumer Price Index.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 33. Berkeley Humane's 7th Annual Pints for Paws Fundraiser on June 6, 2020: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Davila (Author)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Berkeley Humane Society's 7th Annual Pints for Paws Fundraiser on June 6, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
- 34. Resolution in Support of Senate Bill 54 and Assembly Bill 1080: The California Circular Economy and Plastic Pollution Reduction Act**
From: Councilmember Harrison (Author); Councilmember Hahn (Co-Sponsor); Councilmember Davila (Co-Sponsor); Councilmember Wengraf (Co-Sponsor)
Recommendation: Adopt a Resolution affirming Berkeley's support for Senate Bill 54 and Assembly Bill 1080, The California Circular Economy and Plastic Pollution Reduction Act. Send a letter in support to Assemblymember Gonzalez and Senator Allen.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 35. Support for SB-1160 (Stern) Public Utilities: Electrical and Communication Infrastructure: Undergrounding**
From: Councilmember Wengraf (Author); Councilmember Hahn (Co-Sponsor); Councilmember Bartlett (Co-Sponsor)
Recommendation: Write a letter to Senator Stern in support of SB-1160 and send copies to Senator Nancy Skinner, Assembly Member Buffy Wicks and Governor Gavin Newsom.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar

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

The Presiding Officer will request that persons wishing to speak line 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 – Public Hearings

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

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

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

36. General Plan Redesignation and Rezone of The Rose Garden Inn at 2740 Telegraph Avenue (APN 054-1716-002-00), 2744 Telegraph Avenue (APN 054-1716-003-00), and 2348 Ward Street (APN 054-1716-031-00)

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion:

1. Adopt a Resolution amending the General Plan land use designations of portions of parcels that comprise The Rose Garden Inn from Low Medium Density Residential to Avenue Commercial;
2. Adopt first reading of an Ordinance amending the Zoning Map for portion of parcels that comprise the Rose Garden Inn from Restricted Two-Family Residential District (R-2) to General Commercial District (C-1); and
3. Certify that the reclassification of General Plan land use designations and rezoning are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Classes 1, 3, 5, and 31

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – Public Hearings

37. Zoning Ordinance Amendments for Family Daycare Homes to comply with Senate Bill 234

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion:

1. Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 23 (Zoning Ordinance) to comply with Family Daycare Home regulations recently enacted by Senate Bill 234 (SB 234); and
2. Adopt a Resolution amending Resolution 67,985-N.S., the Planning Department Fee Schedule, to reflect the requirement that no permit fees may be charged for Family Daycare Homes pursuant to SB 234.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar (Originally published for March 24, 2020)

38. Placing Charter Amendment Measure on the November 3, 2020 Ballot to Establish a Police Board and Director of Police Accountability

From: City Manager

Recommendation: 1. Adopt a Resolution submitting an amendment to the City Charter to add Article XVIII to establish a Police Board and Director of Police Accountability to a vote of the electors at the November 3, 2020 General Municipal Election. 2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: General Fund - \$300,000-\$500,000

Contact: Dave White, City Manager's Office, (510) 981-7000; Farimah Brown, City Attorney, (510) 981-6950; LaTanya Bellow, Human Resources, (510) 981-6800; Andrew Greenwood, Police, (510) 981-5900

39. Inclusionary Units in Qualified Opportunity Zones *(Reviewed by the Land Use, Housing and Economic Development Committee)*

From: Councilmember Harrison (Author); Councilmember Bartlett (Author); Councilmember Davila (Author); and Councilmember Hahn (Author)

Recommendation: Adopt an ordinance amending Berkeley Municipal Code Chapter 22.20.065 requiring onsite inclusionary units in new rental developments in Qualified Opportunity Zones (QOZs).

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Council Action Items

40. **Amending Tenant Screening Fees Ordinance for Existing Tenancies**
From: Mayor Arreguin (Author) *(Reviewed by the Land Use, Housing & Economic Development Committee)*
Recommendation: Adopt first reading of an Ordinance to amend Berkeley Municipal Code 13.78 (Tenant Screening Fees) to add subsections to prohibit additional fees for existing tenancies and lease terminations.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100

Information Reports

41. **Public Health Officer's Order Directing the Placement of COVID-19 Isolation and Quarantine Facilities for Persons Experiencing Homelessness on Public Property**
From: City Manager
Contact: Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000
42. **Strategic Plan Performance Measures Pilot**
From: City Manager
Contact: Dave White, City Manager's Office, (510) 981-7000
43. **Summary of Aging Services**
From: City Manager
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
44. **Pathways STAIR Center: Fiscal Year 2020 – Six Month Evaluation and Results-Based Accountability Dashboard**
From: City Manager
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
45. **Parks, Recreation & Waterfront Department Capital Improvement Projects (CIP) Update**
From: City Manager
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
46. **Measure T1 Update**
From: City Manager
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
47. **Audit Recommendation Status - 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale**
From: City Manager
Contact: Andrew Greenwood, Police, (510) 981-5900

Information Reports

48. **Public Works Capital Improvement Projects: Planned Projects for Fiscal Year 2021**
From: City Manager
Contact: Phillip Harrington, Public Works, (510) 981-6300
49. **Children, Youth and Recreation Commission FY2020 Work Plan**
From: Children, Youth, and Recreation Commission
Contact: Stephanie Chu, Commission Secretary, (510) 981-6700
50. **Civic Arts Grants Program**
From: Civic Arts Commission
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530
51. **Council Referral – Commemorative Tree Program**
From: Parks and Waterfront Commission
Contact: Roger Miller, Commission Secretary, (510) 981-6700

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

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

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

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

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

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

COMMUNICATION ACCESS INFORMATION:

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 April 2, 2020.

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

Mark Numainville, City Clerk

Communications

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

City Eviction Moratorium & Suspension of Rent Payments

1. 21 identical and/or similar letters
2. Diana Bohn

People's Park Restrooms

3. Sheila Mitra-Sarkar
4. Russbumper
5. Max Ventura (2)

Biking/Safe Social Distance & Essential Businesses

6. Ben Gerhardstein, on behalf of Walk Bike Berkeley (2)
7. Liza Lutzker (3)
8. Dee Williams-Ridley, City Manager

9. Farid Javandel

Homelessness/Encampments & COVID-19

10. Jessica McGinley, on behalf of the Suitcase Clinic

11. Councilmember Davila

12. Connie Tyler

13. Liz Wiener

14. Osha Neumann, on behalf of the East Bay Community Law Center

15. Russbumper (2)

Playground Closures

16. Tracy Hollander

Street Closures & COVID-19

17. Aaron Stein-Chester

18. Michael Katz

Here/There Encampment

19. Toan Nguyen

20. Jacquelyn McCormick

Harriet Tubman Terrace

21. Mary Behm-Steinberg

22. Darinxoso Oyamasela (2)

Criminal Inducement/City of Berkeley

23. Artur Stopes III

Housing Instead of Parking at Berkeley High School

24. Dorothy Walker

TV & Cable Channels For Schools

25. Adolfo Cabral

Right to Rescue

26. Lynn Yarbrough

Upgrading Electricity Accounts City Citywide

27. Tom Kelly

Undergrounding Emergency Evacuation

28. Victoria Legg

Shattuck East Street Naming

29. Rani Bagai

COVID-19 Miscellaneous

30. Sabina McMurtry
31. Friends of Adeline
32. William Rosen
33. Thomas Lord
34. Russbumper (2)
35. James McFadden
36. Bryce Nesbitt
37. Margot (2)
38. Michael Cooper
39. Ben Glickstein
40. Stanton Glantz
41. Melissa Hartman
42. William Rosen
43. LA Wood
44. David Lerman (2)
45. Ramsay Breslin
46. Lena Nitsan
47. Chimey Lee
48. Teresa Clarke
49. Twenty-two signees

Adult School Lot

50. AJ Gilbert (2)
51. Councilmember Kesarwani

Parking Tickets During COVID-19

52. Kent Rasmussen

Luna Dance Institute

53. Cherie Hill

Solano Stroll

54. Elizabeth Bronson

Tree Work Exemption Shelter-in-Place

55. Joe Lamb, on behalf of Brende and Lamb

Police Oversight Committee

56. Natasha Robinson

5G

57. Vivian Warkentin (2)

Cannabis Dispensaries Open During Shelter-in-Place

58. Don Duncan, on behalf of Patients Care Collective (2)
59. Kathryn Reiter

- 60. Geoffrey Lomax
- 61. Amber Morris
- 62. Thomas Lord

Berkeley Relief Fund

- 63. Sharon Dolan, on behalf of Freight & Salvage

Senior Retirement Income

- 64. Barbara Transue

Berkeley Considers

Item 26 (from March 24 Cancelled Meeting): Adopt a Resolution to Upgrade Residential and Commercial Customers to a 100% Greenhouse Gas Emissions-Free Electricity Plan and to Upgrade Municipal Accounts to a 100% Renewable Plan

- 65. 1 Communication submitted via Berkeley Considers, includes summary information

Supplemental Communications and Reports

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

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



Office of the City Manager

01

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services
Subject: Contract: Sonya Dublin Consulting as the External Evaluator for Public Health Division, Tobacco Prevention Program

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract and any amendments with Sonya Dublin Consulting as the External Evaluator for Health, Housing and Community Services Public Health Division's Tobacco Prevention Program, in an amount not to exceed \$93,600, for a term ending June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the external evaluator is available through Local Lead Agency funding through California Tobacco Control Program (CTCP). Total funds available in FY 2020 \$62,400 and funds available in FY 2021 total \$31,200 in budget code 157-51-506-559-2053-000-451-612990 (\$93,600 total).

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives funding from the California Tobacco Program as a Local Lead Agency and is required to contract with an external evaluator as part of the program's contract deliverables.

BACKGROUND

As a Local Lead Agency receiving funding from the California Tobacco Program, the City of Berkeley is required to contract with an external evaluator that is responsible for designing the evaluation plan and providing consultation on the entire scope of work; developing data collection instruments, protocols, and methodology; analyzing data; and preparing evaluation reports. The external evaluator reports to the Tobacco Control Program Director, will work in partnership with the Internal Evaluator, and will execute a variety of evaluation-related tasks. On November 12, 2019, the City of Berkeley City Council approved the formal bid for an external evaluator for the Tobacco Prevention Program. An RFP was released to potential bidders on November 14, 2019 and closed December 3, 2019. The ranking and selection process concluded on December 20, 2019 and Sonya Dublin Consulting was ranked as the top proposal submitted.

Approval for Sonya Dublin Consulting Contract, External Evaluator, Public Health Division,
Tobacco Prevention Program

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Execution of this contract will allow the City of Berkeley's Tobacco Prevention Program to comply with the California Tobacco Control Program's external evaluator requirement as a Local Lead Agency awardee.

ALTERNATIVE ACTIONS CONSIDERED

Failure to contract with an external evaluator would render the City of Berkeley's Tobacco Prevention Program unable to complete program deliverables and would place the City of Berkeley out of compliance with its contract with the State.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5121

Attachments:

1: Resolution

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

CONTRACT NO. 20-11358C: SONYA DUBLIN CONSULTING FOR THE PROVISION OF EXTERNAL EVALUATOR FOR THE HEALTH, HOUSING AND COMMUNITY SERVICES PUBLIC HEALTH DIVISION'S TOBACCO PROGRAM

WHEREAS the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, as a State funded LLA grantee, fosters collaboration and engagement in grassroots community mobilization activities to support social norm change and education to reduce tobacco use and address the tobacco industry strategies through a comprehensive tobacco control plan.

WHEREAS, on December 3, 2019, two proposals were submitted and a review panel determined Sonya Dublin Consulting best matched the selection criteria; and

WHEREAS, Local Lead Agency funding is available through the California Tobacco Control Program (CTCP) for FY20-FY21 in budget code 157-51-506-559-2053-000-451-612990 (\$93,600 total).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager or her designee to execute a contract and any amendments with Sonya Dublin Consulting to provide external evaluation services for the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program through June 30, 2021 in a total amount not to exceed \$93,600. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

02

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Contract: Lind Marine for Removal of Derelict and Abandoned Vessels at the Berkeley Marina

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager or her designee during recess to execute a contract and any amendments with Lind Marine for the removal and disposal of derelict and abandoned vessels at the Berkeley Marina in an amount not-to-exceed of \$104,400; and authorize a contingency in the amount of \$38,600.

FISCAL IMPACTS OF RECOMMENDATION

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 requires a local match of 10% (\$13,000) (Resolution No. 68,791-N.S. On March 26, 2019). Grant funds have been budgeted in account code 607-52-544-592-0000-000-472-612990-PRWWF20006, and the local match has been budgeted in the Marina Fund account code 608-52-544-592-0000-000-472-612990-PRWWF20006. These funds, totaling \$143,000, will be appropriated as part of the Third Amendment to the FY 2020 Annual Appropriations Ordinance in May 2020.

Through a competitive Request For Proposal (RFP) process, Lind Marine was selected to remove and dispose derelict and abandoned vessels at the Berkeley Marina a cost of \$104,400. The remaining grant funding and local match totaling \$38,600 will act as a contingency to cover unforeseen circumstances and future abandoned vessel removals that arise between now and the expiration of the grant in September 30, 2021.

CURRENT SITUATION AND ITS EFFECTS

There are currently 21 vessels at the Berkeley Marina that were either abandoned by their owners, or liened and retitled to the City in accordance with California statutes for non-payment of dockage fees. These vessels occupy slips in the Berkeley Marina that could otherwise provide recreational opportunities for Berkeley residents and generate revenue for the City. The vessels have virtually no value due to age and neglect, and

most require regular dewatering by Marina staff and are in danger of sinking. 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. Contingency funds will be used to remove additional abandoned vessels that become abandoned in the Marina between now and September 30, 2021.

BACKGROUND

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. Execution of this contract will allow the City to properly remove and dispose of 21 vessels that pose a potential environmental hazard to our local waters, and serve as a blight at the Berkeley Marina.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 981-6737
Sean Crothers, Harbormaster, 981-6744

Attachments:

1. Resolution

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

CONTRACT: LIND MARINE, INC. FOR BERKELEY MARINA DERELICT VESSEL
REMOVAL PROJECT SPECIFICATION NO. 19-11297-C

WHEREAS, there are currently 21 vessels at the Berkeley Marina that were either abandoned by their owners, or liened and retitled to the City in accordance with California statutes for non-payment of dockage fees; and

WHEREAS, these vessels occupy slips in the Berkeley Marina that could otherwise provide recreational opportunities for Berkeley residents and generate revenue for the City. The vessels have little or no value due to age and neglect, and many are in danger of sinking and require regular dewatering by Marina staff; and

WHEREAS, 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 requires a local match of 10% (\$13,000) (Resolution No. 68,791-N.S. on March 26, 2019). Grant funds have been budgeted in account code 607-52-544-592-0000-000-472-612990-PRWWF20006, and the local match has been budgeted in the Marina Fund account code 608-52-544-592-0000-000-472-612990-PRWWF20006. These funds, totaling \$143,000, will be appropriated as part of the Third Amendment to the FY2020 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 and will perform the work for the contract amount of \$104,400. The remaining grant funding and local match totaling \$38,600 will act as a contingency to cover unforeseen circumstances and future vessel removal needs that arise between now and the expiration of the grant in September 30, 2021.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager or her designee to execute a contract and any amendments with Lind Marine in the amount not-to-exceed \$104,400, and that a contingency in the amount of \$38,600 is authorized. A record signature copy of said contract will be on file in the Office of the City Clerk.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront
Subject: Contract No. 31900160 Amendment: Affordable Painting Services, Inc. for Additional Painting of Various Park Buildings

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 31900160 with Affordable Painting Service, Inc. for additional painting of various Park buildings by increasing the construction contract amount by \$127,200 for a not-to-exceed amount of \$305,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the construction contract amendment in the amount of \$127,200 is available in FY2020 Capital Improvements Fund and Parks Tax Fund budget, as detailed below:

Capital Improvement Fund (501-52-545-000-0000-000-461-624110- PRWWF20004).....	\$76,600
Parks Tax Fund (138-52-545-000-0000-000-461-624110-PRWPK20001)	\$50,600
Total Funding	\$127,200

CURRENT SITUATION AND ITS EFFECTS

The City has a current contract with Affordable Painting Services Inc. for work in the amount of \$177,800. Staff has identified the need to do additional improvements and emergency repairs to Berkeley Marina restroom facilities as well as painting of directional and informational signage throughout the Marina. Affordable Painting Services Inc. has agreed to the same unit price for this additional work. These prices were the lowest obtained through the competitive bid process. Amending the construction contract provides the City with a cost- effective way to perform this additional work on Berkeley Marina restrooms and facilities.

BACKGROUND

In January 2019, the City solicited proposals for the construction repairs and painting of Hana Japan, HS Lordships and various buildings (Spec No. 19-11304). Among the eight firms solicited for proposals, the City identified Affordable Painting Services Inc. as

the lowest responsive and responsible bidder and executed a construction contract on May 17, 2019.

ENVIRONMENTAL SUSTAINABILITY

The construction contract includes requirements to comply with the City’s Environmentally Preferable Purchasing Policy. The project involves the repair, painting and improvement to Marina restroom facilities and area signage and will not negatively affect the areas natural habitat.

RATIONALE FOR RECOMMENDATION

The FY2020 budget includes an allocation of Capital Improvement Funds and Parks Tax funds for additional improvements and emergency repairs to four (4) Berkeley Marina restroom facilities as well as directional and informational signage throughout the Marina. Affordable Painting Services Inc. has agreed to the same unit price for this additional work, and the City does not have the in-house labor or equipment resources to perform this work.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront Department, 981-6700
Bruce Pratt, Parks Superintendent, 981-6700

Attachments:

1: Resolution

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

CONTRACT NO. 31900160 AMENDMENT: AFFORDABLE PAINTING SERVICE, INC
FOR ADDITIONAL PAINTING OF VARIOUS PARK BUILDINGS

WHEREAS, in January 2019, the City solicited proposals for the construction repairs and painting of Hana Japan, HS Lordships and various buildings (Spec No. 19-11304). Among the eight firms solicited for proposals, the City identified Affordable Painting Services Inc. as the lowest responsive and responsible bidder and executed a construction contract on May 17, 2019; and

WHEREAS, staff has identified the need to do additional improvements and emergency repairs to Berkeley Marina restroom facilities as well as painting of directional and informational signage throughout the Marina. Affordable Painting Services Inc. has agreed to the same unit price for this additional work; and

WHEREAS, funding for the construction contract amendment in the amount of \$127,200 is available in FY2020 Capital Improvements Fund and Parks Tax Fund budget, as follows: Capital Improvement Fund (501-52-545-000-0000-000-461-624110-PRWWF20004), \$76,600, and the Parks Tax Fund (138-52-545-000-0000-000-461-624110), \$50,600.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to amend Contract No. 31900160 with Affordable Painting Services Inc. for additional improvements and emergency repairs to four (4) Berkeley Marina restroom facilities as well as directional and informational signage throughout the Marina by increasing the construction contract amount by \$127,200 for a not-to-exceed amount of \$305,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Contract No. 31900202 Amendment: Bay Area Tree Specialists for As-Needed Tree Services

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for an amended total not-to-exceed amount of \$500,000 for a contract term of May 29, 2019 through May 28, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment of \$300,000 is available in the Fiscal Year (FY) 2020 budget in the Parks Tax Fund (138-52-542-566-0000-000-461-612990) and the General Fund (011-52-542-567-0000-000-461-612990).

CURRENT SITUATION AND ITS EFFECTS

The City currently has contracts with four tree services contractors in order to cover essential tree services on a timely and emergency basis throughout the year¹. This work involves tree and stump removals and tree pruning throughout the City during normal and storm conditions on the public right of way, street medians, and pathways, and in public parks. To date, staff has identified additional tree work that is required in order to reduce fire fuel and improve public safety through FY 2021. Staff solicited proposals from the four current tree service contractors and selected Bay Area Tree Specialists as the most cost effective proposal. In order to perform this additional work, staff recommends Council approval of a contract amendment with Bay Area Tree Specialists (BATS) in the amount of \$300,000 for a new not-to-exceed contract amount of \$500,000 (See contract number

¹ Bay Area Tree Specialists (Resolution 68,972); Hamilton Tree Service, Inc. (Reso 68,928); The Professional Tree Care Company (Reso 68,929); and West Coast Arborists, Inc. (Reso 68,930).

31900202, Resolution No. 68,927-N.S., June 14, 2019). To-date, BATS contractor has successfully completed tree removals at Codornices Park and along Wildcat Canyon Road, near Woodmont Avenue. Over the next three years, there will be additional tree work needed, and staff will solicit proposals for this work from the four current tree service contractors.

BACKGROUND

In April 2019, the City conducted a Request for Qualifications (RFQ) process to obtain qualified contractors to provide tree services on an as-needed basis. The City determined that four tree services contractors met the requirements in the RFQ and executed four service contracts, at \$200,000 per contract (see footnote 1 above).

ENVIRONMENTAL SUSTAINABILITY

The maintenance of the urban forest and the prevention of destructive urban fires are essential in meeting the City's Climate Action Goals over the long term.

RATIONALE FOR RECOMMENDATION

Staff has identified trees to be removed and pruned at various parks, on City paths, and along the public right of way which will reduce the fire fuel load and improve public safety. Staff solicited bids from the four tree service contractors currently under contract with the City, and Bay Area Tree Specialists submitted the most cost-effective proposal to perform the additional work. The City does not have the in-house labor or equipment resources to complete these jobs in an efficient manner.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 981-6632
Dan Gallagher, Senior Forestry Supervisor, 981-6687

Attachments:

1: Resolution

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

CONTRACT NO. 31900202 AMENDMENT: BAY AREA TREE SPECIALISTS FOR AS-NEEDED TREE SERVICES

WHEREAS, In April 2019, the City conducted a Request for Qualifications (RFQ) process to obtain qualified contractors to provide tree services on an as-needed basis. The City determined that four tree services contractors met the requirements in the RFQ and executed four service contracts, at \$200,000 per contract: Bay Area Tree Specialists (Resolution 68,972); Hamilton Tree Service, Inc. (Reso 68,928); The Professional Tree Care Company (Reso 68,929); and West Coast Arborists, Inc. (Reso 68,930); and

WHEREAS, to-date, staff has identified trees to be removed to reduce the fire fuel load and other trees to be pruned to improve the health and safety of the urban forest; and

WHEREAS, to date, staff has identified additional tree work that is required in order to reduce fire fuel and improve public safety through FY 2021. Staff solicited proposals from the four current tree service contractors and selected Bay Area Tree Specialists as the most cost effective proposal; and

WHEREAS, funding for this contract amendment of \$300,000 is available in the Fiscal Year (FY) 2020 budget from the Parks Tax Fund (138) and the General Fund (011).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute an amendment to Contract No. 31900202 with Bay Area Tree Specialists for as-needed tree services, increasing the amount by \$300,000 for an amended total amount not to exceed \$500,000 for a contract term of May 29, 2019 through May 28, 2022.



Office of the City Manager

05

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront
Subject: Contract No. 32000019 Amendment: ERA Construction Inc. for Additional Concrete Repair Work in Parks and Along Pathways

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32000019 with ERA Construction Inc. for additional concrete repair work on City parks and pathways by increasing the construction contract amount by \$204,152 for a not-to-exceed amount of \$375,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the construction contract amendment in the amount of \$204,152 is available in the FY 2020 Parks Tax Fund and General Fund fire fuel budget allocations.

General Fund (011-54-625-711-0000-000-431-642990).....\$112,000
Parks Tax Fund (138-52-542-568-0000-000-461-663110- PRWPK20001).....\$92,152

CURRENT SITUATION AND ITS EFFECTS

The City has a current contract with ERA Construction for facilities and forestry concrete work in the amount of \$170,848. Staff has identified safety concerns that require additional concrete repair work in parks and hillside pathways, and ERA Construction Inc. has agreed to perform this additional work at the same unit price in the current contract. Amending the construction contract provides the city with a cost-effective way to perform this additional work on City parks and pathways.

BACKGROUND

In May 2019, the City advertised for construction work to repair concrete infrastructure in parks and pathways as well as concrete removals at future tree well locations for additional tree plantings (Spec No. 19-11314). Eleven firms were solicited, and the City identified ERA Construction Inc. as the lowest responsive and responsible bidder and executed a construction contract on August 1, 2019.

ENVIRONMENTAL SUSTAINABILITY

The construction contract includes requirements to comply with the City's Environmentally Preferable Purchasing Policy. The project involves the repair and replacement of concrete infrastructure in Parks, along pathways and for future tree planting locations and will not negatively affect the areas natural habitat.

RATIONALE FOR RECOMMENDATION

ERA Construction Inc. has successfully performed this concrete work under current contract, and the City does not have the in-house labor or equipment resources to perform this work.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront Department, 981-6700
Bruce Pratt, Parks Superintendent, 981-6700

Attachments:

1: Resolution

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

CONTRACT NO. 3200019 AMENDMENT: ERA CONSTRUCTION INC. FOR
ADDITIONAL CONCRETE WORK IN PARKS AND ALONG PATHWAYS

WHEREAS, in May 2019, the City advertised for construction work to repair concrete infrastructure in parks and pathways as well as concrete removals at future tree well locations for additional tree plantings (Spec No. 19-11314). Eleven firms were solicited, and the City identified ERA Construction Inc. as the lowest responsive and responsible bidder and executed a construction contract on August 1, 2019; and

WHEREAS, staff has identified safety concerns that require additional concrete repair work in parks and hillside pathways, and ERA Construction Inc. has agreed to perform this additional work at the same unit price in the current contract; and

WHEREAS, funding for the construction contract amendment in the amount of \$300,000 is available in the FY2020 General Fund and Parks Tax Fund as follows: General Fund (011-54-625-711-0000-000-431-642990), \$112,000, and the Parks Tax Fund (138-52-542-568-0000-000-461-663110- PRWPK20001), \$92,152.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to amend Contract No. 3200019 with ERA Construction Inc. for additional concrete repair work on City parks, pathways and tree planting locations by increasing the construction contract amount by \$204,152 for a not-to-exceed amount of \$375,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Contract: Ghilotti Construction Company, Inc. for Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to:

1. Approve the plans and specifications for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project, Specification No. 19-11294-C; and
2. Waive an inconsequential defect and accepting the bid of the lowest responsive and responsible bidder, Ghilotti Construction Company, Inc.; and
3. 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 Ghilotti Construction Company, Inc., for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project at 1200-1201 Euclid Avenue, Berkeley, CA 94708, in an amount not to exceed \$3,491,917, which includes a contract amount of \$3,174,470 and a 10% contingency in the amount of \$317,447.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

The Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project is funded by the Measure T1 Phase 1 bond program, which requires that Phase 1 projects be 85% completed by November 2020.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the Measure T1 Fund, Parks Tax Fund, and Capital Improvements General Fund, and will be included in the third annual appropriations ordinance of FY20. No other funding is required, and no other projects will be delayed due to this expenditure.

Ghilotti Construction Company (lowest bid).....	\$2,858,470
Bid Additives 1 and 2	\$316,000
Total contract amount.....	\$3,174,470
10% Contingency	\$317,447
<hr/>	
Total construction cost	\$3,491,917

Measure T1 Fund\$3,074,470
(511-52-545-000-0000-000-461-663110-PRWT119012)

Parks Tax Fund.....	\$317,447
(138-52-545-000-0000-000-461-663110-PRWT119012)	
Capital Improvements General Fund.....	\$100,000
(501-52-545-000-0000-000-461-663110-PRWT119012)	
<hr/>	
Total funding	\$3,491,917

CURRENT SITUATION AND ITS EFFECTS

This improvement project is at Berkeley Rose Garden, located at 1200 Euclid Avenue, with ancillary work at Codornices Park, located at 1201 Euclid Avenue, and improvements to Codornices Creek at 1231 Glen Avenue.

The Berkeley Rose Garden was built in 1937, and was designated as a City of Berkeley Historical Landmark in 1995. From 2016-2017, the City performed initial efforts to renovate the site by demolishing the existing historic pergola which was in disrepair, reconstructing a portion of the historic pergola, and making several ADA access and site improvements to the site. This project will complete the reconstruction of the historic redwood pergola.

The work to be done also includes, but is not limited to, providing ADA-compliant access through Codornices Park to the Rose Garden pergola, demolishing and reconstructing existing historic retaining walls, repairing tennis courts and pathways, repairing erosion at the lower portion of Codornices Creek, renovating the Rose Garden restroom for ADA compliance, new fencing, flagstone paving, handrails, signage, and providing several site and access improvements throughout the site.

The contract will include a 10% contingency to cover related unexpected or miscellaneous construction services. The term of the contract is 180 calendar days, which includes a performance period of 150 days and an additional 30 days for project closeout.

BACKGROUND

The project was advertised for bids on Monday, January 13, 2020, and bids were opened on February 11, 2020. The City received three bids, from a low bid of \$2,858,470 to a high bid of \$4,339,989 for base bid work, and from \$3,174,470 to \$4,643,522 for the base bid plus additive Bid Alternates 1 and 2. The determination of the lowest responsive and responsible bidder was based on the price for base bid work, as indicated in the bid documents.

Ghilotti Construction Company, Inc. was the lowest responsive and responsible bidder. It should be noted that in Ghilotti Construction Company’s bid, the base bid was incorrectly indicated as \$2,870,470 rather than \$2,858,470, or a difference of \$12,000. The math error was in the final addition of bid amounts per the bid schedule. Since the variance is an inconsequential defect and does not provide Ghilotti Construction Company with a competitive advantage in the bidding process, the City Council may waive the defect. Staff conducted references checks and received satisfactory feedback. Staff recommends that a contract for this project be awarded to Ghilotti Construction Company.

The Living Wage Ordinance does not apply to this project since construction contracts are, pursuant to City policy, subject to State prevailing wage laws. The contractor will need to submit a Certification of Compliance for the Equal Benefits Ordinance. The contract will be subject to the Community Workforce Agreement.

ENVIRONMENTAL SUSTAINABILITY

The construction contract includes requirements to comply with the City's Environmentally Preferable Purchasing Policy. The project is a renovation of a developed urban site and therefore will not negatively affect natural habitat.

RATIONALE FOR RECOMMENDATION

The reconstruction of the Berkeley Rose Garden Pergola and renovation of several park amenities are needed as part of the City's ongoing program to repair, renovate, and improve accessibility at non-compliant or aging Parks facilities. The City does not have in-house labor or equipment resources to complete this renovation project.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Evelyn Chan, Supervising Civil Engineer, Parks Recreation & Waterfront, 981-6430

Attachments:

- 1: Resolution
- 2: Bid Results

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

CONTRACT: GHILOTTI CONSTRUCTION COMPANY, INC. FOR THE BERKELEY ROSE GARDEN PERGOLA RECONSTRUCTION AND SITE IMPROVEMENTS PROJECT

WHEREAS, the Berkeley Rose Garden is in need of several site improvements including the reconstruction of the historic redwood Pergola; and

WHEREAS, the City has neither the in-house labor nor the equipment necessary to undertake this project; and

WHEREAS, an invitation for bids was duly advertised on January 13, 2020, bids were opened on February 11, 2020, and the City received three bids; and

WHEREAS, Ghilotti Construction Company's bid incorrectly indicated a base bid price of \$2,870,470 rather than \$2,858,470, and this variance is an inconsequential defect and does not provide Ghilotti Construction Company with a competitive advantage in the bidding process; and

WHEREAS, Ghilotti Construction Company submitted costs for additive bid alternates (Bid Items BA1 and BA2); and

WHEREAS, Ghilotti Construction Company, Inc. was determined to be the lowest responsive and responsible bidder, and references for Ghilotti Construction Company, Inc. were provided and checked out satisfactorily; and

WHEREAS, funding is available in the Measure T1 Fund (Fund 511), the Parks Tax Fund (Fund 138) and the Capital Improvements General Fund (Fund 501)

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 19-11294-C for the Berkeley Rose Garden Pergola Reconstruction and Site Improvements Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley waives the aforementioned inconsequential defect in the bid from Ghilotti Construction Company, Inc., and the construction contract is awarded to Ghilotti Construction Company, Inc. as the lowest responsive and responsible bidder for a total contract amount of \$3,174,470, which includes the base bid plus bid alternates BA1 and BA2; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley ratifies the action taken by the City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications with Ghilotti Construction Company, Inc. for the Berkeley Rose Garden Pergola Rose Garden Reconstruction and Site Improvements Project in an amount not to exceed \$3,491,917, which includes a contract amount of \$3,174,470 and a 10%

contingency in the amount of \$317,447 for unforeseen circumstances. 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 Bids Worksheet

Finance Department
General Service Division

For: Berkeley Rose Garden Pergola Reconstruction & Site Improvements

Specification#: 19-11294-C

Engineer's Estimate:

Bid Date:

	Bidders	Base Bid	Nuc Free	Work Force Comp	Opp. States	Living Wage	EBO	Bid Bond	Addenda
1	BAY CONSTRUCTION CO	3,405,588.00							✓
2	SHILOTTI CO	2,870,470.00						✓	✓
3	SABOO INC.	4,339,989.00						✓	✓
4									
5									
6									
7									
8									
9									
10									

Bid Recorder: [Signature] 2/11/2020

Bid Opener: [Signature] 2/11/20

Project Manager: [Signature] 2/11/2020



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director of Parks Recreation & Waterfront
Subject: Contract: Vol Ten Corporation DBA Delta Charter for Recreation Division Bus Transportation for Day Camp and Summer Programs

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract with Vol Ten Corporation DBA Delta Charter to provide bus transportation services for Recreation Division Day Camp and summer programs for a not-to-exceed total amount of \$600,000 over a five year period, beginning June 1, 2020 and ending June 1, 2025, contingent upon annual budget appropriations.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

The Recreation Division’s Day Camp and Summer Programs are scheduled to be up and running before June 1, 2020. In order to have bus transportation service for youth enrolled in these programs, a contract with Delta Charter must be executed in a timely manner.

FISCAL IMPACTS OF RECOMMENDATION

The \$600,000 over a five year period averages out to an annual cost of approximately \$120,000 per year, depending on program needs and the number of scheduled trips. Funds in the amount of \$120,000 will be budgeted annually in the Camps Fund and General Fund, and are included in the FY20 budget as follows: \$22,500 from Berkeley Day Camp (Camps Fund) (125-52-543-584-0000-000-461-625120-); no funds are needed from the General Fund for FY20. For FY21, \$99,000 will be budgeted in the Camps Fund, and \$21,000 will be budgeted in the General Fund. Funding for services provided under the contract is contingent upon annual budget appropriations.

CURRENT SITUATION AND ITS EFFECTS

In February 2020, the City conducted a Request For Proposal (RFP) process for Bus Transportation Services For Recreation Division Day Camp and Summer Program needs. More than 30 vendors were invited to submit proposals. The City received two (2) proposals. Staff determined that Vol Ten Corporation DBA Delta Charter’s proposal best meets the criteria described in the RFP. As a result, staff recommends Council

approval of a contract for a not-to-exceed total amount of \$600,000 for a five-year period beginning June 1, 2020 and ending June 1, 2025.

BACKGROUND

The City of Berkeley Day Camp and several Recreation Division summer camp program field trips require bus transportation as part of the programs. The City has previously entered into contract for bus transportation services for these programs. In 2011 and 2014, the City obtained quotes for bus transportation services and selected Berkeley Unified School District for contract services. In 2019, the City obtained quotes for bus transportation services and selected First Student, Inc. for a 1-year term contact service.

ENVIRONMENTAL SUSTAINABILITY

By providing bus transportation to and from camp programs the number of cars on the road is reduced as are carbon emissions.

RATIONALE FOR RECOMMENDATION

Vol Ten Corporation DBA Delta Charter was determined to best meet the criteria described in the RFP for bus service for the City's bus transportation for Recreation Division Day Camp and Summer Program needs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Denise Brown, Recreation and Youth Services Manager, 981-6707

Attachments:

1: Resolution



08

Office of the City Manager

RECESS ITEM
CONSENT CALENDER
 April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: Increase of Authorized Funding: Contract No. 8051 for Police Department Substation, 841 Folger Street/3000 Seventh Street

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to increase the amount of funding authorized under Contract No. 8051 by \$250,000 from \$1,995,725.99 to \$2,245,725.99 for rental of the property at 841 Folger Street/3000 Seventh Street.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

The Police Department will not be able to pay the rent for its Traffic Substation at 841 Folger Street/3000 Seventh Street since the authorized amount of funding for Contract No. 8051 has been expended.

FISCAL IMPACTS OF RECOMMENDATION

This request involves an increase of authorized funding in the amount of \$250,000 to Contract No. 8051 for a not to exceed total of \$2,245,725.99. The increased funding will allow the City to continue to pay the current monthly rent of \$18,225.00 for the next twelve months if needed.

Expenditures for the lease will continue to be funded by the General Fund (40%), budget code 011-71-703-812-0000-000-421-625110, and the Parking Meter Fund (60%), budget code 631-71-703-812-0000-000-474-625110.

CURRENT SITUATION AND ITS EFFECTS

The Police Department is preparing to move its Traffic Substation from 841 Folger Street/3000 Seventh Street to 125/127 University Avenue. Planned installation of fencing and required ADA upgrades to the property at 125/127 University Avenue initially scheduled for completion in February 2020 have been delayed until at least August 2020. The Police Department's lease with Sasha Shamszad for the Traffic Substation at 841 Folger Street/3000 Seventh Street is currently on a month to month basis. At this time, the cumulative contract amount has been fully expended; and therefore, unable to pay the monthly rent of \$18,225.00 without an increase in authorized funding.

Increase of Authorized Funding: Police Department Substation,
841 Folger Street/3000 Seventh Street

CONSENT CALENDER
April 14, 2020

This item seeks Council's approval that will authorize the City Manager to increase the authorized funding amount for Contract No. 8051 by \$250,000. The increased funding authorization will allow the Police Department to continue to pay the monthly rent for the use of 841 Folger Street/3000 Seventh Street until the work at the new facility has been completed.

BACKGROUND

The Police Department Substation moved from 3140 Martin Luther King Jr Way to 841 Folger Street in July of 2009. In February of 2018, the Berkeley Police Department began exploring whether it would make sense to move the location of the Traffic Substation when the current lease expired in July of 2019. After reviewing several different options the decision was made to move to 125/127 University Avenue.

City Staff identified several modifications to 125/127 University Avenue that would need to be completed prior to the move. These modifications included upgrading the restroom facilities to comply with ADA rules and building a fenced parking area for City Vehicles.

These projects were scheduled for completion in February of 2020, however have been delayed until at least August of 2020.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Due to the aforementioned delay of the required construction projects, the move from one facility to another cannot be completed as soon as had been planned and as a result the authorized funding threshold has been exhausted. This amendment will secure funding through December of 2020 in the event construction delays extend further.

ALTERNATIVE ACTIONS CONSIDERED

Staff discussed this issue with the Finance Department; however, this was the most prudent legal option available.

CONTACT PERSON

Andrew Greenwood, Chief of Police, 981-5700

Attachments:

1: Resolution

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

INCREASE OF AUTHORIZED FUNDING: CONTRACT NO. 8051 FOR POLICE DEPARTMENT SUBSTATION, 841 FOLGER STREET/3000 SEVENTH STREET

WHEREAS, The Berkeley Police Department is currently leasing 841 Folger Street/3000 Seventh Street for its Traffic Substation on a month to month basis until construction is completed at 125/127 University Avenue; and

WHEREAS, construction delays have pushed the projected move in date at 125/127 University Avenue from February 2020 until at least August 2020; and

WHEREAS, on July 15, 2009, the City entered into a contract with Sasha Shamszad to lease the property at 841 Folger Street/3000 Seventh Street for five years for a total amount not to exceed \$892,351.27 (Contract No. 8051) for a contract period expiring July 15,2014; and

WHEREAS, on June 27,2014, the City exercised its right to a five year option term to lease the property at 841 Folger Street/3000 Seventh Street for a total amount not to exceed \$1,103,374.72 (Contract No. 8051A) ; and

WHEREAS, Contract No. 8051 contains a holdover clause that allows the tenancy to continue on a month to month basis terminable on (30) days' Notice given at any time by either party; and

WHEREAS, Contract No. 8051 has reached the authorized total not to exceed amount of \$1,995,725.99 and is needed to continue paying rent at 841Folger Street/3000 Seventh Street until the construction has been completed at 125/127 University Avenue; and

WHEREAS, funds for the additional rent costs in the amount of \$250,000 will be provided from the following funds: General Fund (40%), budget code 011-71-703-812-0000-000-421-625110, and the Parking Meter Fund (60%), budget code 631-71-703-812-0000-000-474-625110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute an amendment to Contract No. 8051 with Sasha Shamszad, in an amount of \$250,000 for a total contract amount not to exceed \$2,245,725.99 for rental of the property at 841 Folger Street/3000 Seventh Street.



Office of the City Manager

09

RECESS ITEM
CONSENT CALENDAR
 April 14, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Phillip L. Harrington, Director, Department of Public Works
 Subject: Contract No. 31900071 Amendment: Bigbelly Solar Compacting Trash and Recycling Receptacles

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute an amendment to Contract No. 31900071 for nineteen (19) additional Bigbelly Solar, Inc. manufactured Solar Compacting Trash and Recycling Receptacles for Department of Public Works - Zero Waste Division; increasing the original contract amount by \$162,568.16 for an amended total not-to-exceed amount of \$233,868.16. The contract term remains August 1, 2018 to June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this program in the contract amendment amount of \$162,568.16 is available in FY2020 budget in Measure D Fund (341) budget code 341-54-627-732-3025-000-431-612990.

For some time, the City and the Downtown Berkeley Association (DBA) have held ongoing discussions regarding the purchase and placement of solar compacting trash and recycling receptacles¹ to replace the City's traditional green litter cans. As a result, the DBA has agreed to reimburse the City for 50% of all costs associated with the purchase of these nineteen (19) Bigbelly solar compacting units, operation and maintenance costs associated with these units.

CURRENT SITUATION AND ITS EFFECTS

On July 18, 2018 by Resolution No. 68,558 - N.S., Council approved the pilot program to purchase and install ten (10) Bigbelly solar compacting trash/litter receptacles with a companion recycling (non-compacting). With the aesthetic value of that initial program proven, the Zero Waste Division is seeking Council approval for the placement of nineteen (19) additional receptacles throughout the Downtown

¹ DBA is an independent nonprofit organization funded by Downtown Berkeley property owners focused on creating a welcoming, vibrant and prosperous City Center

Berkeley commercial area. The authority to purchase these supplemental units was included in the original April 24, 2018 Request for Proposals (RFP) for Solar Compacting Trash and Recycling Receptacles.

Bigbelly's Standard Container Model SC5.5 (Model SC5.5) is a smart, fullness-sensing waste (litter) station that may hold two to three times the capacity of a traditional litter can. It is battery powered and recharge by solar energy and equipped with sensors that monitor and report fullness levels and collection activity to communicate its status in real-time using an integrated software platform. The Model SC5.5 has an enclosed hopper option for total waste containment on the litter compacting side of the unit, which eliminate storm water entering and exiting the unit. It can also services a single stream collection system for mixed paper, bottles & containers for recycling. With the City's commitment to dual stream recycling, the face plate of the recycling side of the unit will only allow recycling of bottles and containers. The units are durable and weather resistant with electronic components that can withstand a temperature range of -40°F to +185°F (-40°C to +85°C). They also offer several safety features including a locked front door accessible to collection and service personnel using a key.

Bigbelly Solar Compacting Trash and Recycling Receptacles with assist a Strategic Plan priority project, advancing the City's goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment by providing improved opportunities for general public recycling.

BACKGROUND

On April 24, 2018, the City released an RFP for the purchase, delivery and installation of up to thirty (30) solar compacting trash and recycling receptacle stations. Although the City received responsive proposals from two qualified vendors, staff review of the proposals revealed both companies lacked long-term operating history. Thus, on July 18, 2018, Council approved a pilot program to evaluate ten (10) units in the field, rather than deploying all units approved in the RFP.

ENVIRONMENTAL SUSTAINABILITY

The Bigbelly unit's dual (litter in one separate side and recycling on the other side) litter cans offers the general public expanded opportunity to recycle bottles and containers which will assist the City in achieving a higher diversion rate, and realizing its zero waste and climate action plan goals.

RATIONALE FOR RECOMMENDATION

The City does not have in-house staff available to build and place solar compacting and recycling receptacles. City Staff solicited and selected the most responsive and qualified firms to place these receptacles. The ten (10) unit pilot program in the Shattuck Avenue and Telegraph Avenue commercial corridors is ongoing and has allowed the diversion of additional bottles and containers from the waste stream that would otherwise be landfilled. It has provided information that supports the

placement of up to twenty (20) additional solar compacting and recycling receptacles in Downtown Berkeley area. The Bigbelly units have demonstrated that trash compaction within the receptacle does allow more litter from the general public to be deposited versus the City's traditional green litter cans.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager, Department of Public Works, (510) 981-6359

Attachments:

1: Resolution

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

CONTRACT No. 31900071 AMENDMENT: BIGBELLY SOLAR COMPACTING TRASH AND RECYCLING RECEPTACLES

WHEREAS, on April 24, 2018 the City of Berkeley released a Request For Proposals Specification No. 18-11191-C for the purchase, delivery and installation of up to thirty solar compacting trash and recycling receptacle stations; and

WHEREAS, On July 18, 2018 by Resolution No. 68,558 - N.S., Council approved the pilot program to purchase and install ten Bigbelly solar compacting trash/litter receptacles with companion recycling (non-compacting); and

WHEREAS, the pilot program in the Shattuck Avenue and Telegraph Avenue commercial corridors was successful and has provided more opportunities for individual general public recycling; and

WHEREAS, the pilot program provided information supporting the placement of up to twenty additional solar compacting and recycling receptacles in the Downtown Berkeley Association commercial corridor; and

WHEREAS, funding for this equipment in the contract amendment amount of \$162,568.16 is available in FY2020 budget in Measure D Fund (341); and

WHEREAS, through discussions held between the City and the Downtown Berkeley Association (DBA), the DBA has agreed to reimburse the City for 50% of all costs associated with the purchase of these nineteen Bigbelly Solar Compacting units, operation and maintenance costs associated with these units; and

WHEREAS, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment by, increase the diversion of recyclable materials for the waste streams, and expand opportunities to recycle containers by the general public.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute a contract amendment with Bigbelly Solar, Inc. to purchase an additional nineteen solar compacting trash and recycling receptacles, in a total contract amount not to exceed \$233,868.13 for the term August 1, 2018 to June 30, 2023. A record signature copy of said agreement will be on file in the Office of the City Clerk.

ORDINANCE NO. 7,692-N.S.

PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING

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

Section 1. That Berkeley Municipal Code Chapter 13.106 is hereby added to read as follows:

Chapter 13.106

Prohibiting the Use of Criminal History in Housing Decisions

Sections:

- 13.106.010 Title
- 13.106.020 Findings
- 13.106.030 Definitions
- 13.106.040 Use of Criminal History in Housing Decisions
- 13.106.050 Requirements for Housing Providers
- 13.106.060 Retaliation Prohibited
- 13.106.070 Recordkeeping and Confidentiality
- 13.106.080 Implementation
- 13.106.090 Administrative Complaints
- 13.106.100 Enforcement
- 13.106.110 No Conflict with State or Federal Law
- 13.106.120 Severability

13.106.010 Title

This Chapter shall be known as the “Ronald V. Dellums Fair Chance Access to Housing Ordinance.” and may be shortened to the “Fair Chance Housing Ordinance”.

13.106.020 Findings

- A. Mass incarceration is a national and local crisis and restoring the rights of people affected by mass incarceration is a national priority.
- B. The U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record.
- C. Studies have found that private criminal databases pull source information from inadequate records and lack accountability procedures to ensure that the database records provided to Housing Providers are accurate. Housing Providers in conducting criminal background checks are relying on such inaccurate information in evaluating housing applications.
- D. Formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing.
- E. Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness, which can prevent a formerly

incarcerated person from getting a job, from visiting with their children, and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration.

- F. The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- G. Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- H. Reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in the City of Berkeley, to the detriment of health, welfare, and public safety of the City's residents.

13.106.30 Definitions

- A. "Adverse Action" means to take one of the following actions based on a person's Criminal or Conviction History:
 - 1. Failing or refusing to rent or lease Housing to a person;
 - 2. Failing or refusing to continue to rent or lease Housing to a person;
 - 3. Reducing the amount or term of any person's subsidy for Housing;
 - 4. Treating an Applicant or tenant differently from other applicants or tenants, including but not limited to, taking such actions as requiring higher security deposit or rent;
 - 5. Treating a person as ineligible for a tenant-based rental assistance program, including but not limited to, the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f); or
 - 6. Failing to permit a tenant's Close Family Member to occupy a rental unit while the occupying tenant remains in occupancy.
- B. "Affordable Housing" shall mean any Housing that (1) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f); or (2) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including but not limited to the Affordable Housing Mitigation Fee Ordinance (Section 22.20.065), the State Density Bonus law

(California Government Code Sections 65915-65918 and Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (Section 23E.20.080).

- C. "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider."
- D. "Aggrieved Person" means an Applicant who believes they were subject to an Adverse Action; a tenant who believes they or their Close Family Member was subject to an Adverse Action based on the application of an Applicant to reside in such family member's rental unit; or a tenant who believes they were subject to an Adverse Action based on the failure or refusal to permit a person to reside in such tenant's rental unit to replace an existing tenant, add a new tenant, or to sublet to a subtenant.
- E. "Applicant" means a person who seeks information about, visits, or applies to rent or lease Housing; who applies for a tenant-based rental assistance program, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f); who seeks to be added as a household member to an existing lease for Housing; or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- F. "Arrest" means a record from any jurisdiction that does not result in a Conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor, or other criminal offense.
- G. "Background Check Report" means any report regarding an Applicant's Criminal History, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or any consumer reporting or tenant screening agency.
- H. "Close Family Member" means a spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild.
- I. "Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person was placed on probation, fined, imprisoned and/or paroled.
- J. "Criminal History" means information transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the person to whom the information pertains, a government agency, or a Background Check

Report, regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code Sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

- K. "Housing" means any residential rental housing, building, or unit in the City of Berkeley, with the exception of the following:
1. Single Family Dwellings where one or more owners occupies the dwelling as their principal residence;
 2. Single Family Dwellings with Accessory Dwelling Units, as defined in Section 23F.04.010, where either the main or an Accessory Dwelling Unit is occupied by one or more owners as their principal residence;
 3. Duplexes or triplexes where one of the units is occupied by one or more owners as their principal residence;
 4. Units rented pursuant to Section 13.76.130 A.10; and
 5. Tenant-occupied units where an occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, provided that the occupying tenant remains in occupancy.
- L. "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. For the purpose of this definition, "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and any political or civil subdivision or agency or instrumentality of the City. In addition, any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".

13.106.040 Use of Criminal History in Housing Decisions

- A. Except as provided in Paragraphs B and C of this Section, a Housing Provider shall not, at any time or by any means, whether direct or indirect, inquire about an Applicant's Criminal History, require an Applicant to disclose their Criminal History, require an Applicant to authorize the release of their Criminal History or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- B. It shall not be a violation of this Chapter for a Housing Provider to comply with Federal or State laws that require the Housing Provider to automatically exclude tenants based on certain types of criminal history (e.g. Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Section 13663(a); Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice

Voucher Programs (24 C.F.R. Section 982.553)). However, if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider first does the following: (1) informs the Applicant in advance that the Housing Provider will check for certain types of criminal history; (2) requests and obtains written consent, or if the Applicant objects, provides the applicant the opportunity to withdraw their application; (3) complies with the requirements in subsections D and E of this Section.

Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.

- C. In compliance with state law, in order to protect persons at risk pursuant to Penal Code Section 290.46(j)(1), the Housing Provider may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided that (1) the Housing Provider has stated the lifetime sex offender screening requirement in writing in the rental application; and (2) the Housing Provider may not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:
1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;
 2. Provided to the Applicant a conditional rental agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History and other qualifying criteria; and
 3. Informed the Applicant in advance that the Housing Provider will checking the sex offender registry and obtained the written consent of the Applicant to obtain such information.

The Applicant may elect to withhold such consent and withdraw their application. Any use of information obtained by a Housing Provider pursuant to this Paragraph shall comply with California Penal Code Section 290.46(l).

- D. A Housing Provider's request to obtain written consent from the Applicant to obtain information about the Applicant's Criminal History under Paragraphs B or C of this Section shall inform the Applicant that the Housing Provider may be required to share information about the Applicant's Criminal History with the City of Berkeley for purposes of enforcing the requirements of this Chapter.
- E. If any Adverse Action is based in whole or in part on the Applicant's Criminal History, the Housing Provider shall provide a written notice to the Applicant regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action, instructions on how to file a complaint about the Adverse Action with the City, a list of local legal service providers including contact information, and a copy of any Background Check Report or other information related to the Applicant's Criminal History that served as a basis for the Adverse Action. The Housing Provider shall provide the Applicant an opportunity to respond with rebutting or mitigating

information prior to the denial of the Applicant's housing application. The Housing Provider shall not require reimbursement or payment from the Applicant for the cost of providing any information required under this Paragraph.

13.106.050 Requirements for Housing Providers

- A. It shall be unlawful for any Housing Provider subject to the requirements of this Chapter to produce or disseminate any advertisement related to Housing that expresses, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by State or Federal law.
- B. The City shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than five percent (5%) of the City's population, a notice that informs Applicants for Housing of their rights under this Chapter. The notice shall contain the following information:
 - 1. A description of the restrictions and requirements of this Chapter;
 - 2. Instructions for submitting a complaint to the City regarding a violation of this Chapter; and
 - 3. Information about community resources available to assist an Applicant in connection with a violation of this Chapter.
- C. Housing Providers subject to the requirements of this Chapter shall prominently display the notice made available pursuant to Section 13.106.50.B. in their application materials, on their websites, and at any rental or leasing offices.
- D. In addition to the requirements in Paragraphs A-C of this Section, Affordable Housing Providers shall:
 - 1. Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including the deadlines set forth in Section 13.106.090.A; a list of local legal services providers, including contact information; and a copy of any Background Check Report or other Criminal History obtained by the Affordable Housing Provider; and
 - 2. Submit to the City an annual certificate of compliance with the requirements of this Chapter in the form provided by the City.

13.106.060 Retaliation Prohibited

It shall be a violation of this Chapter to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter, or to take any Adverse Action against any Person because the Person exercised or attempted in good faith to exercise any right protected under this Chapter.

13.106.070 Recordkeeping and Confidentiality

- A. Housing Providers shall maintain a record of any Criminal History obtained for any Applicant for Housing for a period of at least three years. To the maximum extent permitted by law, any information obtained regarding an Applicant's Criminal History shall remain confidential.
- B. Nothing in this section shall prohibit a Housing Provider from complying with a request by the City to provide records for purposes of enforcing the requirements of this Chapter.

13.106.080 Implementation

- A. The City Manager or their designee shall take all necessary steps to implement this Chapter, including but not limited to the following:
 - 1. Developing any notice required for purposes of implementing the requirements of this Chapter, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants; and
 - 2. Conducting outreach to and preparing a plan to provide ongoing training about the requirements Chapter for Housing Providers.

The City Manager is authorized to adopt Administrative Regulations necessary to implement the requirements of this Chapter.

- B. The City Manager or their designee shall provide an annual public report to the City Council on the implementation and enforcement of this Chapter. The annual report shall include, at a minimum: (1) a summary of the annual compliance certifications submitted by Affordable Housing Providers; (2) the number of complaints filed with the City regarding violations of this Chapter and the outcomes of such complaints; (3) and the number of notices filed with the City regarding actions brought under Section 13.106.100.C and the outcomes of any such actions.

13.106.90 Administrative Complaints

- A. Any Applicant subject to an Adverse Action or their Close Family Member who believes the Adverse Action was based on a violation of this Chapter shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will schedule an administrative hearing before a hearing officer designated by the City Manager within 90 days of the date of submission of the complaint. The deadlines set forth in this Paragraph may be extended with the consent of all parties.
- B. The parties shall have the following rights at an administrative hearing conducted pursuant to this Section:
 - 1. To have an advocate of their choosing to represent them at the hearing;

2. To present any relevant witnesses and evidence, which will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding;
 3. To examine the other party's evidence and to rebut and cross-examine any witnesses;
 4. To have a translator present at the hearing, when translation is reasonably necessary and reasonably available;
 5. To request any reasonable accommodation needed to participate in the hearing process; and
 6. To record the hearing.
- C. Where the City determines that a violation of the Chapter has occurred, the City shall issue a determination and order any appropriate relief under this Chapter.

13.106.100 Enforcement

- A. The City may issue an Administrative Citation under Chapter 1.28 to any Person who violates any provision of this Chapter.
- B. The City Attorney may bring an action on behalf of the City seeking injunctive relief to restrain or enjoin any violation of this Chapter.
- C. Any Aggrieved Person who believes that the provisions of this Chapter have been violated shall have a private right of action for injunctive relief, and actual damages or statutory damages up to three times the amount of one month's rent that the Housing Provider charged for the unit in question at the time of the violation. In addition to actual or statutory damages, a court may award punitive damages where it is proven by clear and convincing evidence that a violation of this Chapter has been committed with oppression, fraud, or malice. In any action brought under this Chapter, the court may award reasonable attorneys' fees and cost of action pursuant to Code of Civil Procedure section 1021.5. The right to file an action under this Paragraph is independent of the right to file an administrative complaint under Section 13.106.90 and does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- D. When permitted by law, an award of actual damages under this Chapter may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Chapter.
- E. In an action brought by the City Attorney pursuant to this Section, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable

to the City of Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of this Chapter. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926 *et seq.*, or is aged sixty-five (65) or over.

- F. An attorney who represents an Applicant in litigation against a Housing Provider brought under this Chapter shall provide notice to the City within ten (10) days of filing court action against the Housing Provider, and inform the City of the outcome of the court action within ten (10) days of any final judgment.

13.106.110 No Conflict with State or Federal Law

This Chapter is not intended to conflict with state or federal law. If there is a conflict between the provisions of federal or state law and this Article, federal or state law shall control.

13.106.120 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Effective Date

The provisions of this Chapter shall take effect upon thirty days after final adoption of this ordinance. A Housing Provider shall not be liable for a violation within 180 days after final adoption of this Chapter, unless the Housing Provider has first received a warning letter from the City regarding a violation of the Ordinance.

Section 3. Notice to Housing Providers

The City Manager is directed to cause notice of this Ordinance to be mailed to all residential rental property owners subject to this Chapter within 90 days of final adoption of this Ordinance.

Section 4. Posting

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

At a regular meeting of the Council of the City of Berkeley held on March 10, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



Office of the City Manager

11

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Calling for a Consolidated General Municipal Election for November 3, 2020

RECOMMENDATION

1) Adopt a Resolution: a) Calling for a General Municipal Election to be consolidated with the Presidential General Election to be held in Berkeley on November 3, 2020; b) Requesting that the Alameda County Board of Supervisors consolidate the City of Berkeley General Municipal Election with the Presidential General Election; c) Authorizing certain procedural and contractual actions; and d) Establishing policies for the filing of candidate statements of qualification.

2) Adopt a Resolution establishing policies and timelines for filing ballot measure arguments.

FISCAL IMPACTS OF RECOMMENDATION

The table below shows the year-by-year costs for elections since 2012. The dramatic cost increase that occurred in 2012 and 2014 was due primarily to general year-over-year increases, and the requirement of translating election materials into two additional languages (Vietnamese and Tagalog). The cost increase in 2016 was due to an 85-cent per voter surcharge from the Registrar of Voters. This is a new permanent surcharge that the Registrar has implemented to fund the voting equipment replacement fund.

	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
No. of Measures	10	7	11	0	4
No. of Candidates	26	23	29	2	30
General Costs	\$367,884	\$392,331	\$706,901	-	\$385,246
RCV Costs	\$101,041	\$189,148	\$181,954	-	\$185,578
Total Costs	\$468,925	\$581,479	\$888,855	\$85,628	\$570,824

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley is required under the City's Charter to conduct its general municipal elections in November of each even-numbered year. Adopting these resolutions is the first official step toward holding the election.

The resolution in Attachment 1: a) calls for a General Municipal Election and requests the Alameda County Board of Supervisors accept consolidation of the City's General Municipal Election with the Presidential General Election on November 3, 2020; b) provides authority for the City Clerk to enter into contracts necessary for election supplies and services for the general election; c) provides authority for the City Clerk to hire temporary staff as needed to assist with the conduct of this election; d) adopts certain administrative policies for the filing of candidate statements; and e) authorizes the filing of rebuttal arguments for City ballot measures pursuant to Elections Code Section 9285.

The resolution in Attachment 2 establishes policies and timelines for filing ballot measure arguments on City measures.

BACKGROUND

Since 2010, voters have selected candidates for Mayor, Auditor, and City Council using Ranked-Choice Voting (RCV). In 2020 voters will continue to use RCV, thus eliminating the need for runoff elections. The use of RCV does not affect any of the actions stated in the resolution calling the election.

The City Charter, State Elections, and Government Codes require adoption of a resolution requesting consolidation, and authorizing procedural, contractual and organizational actions in connection with the General Municipal Election to be held on November 3, 2020.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state code in order to carry out the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

- 1: Resolution Calling the November 3, 2020 General Municipal Election
- 2: Resolution Establishing Policies and Timelines for Filing Ballot Measure Arguments

- Exhibit A: Selection Procedure for Multiple Ballot Measure Arguments
- Exhibit B: Ballot Measure Argument Consent Form
- Exhibit C: Signature Form for Proponents

RESOLUTION NO.

CALLING FOR A GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH
THE PRESIDENTIAL GENERAL ELECTION ON NOVEMBER 3, 2020

WHEREAS, a General Municipal Election is to be held on Tuesday, November 3, 2020, in and for the City of Berkeley; and

WHEREAS, certain actions are required in connection with said election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the General Municipal Election to be held in the City of Berkeley on November 3, 2020 is hereby called.

BE IT FURTHER RESOLVED as follows:

1. In accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Presidential General Election to be held November 3, 2020 and to permit the county elections official to render services specified.
2. The Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk. These services include all necessary services related to signature checking for nomination petitions and signatures-in-lieu of filing fee, official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election.
3. The City hereby requests that the Registrar of Voters conduct the election for City Council and Mayor using ranked choice voting in accordance with the executed Memorandum of Understanding between the City and the Registrar as well as Berkeley Municipal Code Section 2.14.010 et seq.
4. The Board of Supervisors of Alameda County is requested to include on the ballots and sample ballots, all qualified measures submitted by the City Council to be ratified by the qualified electors of the City of Berkeley.
5. That the City of Berkeley acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.
6. The City Clerk is hereby directed to cause the posting, publication, and printing of all notices or other election materials pursuant to the requirements of the Charter of the City of Berkeley and the Elections and Government Codes of the State of California.
7. The City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of

the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

8. The offices to be voted upon at the General Municipal Election shall be:
 - a) One council member seat, District 2, term ending November 30, 2024
 - b) One council member seat, District 3, term ending November 30, 2024
 - c) One council member seat, District 5, term ending November 30, 2024
 - d) One council member seat, District 6, term ending November 30, 2024
 - e) One seat for mayor, term ending November 30, 2024
 - f) Two school board director seats, terms ending November 30, 2024
 - g) Four rent stabilization board commissioner seats, terms ending November 30, 2024;
9. The offices of mayor and council member require a 50%+1 majority in the ranked choice voting system to be elected. The offices of school board director and rent stabilization board commissioner require a plurality of the votes cast.
10. Candidates may file a statement of qualification pursuant to the regulations in the Elections Code, the City Charter, the Municipal Code, and the policies set forth below:
 - a. Candidate statements must be filed no later than the last day to file nomination papers.
 - b. Candidate statements must be filed at the same time as completed nomination papers are filed.
 - c. Statements may not be changed once they are submitted. Statements may be withdrawn until 5:00 p.m. on the next business day after the close for the nomination period.
 - d. Statements are confidential until the close of the nomination period. The statements are subject to public review and contest.
 - e. There shall be no fee charged by the City for the submission of a candidate statement of qualifications.
 - f. Statements must be typed or printed from a computer. If prepared on a computer, submit the statement in electronic format in addition to the required hard copy.
 - g. Statements shall be submitted in plain text formatting, single paragraph, without any formatting such as underline, bold, italics, or all caps.
 - h. Candidate statements must be attached to the form provided by the City Clerk when filed.
 - i. Statements are limited to 200 words. The word counting guidelines in Elections Code Section 9 shall govern the counting of words.
 - j. The candidate statement will be translated into Spanish, Chinese, Vietnamese, and Tagalog pursuant to the requirements of the Federal Voting Rights Act.
 - k. Signed and completed consent forms are required for each Berkeley resident referenced as an endorser (no less than 5, no more than 20) and for any person and any organization mentioned in the text of the statement as an endorser or supporter.
 - l. For any discrepancy between the information listed on the hard copy of a candidate statement or candidate statement form and the consent form, the signed consent form will take precedence.

- m. The name and title of an endorser will be printed exactly as it is written on the consent form.
 - n. The total word count for all title(s) of a single endorser shall not exceed 20 words. In the case that there are more than 20 words, the title will be truncated at the 20th word. Words will be counted in accordance with Elections Code Section 9.
 - o. Any mention of partisan activity or membership is prohibited.
 - p. Any mention of any opponent or other candidate for the same office is prohibited.
 - q. Candidates may submit a photograph of themselves to be printed with their statement. Hard copy or electronic photo must be submitted at the same time the candidate statement is filed in order to be included in voter pamphlet.
11. The City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.
12. Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

RESOLUTION NO –N.S.

ESTABLISHING THE SCHEDULE AND POLICY PROVIDING FOR THE FILING OF BALLOT ARGUMENTS FOR CITY MEASURES SUBMITTED AT MUNICIPAL ELECTIONS

WHEREAS, the City Council will likely submit ballot measures to the voters at the November 3, 2020 election; and

WHEREAS, it is necessary to establish a schedule and policy for the filing of ballot arguments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following policy is hereby adopted for the November 3, 2020 General Municipal Election:

Section 1. The Primary Argument filing period opens at 8:00 a.m. on Monday, August 10, 2020 and closes at 12:00 p.m. on Friday, August 14, 2020. The Rebuttal Argument filing period opens at 4:00 p.m. on Friday, August 14, 2020 and closes at 12:00 p.m. on Friday, August 21, 2020.

Section 2. The 10-day public review period for all ballot materials opens at 4:00 p.m. on Friday, August 21, 2020 and closes at 5:00 p.m. on Monday, August 31, 2020.

Section 3. Primary Arguments for or against ballot measures shall not exceed 300 words in length. Rebuttal Arguments for or against ballot measures shall not exceed 250 words in length (*EC 9282, 9285*). Word count will be determined using the standards set forth in Elections Code Section 9.

Section 4. If more than one argument is submitted on a measure, the City Clerk shall select the argument and shall give preference, in the order named, to arguments of the following: (*EC 9287*)

- a) The legislative body, or member or members of the legislative body authorized by that body.
- b) The individual voter or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
- c) Bona fide associations of citizens.
- d) Individual voters who are eligible to vote on the measure.

If more than one argument from the same level of standing is submitted, the argument to be printed will be determined by the procedure in Exhibit A.

Section 5. Each ballot argument must be accompanied by the printed name(s) and signature(s) of the person or persons submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. (*EC 9283*)

- a. The consent form in Exhibit B must be submitted in order to use an organization name for the title of a signor or as an endorser in the argument text.

b. If the argument is filed by: 1) the legislative body or authorized members of the legislative body; or 2) individual voters eligible to vote on the measure, then, pursuant to Elections Code Sections 9282 and 9283, all signors to the argument must be eligible to vote on the measure.

Section 6. No more than five signatures shall appear with any argument. In case any argument is signed by more than five persons, the signatures of the first five shall be printed. (EC 9283) Authors must list the signors names on the argument in the order they are to be printed.

Section 7. The certification of the author(s) and proponent(s) in Exhibit C must be submitted at the time the respective primary argument or rebuttal argument is filed. A separate signature form is required for the rebuttal argument even if the same signor completed a form for the primary argument. (EC 9600)

Section 8. For proponents of ballot arguments whose name and title shall appear with the argument in the voter pamphlet, the title of said proponent is limited to 20 words. In the case that there are more than 20 words, the title will be truncated at the 20th word. Words will be counted in accordance with Elections Code Section 9.

Section 9. The names and titles of proponents will be printed exactly as they appear on the "Printed Name" and "Title" lines on the Signature Form for Proponents in Exhibit C.

Section 10. The Consent Form for Use of Organization Name for Ballot Argument/Rebuttal Statements shown in Exhibit B is required for any proponent and/or signatory that uses the name of any organization in their title. If using more than one organization name in the full title(s), a separate consent form is required for each organization.

a. Consent forms are required for persons and/or organizations listed as supporters in the text of the argument.

b. Offices held with public agencies (including city boards and commissions) do not require a consent form from the jurisdiction.

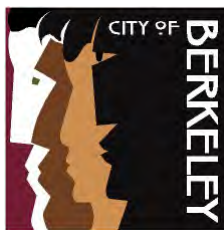
Section 11. The City Clerk, upon receipt of arguments and after the filing deadline, will immediately transmit copies of the arguments to the authors of the opposing arguments (both for and against the measure) who may then submit rebuttals within the time period shown above. (EC 9285)

Section 12. Primary arguments may be changed or withdrawn up to 12:00 p.m., Friday, August 14, 2020. Rebuttal arguments may be changed or withdrawn up to 12:00 p.m., Friday, August 21, 2020. Arguments received prior to the deadline are confidential until the deadline.

Section 13. Only the author whose primary argument has been selected by the City Clerk in accordance with Elections Code Section 9287 may file a rebuttal argument or may authorize in writing another person or persons to prepare, submit, or sign the rebuttal argument. (EC 9285)

Section 14. Primary and rebuttal arguments must be typed or printed from a computer. Hand written arguments will not be accepted. If prepared on a computer, the primary/rebuttal argument shall be submitted in electronic format in addition to the required hard copy.

BE IT FURTHER RESOLVED that these provisions, excluding date specific deadlines, shall remain in effect for all future elections until superseded.



**CITY OF BERKELEY
CITY CLERK DEPARTMENT**

**Selection Procedure for
Multiple Ballot Measure Arguments**

When multiple ballot measure arguments are submitted for or against a measure, Elections Code Section 9287 provides guidelines for determining which argument will be published in the Voter Information Guide.

9287. City elections official to select if more than one argument.

(a) If more than one argument for or more than one argument against any city measure is submitted to the city elections official within the time prescribed, he or she shall select one of the arguments in favor and one of the arguments against the measure for printing and distribution to the voters. In selecting the argument, the city elections official shall give preference and priority, in the order named, to the arguments of the following:

(1) The legislative body, or member or members of the legislative body authorized by that body.

(2) The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.

(3) Bona fide associations of citizens.

(4) Individual voters who are eligible to vote on the measure.

(b) In order to enable the city elections official to determine whether it qualifies as a bona fide association of citizens, an organization or association submitting an argument for or against a city measure shall submit with its argument a copy of one of the following:

(1) Its articles of incorporation, articles of association, partnership documents, bylaws, or similar documents.

(2) Letterhead containing the name of the organization and its principal officers.

(3) If the organization or association is a primarily formed committee established to support or oppose the measure, its statement of organization filed pursuant to Section 84101 of the Government Code.

(c) In selecting an argument from among bona fide associations of citizens, the city elections official shall not consider the type of documentation submitted pursuant to subdivision (b) or the form of the association.

Amended by Stats. 2018, Ch. 92, Sec. 63. (SB 1289) Effective January 1, 2019.)

The Elections Code does not require that the signors of the argument, when filed by a bona fide association of citizens, must reside or be registered to vote in the jurisdiction that is voting on the measure.

If the argument is being filed by a bona fide association, Elections Code Section 9283 requires that “the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument” must accompany the argument.

The Elections Code does not contain any provision for selecting an argument based on which argument was filed first, or earliest in relation to any arguments filed later, but before the deadline. All arguments filed before the deadline are considered equal in priority.

The Elections Code clearly states that only one argument for and one argument against may be printed (**EC Sec. 9287**). If two or more parties filing an argument for or against a measure fall under the same classification, then the Elections Official shall select one argument to print. The Elections Official will determine the most appropriate procedure to select the argument to be printed.

The Berkeley Municipal Code and the City Charter do not stipulate a method for selecting arguments if multiple arguments of equal standing are filed. Therefore, state law is followed to make the determination.

The procedure to determine the winning candidate in the case of a tie vote is by drawing of lots (**EC Sec. 15651**). The Elections Official may determine that the drawing of lots, as outlined below, is the most appropriate means to select the argument to be printed.

Procedure for Drawing of Lots

The names of the authors of each argument shall be written on a piece of paper, folded, and placed in a container so that each argument is represented by one paper. The container will be agitated to mix the papers, and then one paper shall be drawn at a time. As each piece of paper is removed, it will be opened and the names recorded in the order removed.

The order in which the names are removed from the container shall be the order of priority for printing the argument, i.e., the first name chosen shall be the author whose argument shall be printed.

Arguments for a measure and arguments against a measure will each have their own drawing process.

The results of the drawing will then be posted in the City Clerk Department.

BALLOT MEASURE ARGUMENT CONSENT FORM
▶ PRIMARY ARGUMENT ◀

CONSENT FOR USE OF ORGANIZATION NAME

I hereby consent that my organization’s name may be referred to as an endorser either within the text of the primary argument or in the title of the signatory listed below for city ballot measure _____ at the City of Berkeley
(subject or measure letter)

General Municipal Election to be held on November 3, 2020.

**To be completed by
Organization Principal:**

Printed Name of Principal

Signature of Principal

Title

Organization Name

Date

Printed Name of Signatory

CONSENT FOR USE OF ENDORSER NAME

I hereby consent that my name may be referred to as an endorser within the text of the primary argument for City Ballot Measure _____
(subject or measure letter)
at the City of Berkeley General Municipal Election to be held on November 3, 2020.

**To be completed by
Endorser:**

Printed Name of Endorser

Signature of Endorser

Title

BALLOT MEASURE ARGUMENT CONSENT FORM
▶ REBUTTAL ARGUMENT ◀

CONSENT FOR USE OF ORGANIZATION NAME

I hereby consent that my organization's name may be referred to as an endorser either within the text of the rebuttal argument or in the title of the signatory listed below for city ballot measure _____ at the City of Berkeley
(subject or measure letter)

General Municipal Election to be held on November 3, 2020.

**To be completed by
Organization Principal:**

Printed Name of Principal

Signature of Principal

Title

Organization Name

Date

Printed Name of Signatory

CONSENT FOR USE OF ENDORSER NAME

I hereby consent that my name may be referred to as an endorser within the text of the rebuttal argument for City Ballot Measure _____ at the City of Berkeley General Municipal Election to be held on November 3, 2020.
(subject or measure letter)

**To be completed by
Endorser:**

Printed Name of Endorser

Signature of Endorser

Title

SIGNATURE FORM FOR PROPONENTS
► PRIMARY ARGUMENT ◀

EC 9600: "All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:"

The undersigned proponent or author of the ballot argument *in favor of or*
 against ballot measure _____ at the
(subject or measure letter)

General Municipal Election for the City of Berkeley to be held on November 3, 2020, hereby states that this argument is true and correct to the best of his/her/their knowledge and belief:

Signed: _____ Date: _____

Printed Name: _____
(Name will be printed exactly as written on this line)

Full Title: _____
(Title will be printed exactly as written on this line – limit 20 words)

Residence Address: _____

Phone Number: _____

For the City of Berkeley General Municipal Election to be held on November 3, 2020, I hereby consent that my name may be referred to as an endorser within the text of the primary argument for City Ballot Measure _____.
(subject or measure letter)

- *For any argument filed by the City Council or an individual voter, all signors must be eligible to vote on the measure (i.e. Berkeley resident, at least 18 years old on Election Day, U.S. citizen, not incarcerated in a state or federal prison or on parole for the conviction of a felony, and not currently found mentally incompetent to vote by a court).*
- *For any signor on a city ballot measure, a consent form is required for the use of any organization name in the signor's title(s). The organization must consent to the use of its name for all signors.*
- *Offices held with public agencies (including city boards and commissions) do not require a consent form from the jurisdiction.*
- *If using more than one organization name in the full title(s), a separate consent form is required for each organization.*

SIGNATURE FORM FOR PROPONENTS
► REBUTTAL ARGUMENT ◀

EC 9600: "All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:"

The undersigned proponent or author of the ballot argument *in favor of or*
 against ballot measure _____ at the
(subject or measure letter)

General Municipal Election for the City of Berkeley to be held on November 3, 2020, hereby states that such argument is true and correct to the best of his/her/their knowledge and belief:

Signed: _____ Date: _____

Printed Name: _____
(Name will be printed exactly as written on this line)

Full Title: _____
(Title will be printed exactly as written on this line – limit 20 words)

Residence Address: _____

Phone Number: _____

For the City of Berkeley General Municipal Election to be held on November 3, 2020, I hereby consent that my name may be referred to as an endorser within the text of the rebuttal argument for City Ballot Measure _____.
(subject or measure letter)

- *For any argument filed by the City Council or an individual voter, all signors must be eligible to vote on the measure (i.e. Berkeley resident, at least 18 years old on Election Day, U.S. citizen, not incarcerated in a state or federal prison or on parole for the conviction of a felony, and not currently found mentally incompetent to vote by a court).*
- *For any signor on a city ballot measure, a consent form is required for the use of any organization name in the signor’s title(s). The organization must consent to the use of its name for all signors.*
- *Offices held with public agencies (including city boards and commissions) do not require a consent form from the jurisdiction.*
- *If using more than one organization name in the full title(s), a separate consent form is required for each organization.*



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

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

RECOMMENDATION

Approve the minutes for the council meetings of February 4, 2020 (special closed, special and special-worksession), February 11, 2020 (special closed and regular) and February 25, 2020 (regular).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. February 4, 2020 - Special Closed City Council Meeting
2. February 4, 2020 - Special City Council Meeting
3. February 4, 2020 – Special-Worksession City Council Meeting
4. February 11, 2020 – Special Closed Council Meeting
5. February 11, 2020 – Regular City Council Meeting
6. February 25, 2020 – Regular City Council Meeting

**SPECIAL MEETING MINUTES
BERKELEY CITY COUNCIL**

TUESDAY, FEBRUARY 4, 2020

3:00 P.M.

School District Board Room – 1231 Addison Street, Berkeley, CA

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 3:04 p.m.

Present: Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Davila, Bartlett

Councilmember Kesarwani present at 3:10 p.m.

Councilmember Davila present at 3:16 p.m.

Councilmember Bartlett present at 3:16 p.m.

Public Comment - Limited to items on this agenda only – 0 speakers

CLOSED SESSION:

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

1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, David White, Deputy City Manager, LaTanya Bellow, Director of Human Resources.

Employee Organizations: Berkeley Police Association

Action: No reportable action.

OPEN SESSION:

No reportable action.

Adjournment

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

Vote: All Ayes.

Adjourned at 4:05 p.m.

I hereby certify that the foregoing is a true and correct record of the special closed session meeting held on February 4, 2020.

Mark Numainville, City Clerk

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

Tuesday, February 4, 2020

4:00 P.M.

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 4:14 p.m.

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

Absent: Droste

Councilmember Droste present at 4:16 p.m.

Action Calendar – Public Hearing

1. Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12

From: Fair Campaign Practices Commission

Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Elections Reform Act, BMC Chapter 2.12, regarding the public financing program.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

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

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

Vote: All Ayes.

Action: M/S/C (Arreguin/Droste) to adopt first reading of Ordinance No. 7,691–N.S. Second reading scheduled for February 25, 2020.

Vote: All Ayes.

Action Calendar – Public Hearings

2. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

From: Fair Campaign Practices Commission

Recommendation: Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

Public Testimony: The Mayor opened the public hearing. 0 speakers.
M/S/C (Droste/Wengraf) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Hahn/Wengraf) to refer a discussion of Officeholder Accounts and Council District (D-13) accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

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

Action Calendar – Old Business

3. City Council Rules of Procedure and Order Revisions *(Reviewed by the Agenda & Rules Committee) (Continued from January 21, 2020. Item contains revised and supplemental material.)*

From: City Manager

Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to integrate the previously adopted regulations for policy committees and make associated changes to other sections; update outdated references and practices; conform to the Open Government Ordinance; make other technical corrections; and rescinding any preceding amendatory resolutions.

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: 1 speaker. M/S/C (Harrison/Hahn) to adopt Resolution No. 69,283–N.S. as amended in the supplemental material from Councilmember Hahn originally submitted on 12/3/19, retain original proposed language on commission membership, and to direct the City Manager to make any changes necessary to allow the Agenda & Rules Committee to refer items from Boards and Commissions to a policy committee.

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

Action Calendar – New Business

4. Change to the Council Rules and Procedures: Public access to changing status of a Consent Calendar Item

From: Open Government Commission

Recommendation: Adopt a Resolution changing and updating the “Council Rules and Procedures” to give the public a procedure for moving items on the consent calendar to the Action Calendar.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

Action: 2 speakers. M/S/Failed (Harrison/Bartlett) to adopt the commission recommendation amended to increase 5 persons to 10 persons.

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

Action: M/S/Carried (Arreguin/Robinson) to take no action on the commission recommendation.

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

5. Change to the Council Rules and Procedures: Public Comment on Council Agenda Action Items

From: Open Government Commission

Recommendation: Adopt a Resolution changing and updating the “Council Rules and Procedures” to change the public comment section that would allow a more comprehensible discussion between the Council and the public.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

Action: 3 speakers. M/S/C (Hahn/Kesarwani) to take no action and acknowledge the Mayor’s option to implement the practice as needed.

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila.

6. Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan

From: Homeless Commission

Recommendation: Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan

Financial Implications: See report

Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400

Action: 0 speakers. M/S/C (Arreguin/Kesarwani) to take no action on the commission recommendation and refer the issue of using cannabis tax revenue for homeless services to the Budget and Finance Committee.

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

Adjournment

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

Vote: All Ayes.

Adjourned at 6:41 p.m.

I hereby certify that the foregoing is a true and correct record of the special meeting held on February 4, 2020.

Mark Numainville, City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #2: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12

1. Supplemental material, submitted by the Attorney's Office
2. Supplemental material, submitted by Councilmember Hahn

Supplemental Communications and Reports 3

Item #3: City Council Rules of Procedure and Order Revisions

3. Presentation, submitted by the City Clerk

Item #4: Utilize Substantial Portion of Cannabis Tax Proceeds to Fund Subsidies under 1000 Person Plan

4. Carole Marasovic, on behalf of the Homeless Commission

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

Tuesday, February 4, 2020

6:00 P.M.

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 7:00 p.m.

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

Absent: Davila

Councilmember Davila present at 7:03 p.m.

Worksession

1. Discussion Regarding Potential Ballot Measures for the November 3, 2020

General Municipal Election

From: City Manager

Contact: Dave White, City Manager's Office, (510) 981-7000

Action: 1 speaker. Presentation made and discussion held.

2. Adeline Corridor Specific Planning Process Update

From: City Manager

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action: 25 speakers. Presentation made and discussion held.

Adjournment

Action: M/S/C (Robinson/Davila) to adjourn the meeting.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin;

Noes – Noen; Abstain – None; Absent – Droste.

Councilmember Droste absent 10:03 p.m. – 10:52 p.m.

Adjourned at 10:52 p.m.

I hereby certify that the foregoing is a true and correct record of the special (worksession) meeting held on February 4, 2020.

Mark Numainville, City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Discussion Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

1. Ben Paulos

Item #2: Adeline Corridor Specific Planning Process Update

2. 20 identical letters (Ashby BART transit village)
3. 6 identical letters (Objection to Adeline Plan Subcommittee)
4. Gary Facente
5. Charis Baz
6. Nathan Pallo
7. Aaron Foxworthy
8. Phyllis Orrick (2)
9. John Pingel
10. South Berkeley Now Steering Committee
11. Liza Lutzker
12. Sarah Madden
13. Teresa Clarke
14. Iris Starr
15. Chimey Lee
16. Jane Scantlebury
17. Julie Twichell
18. Milo Trauss
19. Jeremy and Shelly Kaller
20. Chris Lee-Egan
21. Margot Smith
22. Alexander Benn
23. Charlene Woodcock
24. Linda Franklin

Supplemental Communications and Reports 3

Item #1: Discussion Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

25. Presentation, submitted by the City Manager
26. Igor Tregub, on behalf of the Sierra Club Bay Chapter Northern Alameda County Group
27. Ben Gerhardstein, on behalf of Walk Bike Berkeley

Item #2: Adeline Corridor Specific Planning Process Update

28. Presentation, submitted by Planning and Development
29. Louise Rosenkrantz
30. Elizabeth Van Nostrand
31. Theo Posselt
32. Mary Kay Lacey
33. Jacob Kopczynski
34. Adam Rogers
35. Pablo Diaz-Gutierrez
36. Gerry Tierney
37. Philip Soffer
38. Victoria Eisen
39. Therese Fitzpatrick
40. Blaine Merker
41. David Cobb
42. Matt Taecker
43. Lee Bishop
44. Chris Reed
45. Bhima Sheridan
46. Adriana Valencia
47. Aaron Stein-Chester
48. Jodi Levin
49. Tobey Wiebe
50. John Selawsky (2)
51. Leah Simon-Weisberg
52. Fred Dodsworth
53. Kelly Hammargren
54. Margy Wilkinson (2)
55. Paola Laverde
56. Ariella Seidenberg
57. Janis Ching
58. Charlene Woodcock
59. Kevin Rayhill
60. Jason Warriner
61. Cece Littlepage
62. Ben Grant
63. Jack Sawyer
64. Vicki Alexander
65. Linda Franklin
66. Irene Rice
67. Negeene Mosaed
68. Della Watson
69. Zelda Bronstein

70. Lois Cantor
71. Sharon Maldonado
72. Michael Caplan
73. Carla Woodworth
74. Linda Franklin
75. Liza Lutzker and Ben Gerhardtstien, on behalf of Walk Bike Berkeley
76. Mary Elieisar
77. Mary Lai
78. Kenneth Gross
79. Councilmember Harrison (2)
80. Mary Behm-Steinberg
81. Arlene Makita-Acuna
82. Sophia DeWitt
83. Eileen Hughes
84. Jordan Burns
85. Art Goldberg
86. Friends of Adeline
87. Teresa Clarke, South Berkeley Now!

**SPECIAL MEETING MINUTES
BERKELEY CITY COUNCIL**

TUESDAY, FEBRUARY 11, 2020

4:00 P.M.

School District Board Room – 1231 Addison Street, Berkeley, CA

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 4:02 p.m.

Present: Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Davila

Councilmember Kesarwani present at 4:07 p.m.

Councilmember Davila present at 4:08 p.m.

Public Comment - Limited to items on this agenda only – 0 speakers

CLOSED SESSION:

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

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(1)

a. *Clay v. City of Berkeley*, Alameda County Superior Court Case No. 18897070

Action: M/S/C (Wengraf/Hahn) to authorize the City Attorney to settle *Clay v. City of Berkeley*, Superior Court of California County of Alameda, Case No. RG-18-897070 for \$75,000.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – None; Absent – Droste.

Councilmember Droste absent 4:05 p.m. – 4:26 p.m.

- b. *1444 Fifth Street LLC v. City of Berkeley*, Alameda County Superior Court Case No. 19032434

Action: No reportable action.

OPEN SESSION:

The City Council met in closed session and authorized the City Attorney to settle Clay v. City of Berkeley, Superior Court of California County of Alameda, Case No. RG-18-897070 for \$75,000.

Adjournment

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

Vote: All Ayes.

Adjourned at 5:47 p.m.

I hereby certify that the foregoing is a true and correct record of the special closed session meeting held on February 11, 2020.

Mark Numainville, City Clerk

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, February 11, 2020
6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 6:22 p.m.

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

Absent: None

Report from Closed Session:

The City Council met in closed session and authorized the City Attorney to settle Clay v. City of Berkeley, Superior Court of California County of Alameda, Case No. RG-18-897070 for \$75,000.

Ceremonial Matters:

1. Recognition of Mansour Id-Deen
2. Recognition of Berkeley Community Media
3. Recognition of Former Berkeley Firefighter, Richard Ellison
4. Recognition of Former Berkeley Firefighter, Gene Lavon-Smith
5. Adjourn in memory of Ove Wittstock, Berkeley Commissioner and Activist
6. Adjourn in memory of Herbert Roberts, Berkeley Resident

City Manager Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Action: M/S/C (Arreguin/Robinson) to accept revised material from Mayor Arreguin on Item 2.

Vote: All Ayes.

Public Comment on Consent Calendar and Information Items Only: 30 speakers.

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

Vote: All Ayes.

Consent Calendar

- 1. Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,684-N.S. approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
Action: Adopted second reading of Ordinance No. 7,684-N.S.

Consent Calendar

2. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

From: City Manager

Recommendation: Adopt second reading of five ordinances (1. Ordinance No. 7,686-N.S. amending BMC Title 12 (Health and Safety); 2. Ordinance No. 7,687-N.S. amending BMC Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising); 3. Ordinance No. 7,688-N.S. amending BMC Chapter 23C.25 (Cannabis Uses); 4. Ordinance No. 7,689-N.S. amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts); 5. Ordinance No. 7,690-N.S. amending BMC Sub-Title F (Definitions)) to amend the Berkeley Municipal Code which would:

- A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);
- B. Allow Retailers to continue to operate as Microbusinesses;
- C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;
- D. Allow more opportunities for Commercial Cultivation by expanding location options; and
- E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

First Reading Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action: Adopted first reading of Ordinance No. 7,686-N.S. amended to add the following sentence to the text of the required notice in Section 12.22.040.E.7 “Driving while under the influence of cannabis is illegal.” and add the following language to Section 12.22.040.E.7, “This notice shall be reviewed and updated annually by the Berkeley Public Health Department, who shall review the warning requirements and update them as needed to reflect current science on cannabis risks and science on the most effective means to communicate warnings.” Second reading scheduled for February 25, 2020.

Amended the referral to the City Manager to read: 1) determine if the City can require businesses to post notices on their website, and 2) direct the Berkeley Public Health Department to review the issue of flavored cannabis products for combustion or inhalation, and cannabis products whose names imply that they are flavored, and review any additional ingredients that may be hazardous, whether natural or artificial, including vitamin E acetate in inhalation products, and make recommendations for action.

Adopted second reading of Ordinance No. 7,687-N.S. amending BMC Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising); Ordinance No. 7,688-N.S. amending BMC Chapter 23C.25 (Cannabis Uses); Ordinance No. 7,689-N.S. amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts); Ordinance No. 7,690-N.S. amending BMC Sub-Title F (Definitions).

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila; Absent – None.

Consent Calendar

- 3. Appointment of Director of Health, Housing, and Community Services Department**
From: City Manager
Recommendation: Adopt a Resolution confirming the appointment of Lisa Warhuus as the Director of the Health, Housing and Community Services Department (HHCS) to be effective March 9, 2020 at an annual salary of \$188,000
Financial Implications: Various Funds - \$188,000
Contact: Dee Williams-Ridley, City Manager, (510) 981-7000
Action: Adopted Resolution No. 69,284–N.S.
- 4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 11, 2020**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$12,528,300
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.
- 5. Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9649 increasing the contract amount by \$235,000 with Sloan Sakai LLP for Chief Labor Negotiator services, for a revised total contract amount not to exceed \$450,000.
Financial Implications: General Fund - \$235,000
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,285–N.S.
- 6. Funding Application: State of California Department of Housing and Community Development for CalHome Funds**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager, or her designee, to submit an application to the State of California Department of Housing and Community Development (HCD) for a minimum of \$1,000,000 and up to \$5,000,000 in funding under the CalHome Owner-Occupied Rehabilitation Program, and if awarded, execute the Standard Agreement, and any subsequent amendments or modifications thereto.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,286–N.S.

Consent Calendar

7. Jointly Apply for Infill Infrastructure Grant Funding for Projects Seeking City Funding through the 2019 Housing Trust Fund Request for Proposals

From: City Manager

Recommendation: Adopt two Resolutions that enable affordable housing development projects that applied for City funding through the 2019 Housing Trust Fund Request for Proposals to access State of California Infill Infrastructure Grant (IIG) funds by:

1. Authorizing the City Manager to prepare and submit a joint application with each of the following developers proposing to use IIG funds: a. Satellite Affordable Housing Associates (for Blake Apartments at 2527 San Pablo); b. Resources for Community Development (for Maudelle Miller Shirek Community at 2001 Ashby); and
2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting applications, entering into the State's Standard Agreement and other documents.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Action: Adopted Resolution No. 69,287–N.S. (Blake Apartments) and Resolution No. 69,288–N.S. (Maudelle Miller Shirek Community).

8. Contract No. 19F-4404: Community Services Block Grant Discretionary Funding for June 1, 2019 – May 31, 2020

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to modify the scope and deliverables for Community Services Block Grant (CSBG) Contract Number 19F-4404 and execute any resultant agreements and amendments to provide services to low-income people for the period June 1, 2019 – May 31, 2020. Instead of providing short-term rental assistance, CSBG funds will be used for a mobile shower program operated by Project We Hope's Dignity on Wheels.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Action: Adopted Resolution No. 69,289–N.S.

Council Consent Items

9. Support of HR 5038 – Farm Workforce Modernization Act of 2019

From: Mayor Arreguin and Councilmember Bartlett

Recommendation: Adopt a Resolution supporting House Resolution (HR) 5038 – the Farm Workforce Modernization Act of 2019. Send a copy of the Resolution to Representatives Zoe Lofgren and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Donald Trump.

Financial Implications: None

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

Action: Councilmember Davila added as a co-sponsor. Adopted Resolution No. 69,290–N.S.

Council Consent Items

- 10. Support of HR 5609 - Homelessness Emergency Declaration Act**
From: Mayor Arreguin and Councilmembers Hahn, Bartlett, and Harrison
Recommendation: Adopt a Resolution supporting House Resolution (HR) 5609, the Homelessness Emergency Declaration Act. Send a copy of the Resolution to Representatives Josh Harder and Barbara Lee, Senators Dianne Feinstein and Kamala Harris, and President Trump.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 69,291–N.S.
- 11. Excused Absence for Vice-Mayor Sophie Hahn**
From: Mayor Arreguin
Recommendation: Excuse Vice-Mayor Sophie Hahn from the January 28, 2020 Council meeting due to illness.
Financial Implications: None
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Approved recommendation.
- 12. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention**
(Continued from November 12, 2019. Item contains revised material.)
From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn
Recommendation: Adopt first reading of Ordinance No. 7,668-N.S. repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted first reading of Ordinance No. 7,668–N.S. Second reading scheduled for February 25, 2020.
- 13. Installation of William Byron Rumford Plaque**
From: Councilmembers Davila and Bartlett
Recommendation: Adopt a Resolution authorizing the installation of a plaque to honor William Byron Rumford in the public right of way.
Financial Implications: \$2,000
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Councilmember Kesarwani added as a co-sponsor. Adopted Resolution No. 69,292–N.S.

Council Consent Items

14. **Referral: Electric Moped Ride-Share Franchise Agreement** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)*
From: Councilmembers Robinson, Bartlett, and Harrison
Recommendation: Refer to the City Manager to rename the existing One-Way Car Share Program as the One-Way Vehicle Share Program and to amend the Program to include administrative requirements and parking permit fees for motorized bicycles that are affixed with license plates and require a driver's license for individuals to operate them (mopeds), in coordination with the City of Oakland.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: Councilmember Hahn added as a co-sponsor. Approved recommendation.

Recess 8:28 p.m. – 8:43 p.m.

Action Calendar – Old Business

15. Recommendations Related to Code Enforcement and Receivership Actions

(Continued from January 21, 2020.)

From: Health, Life Enrichment, Equity, and Community Committee

Recommendation: On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;
- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150, Rashi Kesarwani, Councilmember, District 1, (510) 981-7110, Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action: Moved to Consent Calendar. Approved recommendation with the amendments noted below.

Additional requests for information include: How many complaints were received and what type of violations? How long did it take for abatement? How many went to nuisance proceedings, court, or receivership? What does the code require? Under what circumstances does the City enforce? How can the City promote compliance and not be lenient but work with property owners who demonstrate good faith attempts?

The third recommendation regarding creating a mechanism creating legal and technical assistance is tabled until after the community forum is held and next steps are determined.

Action Calendar – Old Business

16. **Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street** *(Reviewed by the Land Use, Housing & Economic Development Committee. Continued from January 28, 2020.)*

From: City Manager

Recommendation: Adopt a Resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Action: Item 16 held over to March 10, 2020.

Action Calendar – Old Business

17. **Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours** *(Continued from January 28, 2020. Item contains revised material.)*

From: Councilmember Kesarwani, Mayor Arreguin, and Councilmembers Harrison and Hahn

Recommendation: Adopt a resolution to allow recipients of a three-month “Grace Period” permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 22519. Section 22519 states: “Local authorities may by ordinance or resolution prohibit, restrict or regulate the parking, stopping or standing of vehicles on any offstreet parking facility which it owns or operates. No such ordinance or resolution shall apply until signs giving notice thereof have been erected.”

This resolution identifies appropriate City-owned parking lots for overnight safe RV parking – selected in consultation with the City Manager and relevant City staff -- with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

Financial Implications: See report

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

Action: 19 speakers. M/S/C (Arreguin/Kesarwani) to adopt Resolution No. 69,293–N.S. as written in Supplemental Communications Packet #2 from Mayor Arreguin, Councilmember Kesarwani, and Councilmember Harrison, and further revised to add to the resolved clauses direction to the City Manager to redouble efforts to work with neighboring cities and other regional partners to establish one or more sites for RVs to park and receive rehousing and other services; add clarification that health and safety can always be enforced in any location as previously established by Council action.

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

Action: M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 11:15 p.m.

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

Action Calendar – New Business

18. Discussion and Direction Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

From: City Manager

Recommendation: Discuss possible ballot measures for November 2020, and provide direction to the City Manager about which issues to include in a community survey.

Financial Implications: See report

Contact: Dave White, City Manager's Office, (510) 981-7000

Action: M/S/C (Arreguin/Robinson) to accept revised material from Mayor Arreguin on Item 18.

Vote: All Ayes.

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

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

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

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – Davila; Abstain – None; Absent – Droste.

Councilmember Droste absent 11:22 p.m. – 11:28 p.m.

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

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

Action: 2 speakers. M/S/C (Arreguin/Hahn) to provide direction to the City Manager about which issues to include in a community survey as follows:

- Fire and Emergency Services Tax.
- Citywide wildfire prevention measure that includes undergrounding and emergency warning system.
- Residential Vacancy Tax on multi-unit buildings with certain exceptions (general tax).
- User Fee on rides with Transportation Network Companies (general tax).
- Fund a Climate Action Fund (special tax) through an increase in the Utility Users Tax (gas and electric portion only) by 2.5% and a carbon tax.
- Add climate and sustainability to the question about community priorities.
- Request information from the City Manager about revenues and costs for the programs listed as survey questions.

Vote: Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Kesarwani.

Action Calendar – New Business

19. Electric Bike Share Program Franchise Amendment

From: City Manager

Recommendation: Adopt a Resolution declaring the Council's intention to set a public hearing for March 10, 2020, at 6:00 p.m., to consider whether to grant a Franchise Agreement Amendment to Bay Area Motivate, LLC, a subsidiary of Lyft Incorporated, to provide shared electric bicycles to the Berkeley public.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

Action: Moved to Consent Calendar. Adopted Resolution No. 69,294–N.S.

Council Action Items

20. Discourage the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings *(Reviewed by the Agenda & Rules Committee)*

From: Councilmember Davila

Recommendation: Adopt a Resolution Discouraging the Use of Cell Phones, Email, Texting, Instant Messaging, and Social Media by City Councilmembers during Official City Meetings. The Brown Act prohibits a majority of members of a legislative body from communicating outside of a public meeting on a matter on the agenda for their consideration.

In order to ensure the full attention of the Council to the public and each other, the use of cell phones with access to email, text-messaging, instant messaging, and social media should be limited as much as possible during City Council meetings. The use of digital technologies outside of the City-provided equipment, upon which Agenda Items and notes can be stored, is distracting, and disrespectful to the democratic process.

The use of cellphones and telecommunications should explicitly be prohibited during City Council Closed Sessions meetings, as they are confidential. All council meetings require the full and utmost attention of attendees.

The City Manager is recommended to submit an item to the Council to amend the Council Rules of Procedure and Order to include a moratorium on the use of cell phones by Councilmembers on the dais during council meetings.

Financial Implications: See report

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

Action: Moved to Consent Calendar. Adopted Resolution No. 69,295–N.S.

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

Information Reports

21. 2-Lane Option on Adeline St. between MLK Way and Ward St.

From: Councilmember Bartlett

Recommendation: Refer to the City Manager to analyze the potential for a major redesign of the section of Adeline St. between MLK Way and Ward St., to improve the public space to increase safety for pedestrians, cyclists, and people living with disabilities, while also meeting the needs of public transit and emergency vehicles. The analysis should prioritize a 2-lane option that reduces the width of the street and creates many benefits for our community. Refer \$250,000 to the budget process to fund this important project.

Financial Implications: See report

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

Action: Moved to Consent Calendar. Amended the referral to read as follows:

Refer to the City Manager to analyze the potential for a major redesign of the section of Adeline St. between MLK Way and Ward St., to improve the public space to increase safety for pedestrians, cyclists, and people living with disabilities, while also meeting the needs of public transit and emergency vehicles and to also consider potential use of portions of the redesign area for use as a shared community plaza. The analysis should prioritize a 2-lane option that reduces the width of the street and creates many benefits for our community and include exploration of demonstration projects for study. Specific project designs should be reviewed by the Transportation Commission. Refer \$250,000 to the budget process to fund this important project.

Information Reports

22. Commission on Disability FY 2019-20 Annual Workplan

From: Commission on Disability

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

Action: Received and filed.

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

Adjournment

Adjourned at 11:50 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on February 11, 2020.

Mark Numainville, City Clerk

Communications

5G/Cell Towers

1. Tom Luce
2. Marilla Arguelles
3. Kate Waffner
4. Emily Benner
5. Darlene Pratt
6. Marge Turngren

2211 Harold Way

7. Rob Wrenn
8. Erin Diehm
9. Kelly Hammargren

Police Matters

10. David Lerman (2)
11. David Fielder

Stop SB 50 – Elimination of Residential Single-Family Zoning

12. Vivian Warkentin

Southside Subcommittee

13. Avram Gur Arye

Housing

14. Erwan Illian
15. Sheila Goldmacher

Environment

16. Vivian Warkentin

Gas Powered Leaf Blowers

17. David Lerman

Homelessness/Encampments

18. Mary Ann Brewin
19. James Mattson
20. Ellen Pasternack
21. Diana

Seismic Safety

22. Nancy Caruso

East Bay Community Energy – Using Nuclear Power

23. Janice Schroeder

24. Christopher Kroll

Healthy Checkout Ordinance

25. John Maa, on behalf of the American Heart Association

Okinawa

26. Margy Wilkinson

Animal Welfare

27. Aja Duniven

Live Oak Park Issues

28. Marc Bodian

Telecom Ordinance Revision

29. Isis Feral

Supplemental Communications and Reports 1

Item #2: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

30. Carol Denney

31. Lynn Silver, on behalf of Getting it Right, from the Start

Item #17: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

32. Supplemental material, submitted by Councilmember Harrison

33. Steven Donaldson

Supplemental Communications and Reports 2

Item #2: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

34. Cynthia Hallett, on behalf of Americans for Nonsmokers' Rights

35. Roland Moore, on behalf of Prevention Research Center

36. Carolyn Hall

37. Sandy Young

38. Lori McBride

39. Deborah Cooney

40. Friedner Wittman

41. Geoffrey Lomax

42. Elizabeth Starr

43. Jim Cauble

44. Matt Springer

Item #17: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

45. Revised material, submitted by Councilmember Kesarwani, Mayor Arreguin and Councilmember Harrison

- 46. Mike Chaput
- 47. Michael Gill
- 48. Todd Seeley
- 49. Barbara Phillips
- 50. Nathaniel Emodi
- 51. Michael McCutcheon
- 52. Osha Neumann, on behalf of East Bay Community Law Center

Item #18. Discussion and Direction Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

- 53. Revised material, submitted by Councilmember Harrison
- 54. Supplemental material, submitted by Councilmember Bartlett

Item #21: 2-Lane Option on Adeline St. between MLK Way and Ward St.

- 55. Jodi Levin
- 56. Charles Siegel
- 57. Jenn Guitart
- 58. Chris Duncan
- 59. Abbie Turiansky
- 60. Adam Lenz
- 61. Sarah Garrett
- 62. Stephanie Allan
- 63. Jane Scantlebury
- 64. Charity Kenyon
- 65. Mike Vanderman
- 66. Nathaniel Kane
- 67. Jocelyn Beaufort
- 68. Jeremy Kaller

Supplemental Communications and Reports 3

Item #2: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

- 69. Revised material, submitted by Mayor Arreguin, and Councilmembers Wengraf, Hahn, and Droste
- 70. Diane Hart
- 71. Kathleen Lippitt
- 72. Judi Strang
- 73. Jane Steinberg
- 74. Norman Constantine, on behalf of School of Public Health, UC Berkeley
- 75. Councilmember Harrison
- 76. Elena Lingas
- 77. Carl Resnikoff

Item #15 Recommendations Related to Code Enforcement and Receivership Actions

- 78. Leonard Powell

Item #17: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

- 79. Cree Partridge, owner of Berkeley Marine Center
- 80. Ellie
- 81. Nancy Halloran
- 82. Stephanie Hextrum
- 83. Igor Tregub
- 84. Lucretia Ausse
- 85. Judy Hunt
- 86. Diana Bohn
- 87. Daniel Gordon
- 88. Lauren Parsons
- 89. Toni Mester (2)
- 90. Carol Sitea
- 91. Robert G. Glantz
- 92. thgj
- 93. Ann Garbarino
- 94. Jan Stevenson
- 95. Janet Stephens
- 96. Jonathan Weldon
- 97. Carole Cool

Item #18. Discussion and Direction Regarding Potential Ballot Measures for the November 3, 2020 General Municipal Election

- 98. Presentation, submitted by City Manager's Office
- 99. Revised material, submitted by Mayor Arreguin
- 100. Ben Paulos

Item #21: 2-Lane Option on Adeline St. between MLK Way and Ward St.

- 101. 10 identical form letters in support
- 102. Dave Campbell, on behalf of Bike East Bay
- 103. Michael Katz
- 104. Paul Rauber
- 105. Charis Baz
- 106. Charles Siegel
- 107. Mike Wilson
- 108. Ben Gerhardstein
- 109. Bhima Sheridan

Miscellaneous

Graph

- 110. Unknown

Business Card

- 111. Miriam Gonzalez

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, February 25, 2020
6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 6:20 p.m.

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

Absent: Kesarwani

Councilmember Kesarwani present at 6:25 p.m.

Ceremonial Matters:

1. Recognition of RJ Reed and the Black Inventors Exhibit
2. Recognition of Raymond Nat Turner, Local Poet
3. Adjourn in memory of Eva Cohen, Berkeley Resident
4. Adjourn in memory of Glenn Yasuda, Berkeley Business Owner
5. Adjourn in memory of Mike Zint, Local Activist
6. Adjourn in memory of Ellen Gasser, Berkeley Resident and Berkeley Business Owner
7. Adjourn in memory of Katherine Johnson, NASA Mathematician

City Manager Comments:

The City Manager provided an update regarding COVID-19 (coronavirus) and local planning efforts.

City Auditor Comments:

The City Auditor provided general remarks regarding audits currently underway, and highlighted item #24 on the agenda regarding the City's Code Enforcement resources and the progress made thus far on the audit recommendations.

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 11 speakers.

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

Vote: All Ayes.

- 1. Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12**
From: Fair Campaign Practices Commission
Recommendation: Adopt second reading of Ordinance No. 7,691-N.S. amending the Berkeley Elections Reform Act, BMC Chapter 2.12, regarding the public financing program.
First Reading Vote: All Ayes.
Financial Implications: None
Contact: Samuel Harvey, Commission Secretary, (510) 981-6950
Action: Adopted second reading of Ordinance No. 7,691-N.S.
- 2. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention**
From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn
Recommendation: Adopt second reading of Ordinance No. 7,668-N.S. repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation.
First Reading Vote: All Ayes.
Financial Implications: Staff time
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted second reading of Ordinance No. 7,668-N.S.
- 3. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21 and 12.22**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,686-N.S. amending Berkeley Municipal Code Chapters 12.21 and 12.22 regarding general regulations and specific operating standards for cannabis businesses.
First Reading Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila; Absent – None.
Financial Implications: See report
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
Action: Adopted second reading of Ordinance No. 7,686-N.S.

Consent Calendar

4. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of January 14, 2020 (special closed and special), January 21, 2020 (special closed and regular) and January 28, 2020 (special and regular).

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: Approved minutes as submitted.

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 25, 2020

From: City Manager

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

Financial Implications: Various Funds - \$13,085,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Action: Moved to Action Calendar. 0 speakers. Approved recommendation revised to remove the line item for the Operation of Berkeley Recycling from the proposed list of projects.

Vote: Ayes – Kesarwani, Davila, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett.

Councilmember Bartlett absent 7:33 p.m. – 7:40 p.m.

6. Contract: Worldwide Travel Staffing for Nurse Registry Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Worldwide Travel Staffing for nurse registry services for a total contract limit of \$313,800 for the period beginning March 1, 2020 and ending June 30, 2023. The contract will serve the needs of both the Mental Health and Public Health Divisions, providing fill-in nursing services as necessary at both the Mental Health clinics and the Berkeley High School Health Center.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Action: Moved to Action Calendar. 2 speakers. Adopted Resolution No. 69,296–N.S.

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila; Absent – None.

Consent Calendar

7. **Contract: Van Meter Williams Pollack for Professional Planning Services to Prepare Zoning Standards and an Environmental Impact Report for the Ashby and North Berkeley BART Stations**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Van Meter Williams Pollack to perform professional planning services to prepare Zoning Standards and an Environmental Impact Report and conduct associated community outreach for the Ashby and North Berkeley Bay Area Rapid Transit (BART) Stations, in an amount not to exceed \$500,000 for the period from March 1, 2020 to July 31, 2021.
Financial Implications: See report.
 Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
Action: Adopted Resolution No. 69,297–N.S. and revised the recommendation to read as follows: *Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Van Meter Williams Pollack to conduct community outreach and perform professional planning services to prepare Zoning Standards and an Environmental Impact Report for the Ashby and North Berkeley Bay Area Rapid Transit (BART) Stations, in an amount not to exceed \$500,000 for the period from March 1, 2020 to July 31, 2021.*
8. **Amendment to the Agreement for Maintenance of State Highways in the City between the California Department of Transportation and City of Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley. The amendment will address roadway and traffic signal improvements from the City's Ninth Street Bicycle Boulevard Pathway Extension Phase II project.
Financial Implications: See report
 Contact: Phillip Harrington, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,298–N.S.
9. **Contract: APB General Engineering for Sanitary Sewer Rehabilitation and Replacement - Urgent Sewer Repair Project FY 2020**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Urgent Sewer Repair Project FY 2020 with sites located throughout the City; accepting the bid of the lowest responsive and responsible bidder, APB General Engineering; and, authorizing City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$388,489 which includes a 10% contingency of \$35,317.
Financial Implications: Sanitary Sewer Fund - \$388,489
 Contact: Phillip Harrington, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,299–N.S.

Consent Calendar

- 10. Permit Fee Waiver for Pacific Gas and Electric Company for the Undergrounding of Existing Overhead Electrical Facilities and Electrical Service Conversions within Utility Undergrounding District No. 48 – Grizzly Peak/Summit**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to waive all permit fees for Pacific Gas and Electric Company for the undergrounding of existing overhead electrical facilities and electrical service conversions in Utility Undergrounding District No. 48.
Financial Implications: General Fund - \$100,000
Contact: Phillip Harrington, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,300–N.S.
- 11. Resolution: Condemn the Federal Government’s Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence**
From: Peace and Justice Commission
Recommendation: Adopt a resolution affirming Berkeley’s commitment to our asylum-seeking residents and condemning the Federal government’s administrative decision undermining asylum protection for survivors of domestic violence.
Financial Implications: None.
Contact: Nina Goldman, Commission Secretary, (510) 981-7000
Action: Adopted Resolution No. 69,301–N.S.

Council Consent Items

- 12. LifeLong Medical Care’s March 7, 2020 Annual Gala Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Davila
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmember Cheryl Davila, to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020 with funds relinquished to the City’s general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Adopted Resolution No. 69,302–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$100; Councilmember Bartlett - \$100; Councilmember Wengraf - \$100; Councilmember Harrison - \$100.

Council Consent Items

13. **Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmembers Davila and Hahn
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmembers Cheryl Davila and Sophie Hahn, to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Adopted Resolution No. 69,303–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Bartlett - \$100.
14. **Referral to Schedule a Special City Council Meeting on Ohlone History and Culture**
From: Councilmembers Hahn and Davila
Recommendation: Refer to the Agenda & Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.
Financial Implications: None
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Approved recommendation.
15. **Support for S.2012 (Feinstein)**
From: Councilmembers Wengraf, Hahn, and Harrison
Recommendation: Adopt a Resolution in support of S.2012, "Restoring Local Control Over Public Infrastructure Act of 2019" (Feinstein) and send copies to Senators Dianne Feinstein and Kamala Harris, and Congresswoman Barbara Lee.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Councilmember Davila added as a co-sponsor. Adopted Resolution No. 69,304–N.S.

Council Consent Items

16. Support for SB-431, SB-801 and SB-802 (McGuire and Glazer)

From: Councilmember Wengraf, Mayor Arreguin, and Councilmembers Hahn and Harrison

Recommendation: Adopt a resolution in support of three bills which aim to protect people whose lives could be endangered without use of needed electrical resources during PG&E's Public Safety Power Shut-offs. Send the resolution to California Senators Mike McGuire, Steve Glazer, Nancy Skinner and Buffy Wicks. The bills are: 1. SB-431 Mobile telephony service base transceiver station towers: performance reliability standards (McGuire & Glazer); 2. SB-801 Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol (McGuire & Glazer); 3. SB-802 Emergency backup generators: health facilities: permit operating condition exclusion (Glazer)

Financial Implications: None

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action: Adopted Resolution No. 69,305–N.S.

17. Referral: Street Lighting Near Campus

From: Councilmembers Robinson, Droste, Harrison, and Wengraf

Recommendation: Refer to the Public Works Commission to include the following in the Street Lighting Subcommittee Work Plan, for the purposes of seeking input from key stakeholders and bringing together work that happens through parallel processes. The Subcommittee should: 1. Invite input from representatives from the UC Berkeley administration, UC Berkeley undergraduate and graduate students, UCPD and BPD, the Department of Public Works, and other relevant groups. 2. Develop a streamlined and accessible process for requesting street lights that includes neighborhood and campus input, while recognizing the overriding public safety concern posed by substandard lighting. 3. Develop a plan for expeditiously installing new streetlights near campus that prioritizes high-crime areas, high-injury pedestrian corridors, and student-priority areas as determined by student input.

Financial Implications: Staff time

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action: Approved recommendation.

Action Calendar– New Business

Action Calendar – New Business

18. **Issuance of \$38,000,000 General Obligation Bonds for Measure O – Affordable Housing**
From: City Manager
Recommendation: Adopt a Resolution authorizing the issuance and sale of general obligation bonds to finance acquisition and improvement of affordable housing and authorizing actions related thereto.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: 0 speakers. M/S/C (Arreguin/Hahn) to adopt Resolution No. 69,306–N.S. authorizing the issuance and sale of general obligation bonds to finance acquisition and improvement of affordable housing and authorizing actions related thereto.
Vote: All Ayes.
19. **Refinancing of 2009 and 2010 General Obligation Bonds (Measure FF)**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the issuance and sale of general obligation bonds to refund outstanding 2009 and 2010 bonds and authorizing actions related thereto.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: 0 speakers. M/S/C (Droste/Wengraf) to adopt Resolution No. 69,307–N.S. (Series A, 2009 Bonds) and Resolution No. 69,308–N.S. (Series B, 2010 Bonds) authorizing the issuance and sale of general obligation bonds to refund outstanding 2009 and 2010 bonds and authorizing actions related thereto.
Vote: All Ayes.
20. **Refinancing of 2010 Certificates of Participation Originally Issued to Finance Animal Shelter Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the issuance and sale of lease revenue bonds to refinance outstanding 2010 certificates of participation and approving related documents and official actions.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: 0 speakers. M/S/C (Hahn/Droste) to adopt Resolution No. 69,309–N.S. authorizing the issuance and sale of lease revenue bonds to refinance outstanding 2010 certificates of participation and approving related documents and official actions.
Vote: All Ayes.

Recess 8:00 p.m. – 8:10 p.m.

Action Calendar – Public Hearings

Action Calendar – Public Hearings

- 21a. Public Hearing: Landmarks Preservation Commission Appeal: Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue**
From: City Manager
Recommendation: Conduct a public hearing on the appeal of the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 to modify and rehabilitate a City Landmark and National Register building and site.
Financial Implications: None.
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
- 21b. Public Hearing: Zoning Adjustments Board Appeal: Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue**
From: City Manager
Recommendation: Conduct a public hearing on the appeal of the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to convert the Hillside School to residential use.
Financial Implications: None.
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
- 21c. Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue**
From: City Manager
Recommendation: Upon conclusion of the agendized public hearings, adopt a Resolution affirming the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 and the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to rehabilitate and convert the Hillside School to residential use, and dismiss the appeals.
Financial Implications: None.
Contact: Timothy Burroughs, Planning and Development, (510) 981-7400
- Public Testimony:** The Mayor opened the public hearing. 49 speakers.
M/S/C (Wengraf/Droste) to close the public hearing.
Vote: All Ayes.
- Action:** M/S/C (Wengraf/Bartlett) to adopt Resolution No. 69,310–N.S. affirming the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 and the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to rehabilitate and convert the Hillside School to residential use, and dismiss the appeals.
Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila; Absent – None.

Recess 10:38 p.m. – 10:45 p.m.

Action Calendar – Public Hearings

22. ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces, and dismiss the appeal.

Financial Implications: None.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Public Testimony: The Mayor opened the public hearing. 4 speakers. M/S/C (Arreguin/Droste) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Arreguin/Kesarwani) to suspend the rules and extend the meeting to 11:15 p.m.

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

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

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

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

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

Action: M/S/C (Arreguin/Droste) to adopt Resolution No. 69,311–N.S. affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces, and dismiss the appeal.

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila; Absent – None.

Action Calendar – Old Business

23. **Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras** *(Continued from January 28, 2020. Item contains supplemental materials.)*
From: City Manager
Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.
Financial Implications: None
Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000
Action: Moved to Consent Calendar. Consideration of the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Body Worn Cameras, including revised material in Supplemental Communications Packet #1, continued to March 10, 2020. Consideration of the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, including revised material in Supplemental Communications Packet #1, continued to April 14, 2020.

Information Reports

24. **Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight**
From: City Manager
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
Action: Received and filed.
25. **Report on Regional Leadership and Goals for 2020**
From: Mayor Arreguin
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Received and filed.

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

Adjournment

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

Vote: All Ayes.

Adjourned at 11:39 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on February 25, 2020.

Rose Thomsen, Deputy City Clerk

Communications

Item #21c: Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions – Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

1. Laura Atieri
2. Eric Schroeder
3. Zoe Scheffy
4. Patricia Slater
5. Greg Murphy
6. Krishen Laetsch
7. Kaethe Weingarten
8. Sondra Schlesinger
9. Fred Kellogg
10. Gertrude Allen
11. Tim and Jo Drescher
12. Marty Lorber
13. Eric Geoffroy
14. Cynthia Johnson
15. Robert Mains
16. Martin St. John
17. Patricia St. John
18. Eleanore Lee
19. Ronald Elson
20. Sophia Skoda
21. Sally Hindman
22. Paul and Susan Grossberg
23. David Helfant
24. Robert Jackson
25. Ernst and Lois Valfer
26. Beverly Cheney and Avrum Gratch

- 27. Michael Scott
- 28. Vicki Piovio
- 29. Bronwyn Hall
- 30. Michael Bank
- 31. Eric Van Dusen and Kara Nelson
- 32. Norma Lydon
- 33. Sandra Schlesinger
- 34. John Armitage
- 35. Peter Lydon
- 36. Clayton Smith
- 37. Kate and Dan Funk
- 38. Patricia O’Gillooly
- 39. Horst Haussecker, on behalf of Ali Bar-Bar
- 40. Eric Boskin
- 41. Mark Nitzbert
- 42. Ville Skogberg

Crime/Safety

- 43. Susan Freeman
- 44. Sharon Wong

Affordable Housing

- 45. Sue Martin

Luxury Housing

- 46. Margy Wilkinson

Measure T1

- 47. Janice Schroeder
- 48. Joan Hamilton

Civic Center Envisioning

- 49. Councilmember Hahn

5G/Telecom/Cell Towers

- 50. Isis Feral
- 51. Pat Robak
- 52. Miller Wise

Homelessness/Encampments

- 53. Diana Bohn
- 54. Avram Gur Arye (2)

Retailers Closing Stores

- 55. Steve Smith, on behalf of Norheim & Yost

Greenhouse Gas Emissions

56. Peter Drekmeier, on behalf of the Tuolumne River Trust

Berkeley Way

57. Avram Gur Arye

Adeline Corridor

58. Sara Bardeen

59. Councilmember Harrison

60. Abbie Turiansky

61. Margy Wilkinson

Developers

62. Vivian Warkentin

Cigarette Butt Receptacles

63. Carol Denney

64. Viviana Garcia, Public Works Department

Supplemental Communications and Reports 1

Item #3: Cannabis Ordinance Revision; Amending Berkeley Municipal Code Chapters 12.21 and 12.22

65. Carol Denny (2)

66. Friedner Wittman

67. Shirley Brewin (2)

Item #21c: Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

68. Fred Rowe

69. Edie Barschi

70. Jeannie de Vries

71. Richard and Valerie Herr

72. Shirley Issel

73. Fran Segal

74. Julie

75. Bob Buchanan

76. Leslie Emmington

Item #22: ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108

77. Stacie Blair

Item #23: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras

78. Revised material, submitted by Councilmember Harrison

Supplemental Communications and Reports 2

Item #3: Cannabis Ordinance Revision; Amending Berkeley Municipal Code Chapters 12.21 and 12.22

79. Tobey Wiebe

Item #11: Resolution: Condemn the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

80. Diana Bohn

81. Brianna Krong

Item #18: Issuance of \$38,000,000 General Obligation Bonds for Measure O – Affordable Housing

82. David Denton

Item #21c: Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

83. Nancy Genn

84. Peter Genn

85. Kelly Cobeen, on behalf of WJE Associates

86. Julie

87. David Helfant

88. Susan Duhan Felix

89. Luke Hedlund

90. Brian McKibben

91. Rena Rickles on behalf of Law Offices of Rena Rickles (2)

92. Rebecca Davis, on behalf of Law Office of Lozeau Drury

Supplemental Communications and Reports 3

Item #3: Cannabis Ordinance Revision; Amending Berkeley Municipal Code Chapters 12.21 and 12.22

93. Igor Tregub

94. David Luu

Item #6: Contract: Worldwide Travel Staffing for Nurse Registry Services

95. Margie Wilkinson

Item #11: Resolution: Condemn the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

96. Kat Jastram, on behalf of the Center for Gender & Refugee Studies

Item #17: Referral: Street Lighting Near Campus

97. Varsha Sarveshwar, on behalf of the Associated Student of Cal

Item #21c: Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

- 98. Presentation, submitted by Planning
- 99. Sam Seppala, Veronica Petersen and Family (2)
- 100. Slava Nikolova
- 101. Joseph Dodge
- 102. Rena Rickles, on behalf of Law firm of Rena Rickles
- 103. Howard M. Leggett III
- 104. Jane Edgington
- 105. Unknown

Item #22: ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108

- 106. Presentation, submitted by Planning

Miscellaneous Communications

Street Light Installation

- 107. Charles Clarke

Ceremonial

- 108. Unknown



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Erin Steffens, Assistant to the City Manager
Subject: Donation to the Animal Shelter from the Stephen and Mary Birch Foundation

RECOMMENDATION

Adopt a Resolution accepting a donation from the estate of Stephen and Mary Birch in the sum of \$5,000.00.

FISCAL IMPACTS OF RECOMMENDATION

The donation of \$5,000.00 will be deposited and expensed from the Animal Shelter Donation Fund (115).

CURRENT SITUATION AND ITS EFFECTS

Berkeley Animal Care Services (BACS) houses and cares for approximately 2000 stray, surrendered and abandoned animals each year. BACS treats sick and injured animals that have a good chance of recovery and adoption and donations are often used to pay for these vet bills.

Donations are used to help in the general care of the animals and to help cover the cost of veterinary care. This year, for example, donated funds will be used to cover veterinary services that are unavailable in the shelter's clinic such as X-rays, CAT scans and ultra sounds. Donations also support services that are provided to BACS shelter animals by contracted private veterinary clinics.

BACKGROUND

Each year starting in 2008, the Stephen and Mary Birch Foundation have generously donated money to BACS to be used for the welfare of shelter animals.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The shelter receives donations from the public and the funds are used for the programs outlined above. The cost of goods and services continue to increase. Donations are greatly appreciated as they ensure that the animals in our care receive the best medical treatment possible.

CONTACT PERSON

Amelia Funghi, Animal Shelter Manager (510) 981-6603

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

ADOPT A RESOLUTION ACCEPTING A DONATION TO THE ANIMAL SHELTER FROM THE STEPHEN AND MARY BIRCH FOUNDATION IN THE SUM OF \$5000

WHEREAS, The Stephen and Mary Birch Foundation has named Berkley Animal Care Services (BACS) as a recipient of a gift; and

WHEREAS, BACS houses and cares for approximately 2000 stray, surrendered and abandoned animals each year; and

WHEREAS, the shelter treats sick and injured animals that have a good chance of recovery and adoption, and donations are often used to cover these veterinary bills; and

WHEREAS, donations are also used to help in the general care of the animals, to purchase treats, leashes, collars and toys and to provide critical community programs; and

WHEREAS, this year, donation funds are also being used to help cover the cost of contracted veterinary care; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council accepts a donation to the Animal Shelter from the Stephen and Mary Birch in the sum of \$5,000 to be deposited in the Animal Shelter Donation Fund: 115-21-203-000-0000-000-000-481110.



Office of the City Manager

14

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Teresa Berkeley-Simmons, Budget Manager
 Subject: Amendment: FY 2020 Annual Appropriations Ordinance

RECOMMENDATION

Adopt first reading of an Ordinance amending the FY 2020 Annual Appropriations Ordinance No. 7,682–N.S. for fiscal year 2020 based upon recommended re-appropriation of committed FY 2019 funding and other adjustments in the amount of \$28,565,263 (gross) and \$15,378,568 (net).

FISCAL IMPACTS OF RECOMMENDATION

On June 25, 2019 the City Council adopted the FY 2020 Budget, authorizing gross appropriations of \$525,856,809 and net appropriations of \$460,146,093 (net of dual appropriations).

The First Amendment to the FY 2020 Annual Appropriations Ordinance, adopted by Council on December 10, 2019, increased the gross appropriations to \$672,748,107 and net appropriations to \$600,573,611 and represents the re-authorization of funding previously committed in FY 2019 and some new expenditures including new grant fund appropriations¹.

This Second Amendment to the FY 2020 Annual Appropriations Ordinance totals \$28,565,263 (gross) and \$15,378,568 (net) and increases gross appropriations to \$701,313,370 and net appropriations to \$615,952,179. The changes in this report are primarily unencumbered carryover and adjustments in special funds that were not able to be included in the First Amendment to the FY 2020 Annual Appropriations Ordinance. Due to the shift from FUND\$ to ERMA in the middle of FY 2019, the process for reconciling capital project year-end balances and determining the amounts available to be carried over from FY 2019 took much longer than it did in prior years. This made it hard to include these amounts in the First Amendment to the FY 2020 Annual Appropriations Ordinance and necessitated the need to do an additional amendment to the FY 2020 Annual Appropriations Ordinance this fiscal year.

¹ https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-10_Item_B_Ordinance_7682_pdf.aspx

BACKGROUND

The Annual Appropriations Ordinance (AAO) establishes the expenditure limits by fund for FY 2020. Throughout the year, the City takes actions that amend the adopted budget. These may include, but are not limited to, the acceptance of new grants, revisions to existing grants, adjustments to adopted expenditure authority due to emergency needs, and transfers in accordance with Council’s fiscal policies.

The adopted budget is also amended annually to reflect the re-appropriation of prior year funds for contractual commitments (i.e. encumbrances) as well as unencumbered carryover of unexpended funds previously authorized for one-time, non-recurring purposes. These budget modifications are periodically presented to the Council in the form of an Ordinance amending the Annual Appropriations Ordinance, which formally requires a two-thirds vote of the City Council. This report addresses re-appropriating FY 2019 spending authority to FY 2020 of available cash for commitments entered into in prior years and is the second amendment to the FY 2020 AAO.

When Council adopts an appropriations ordinance (budget), it is based on projected revenues and expenditures. If fund balances do not support the requested level of expenditures, no carryover is recommended.

The proposed changes, presented in their entirety in Exhibit A, are summarized as follows:

	Recommended Carryover	Recommended Adjustments	Total
General Fund (011)	\$ -	\$ 253,754	\$ 253,754
Capital Improvement Fund (501)	\$ 2,055,911	\$ 380,945	\$ 2,436,856
All Other Funds	\$ 8,315,262	\$ 17,559,391	\$ 25,874,653
Total	\$ 10,371,173	\$ 18,194,090	\$ 28,565,263

Below is a summary of the FY 2019 Unencumbered Carryover and the FY 2020 Adjustments for the City’s General Fund and Other Funds.

General Fund

The General Fund includes recommended adjustments of \$253,754 for the following items:

- ❑ \$3,622 remaining balance of the Fusako Castro donation for the purchase of a new fire water rescue boat. This item was not included in AAO #1 due to the timing of the purchase of the water rescue boat and a need to determine funding sources to pay for it.
- ❑ \$40,650 to cover increased operations and maintenance costs for the University Avenue Center (UAC). This appropriation was not included in AAO #1 due to the timing of AAO #1 and not knowing the additional costs. This allocation is fully covered by the lease revenue we receive from the Culinary School at the UAC.

- ❑ \$203,652 for the City-wide Undergrounding project. Funding for this item was not included in AAO #1 due to the timing of selecting the consultants to help with further undergrounding studies.
- ❑ \$5,830 for on-going certification of sewer laterals for City-owned buildings. These funds were not included in AAO #1 as the amount was unknown when AAO #1 was issued.

Other Funds

Other City funds (including capital improvement project funds) total unencumbered carryover of \$10,371,173 and other adjustments of \$17,940,336 including the following project allocations:

Carryover

- ❑ \$490,000 in Playground Camp funds for construction management at Berkeley Tuolumne Camp
- ❑ \$1,392,571 in State Transportation Tax Funds for the Bay Cities Paving Project, design phase of the Cordornices Creek at Kains project, Street Rehab FY 2018 Panoramic Hill project, and the Shattuck Reconfiguration project
- ❑ \$1,299,965 in Measure BB – Local Streets & Roads Funds for the Bay Cities Paving Project
- ❑ \$922,855 in Parks Tax funds for various Parks, Recreation & Waterfront Department capital projects currently under way
- ❑ \$628,139 in Capital Grants Local Funds for the construction of the 9th Street Pathway Phase II project
- ❑ \$301,028 in One Time Grant: No Capital Expenditure funds for the Codornices Creek at Kains
- ❑ \$698,950 in Metropolitan Transportation Commission (MTC) Funds for the goBerkeley Residential Shared Parking Pilot project and the Bay Trail project
- ❑ \$700,373 in CALTRANS Grant Funding for the 9th Street Pathway Phase II project
- ❑ \$2,055,911 in Capital Improvement Projects funding for Parks, Recreation & Waterfront, and Public Works projects
- ❑ \$971,206 in Measure T1 funds for Parks, Recreation & Waterfront Department and Public Works Department project currently under way
- ❑ \$319,303 in Marina Funds for capital projects

Other Adjustments

- ❑ \$4,217,500 in Playground Camps funds for the Berkeley Tuolumne Camp project expenses and camps bus transportation
- ❑ \$453,896 in State Proposition 172 funds for the removal of an FY 2019 salary savings target not removed from the FY 2020 budget
- ❑ \$620,737 in Measure B – Local Streets & Road funds for the Bay Cities Paving Project
- ❑ \$300,035 in Measure BB – Local Streets & Roads funds for the Bay Cities Paving Project

- ❑ \$500,000 in Parks Tax Funds for the Strawberry Park Phase 2 project
- ❑ \$223,563 in Emergency Solutions Grant Program funds for a contract with Bay Area Community Services to operate the Pathways Project
- ❑ \$416,921 in One-Time Grant – Non Capital Expenditure Funds for the Memorandum of Understanding for a Winter Relief program, Food & Drug Administration grants, and Homeless Emergency Aid Program funds for portable toilets
- ❑ \$201,580 In Alameda County Waste Management funds for foodware containers and Recology contract
- ❑ \$377,605 in CALTRANS Grant funds for the Gilman Railroad Pedestrian Crossing Safety project
- ❑ \$380,945 in Capital Improvement funds for Parks, Recreation & Waterfront, and Public Works projects
- ❑ \$4,985,209 in Measure T1 funds for funds for Parks, Recreation & Waterfront Department and Public Works Department projects
- ❑ \$1,749,600 in Sanitary Sewer funds for various capital projects
- ❑ \$1,010,866 in Equipment Replacement funds for an ambulance purchase and to cover a shortfall to purchase 13 Berkeley Police Department vehicles
- ❑ \$750,702 in Equipment Maintenance funds for a shortfall in the fuel budget and Zonar GPS contract and tools

This report was discussed with the Budget & Finance Policy Committee at their March 12, 2020 meetings.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the act of adopting the budget/appropriations ordinance/amendments. Actions included in the budget will be developed and implemented in a manner that is consistent with the City's environmental sustainability goals and requirements.

RATIONALE FOR RECOMMENDATION

The recommendation allows the City to amend the FY 2020 Adopted Budget, re-appropriating funds from FY 2019 to FY 2020 for contractual commitments that need to be paid and revising the budget to reflect approved carryover requests in both discretionary and non-discretionary funds.

The recommendations in this report deal with the unencumbered carryover in the funds listed above and the other adjustments in all funds. Staff has conducted a detailed analysis of the individual carryover requests submitted by departments and is presenting carryover recommendations for projects that are either currently under contract, represent council priorities, and/or are considered critical.

CONTACT PERSON

Teresa Berkeley-Simmons, Budget Manager, City Manager's Office, 981-7000
Rama Murty, Senior Management Analyst, City Manager's Office, 981-7000

Attachments:

1: Ordinance

Exhibit A: Annual Appropriation Ordinance Summary of Appropriations by Fund

2: FY 2020 Annual Appropriations Ordinance Amendment #2 Recommendations

ORDINANCE NO. -N.S.

AMENDING THE ANNUAL APPROPRIATIONS ORDINANCE NO. 7,682–N.S. FOR FISCAL YEAR 2020

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

A. General Fund (Funds 001-099)	229,760,903
B. Special Funds (Funds 100-199)	127,835,233
C. Grant Funds (Funds 300-399)	50,847,480
D. Capital Projects Funds (Funds 500-550)	76,738,857
E. Debt Service Fund (Funds 551-599)	10,533,979
F. Enterprise Funds (Funds 600-669)	146,474,859
G. Internal Service Funds (Funds 146, 670-699)	47,878,520
H. Successor Agency (Funds 760-769)	56,960
I. Agency Funds (Funds 771-799)	5,688,931
J. Other Funds (Funds 800-899)	5,497,649
K. Total	
Total General Fund	229,760,903
Add: Total Other Than General Fund	471,552,468
Gross Revenue Appropriated	701,313,370
Less: Dual Appropriations	-37,596,671
Less: Revolving/Internal Service Funds	-47,764,520
Net Revenue Appropriated	615,952,179

Section 2. The City Manager is hereby permitted, without further authority from the City Council, to make the following transfers by giving written notice to the Director of Finance:

- a. From the General Fund to the General Fund – Stability Reserve Fund; Catastrophic Reserve Fund; Health State Aid Realignment; Paramedic Tax Fund; Capital Improvement Fund; Phone System Replacement; Equipment Replacement Fund; Public Liability Fund; Catastrophic Loss Fund; Police Employee Retiree Health Assistance Plan; Safety Members Pension Fund; Information Technology Cost Allocation Fund; and Sick Leave Entitlement Fund.
- b. To the General Fund from the Community Development Block Grant Fund; Street Lighting Assessment District Fund; Zero Waste Fund; Marina Operations and

Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Unified Program (CUPA); and Health State Aid Realignment Fund.

- c. To the First Source Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- d. From UC Settlement Fund to General Fund and Clean Storm Water Fund.
- e. From Capital Improvement Fund to PERS Savings Fund; Berkeley Repertory Theater Fund; 2010 COP (Animal Shelter) Fund; Workers' Compensation Fund; and Information Technology Cost Allocation Fund.
- f. To the Public Art Fund from the Parks Tax Fund; Capital Improvement Fund; and the Marina Fund.
- g. To CFD#1 District Fire Protection Bond (Measure Q) from Special Tax Bonds CFD#1 ML-ROOS.
- h. To Private Sewer Lateral Fund from Sanitary Sewer Operation Fund.
- i. To Catastrophic Loss Fund from Permit Service Center Fund.
- j. To Catastrophic Loss Fund from Unified Program (CUPA) Fund.
- k. To the Building Purchases and Management Fund from General Fund; Health (General) Fund; Rental Housing Safety Program Fund; Measure B Local Streets & Road Fund; Employee Training Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Health State Aide Realignment Trust Fund.
- l. To Equipment Replacement Fund from General Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.
- m. To the Equipment Maintenance Fund from General Fund; Health (General) Fund; Mental Health Services Act Fund; Health (Short/Doyle) Fund; Vector Control Fund; Paramedic Tax Fund; Library - Discretionary Fund; Playground Camp Fund; State Transportation Tax Fund; Rental Housing Safety Program Fund; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; FEMA Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Permit Service Center Fund; Off Street

Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Central Services Fund.

- n. To the Building Maintenance Fund from the General Fund; Health (General) Fund; Health (Short/Doyle) Fund; Measure B Local Street & Road Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Off Street Parking Fund; Parking Meter Fund; Equipment Maintenance Fund; Building Maintenance Fund; and Mental Health State Aid Realignment Fund.
- o. To the Central Services Fund from the General Fund; First Source Fund; Health (Short/Doyle) Fund; Library-Discretionary Fund; Playground Camp Fund; Rent Stabilization Board Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Building Purchases & Management Fund; Building Maintenance Fund; Central Services Fund; and Mental Health State Aid Realignment Fund.
- p. To Information Technology Cost Allocation Plan Fund from General Fund; Target Case Management/Linkages Fund; Health (Short/Doyle); Library Fund; Playground Camp Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Rent Stabilization Board Fund; Parks Tax Fund; Street Light Assessment District Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation; Clean Storm Water Fund; Permit Service Center Fund; Off Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Equipment Maintenance Fund; Building Maintenance Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; and Mental Health State Aid Realignment Fund.
- q. To the Workers' Compensation Self-Insurance Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care

County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

- r. To the Sick Leave and Vacation Leave Accrual Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUND\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.
- s. To the Payroll Deduction Trust Fund from General Fund; Special Tax for Severely Disabled Measure E Fund; First Source Fund; HUD Fund; ESGP Fund; Health (General) Fund; Target Case Management/Linkages Fund; Mental Health Service Act Fund; Health (Short/Doyle) Fund; EPSDT Expansion Proposal Fund; Senior Nutrition (Title III) Fund; C.F.P. Title X Fund; Fund Raising Activities Fund; Berkeley Unified School District Grant; Vector Control Fund; Paramedic Tax Fund; Alameda County Grants Fund; Senior Supportive Social Services Fund; Family

Care Support Program Fund; Domestic Violence Prevention – Vital Statistics Fund; Affordable Housing Mitigation; Inclusionary Housing Program; Library – Discretionary Fund; Playground Camp Fund; Community Action Program Fund; State Proposition 172 Public Safety Fund; State Transportation Tax Fund; CDBG Fund; Rental Housing Safety Program; Measure B Local State & Road Fund; Measure B Bike & Pedestrian Fund; Measure B – Paratransit Fund; Measure F Alameda County Vehicle Registration Fee Streets & Roads Fund; Measure BB – Paratransit Fund; One-Time Grant: No Cap Expense Fund; Rent Stabilization Board Fund; Parks Tax Fund; Measure GG – Fire Prep Tax Fund; Street Lighting Assessment District Fund; Employee Training Fund; Private Percent – Art Fund; Measure T1 – Infrastructure & Facilities Fund; FUNDS\$ Replacement Fund; Capital Improvement Fund; FEMA Fund; CFD #1 District Fire Protect Bond Fund; Special Tax Bonds CFD#1 ML-ROOS Fund; Shelter+Care HUD Fund; Shelter+Care County Fund; Zero Waste Fund; Marina Operations/Maintenance Fund; Sanitary Sewer Operation Fund; Clean Storm Water Fund; Private Sewer Lateral Fund; Permit Service Center Fund; Off-Street Parking Fund; Parking Meter Fund; Unified Program (CUPA) Fund; Building Purchases & Management Fund; Equipment Replacement Fund; Equipment Maintenance Fund; Building Maintenance Fund; Central Services Fund; Workers' Compensation Fund; Public Liability Fund; Information Technology Cost Allocation Plan Fund; Health State Aid Realignment Trust Fund; Tobacco Control Trust Fund; Mental Health State Aid Realignment Fund; Alameda Abandoned Vehicle Abatement Authority; and Bio-Terrorism Grant Fund.

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

Attachment for Annual Appropriations Ordinance - Fiscal Year 2020**REVOLVING FUNDS/INTERNAL SERVICE FUNDS**

Appropriations are identified with revolving and internal service funds. Such funds derive revenue by virtue of payment from other fund sources as benefits are received by such funds, and the total is reflected in the "Less Revolving Funds and Internal Service Funds" in item I. The funds are:

Revolving/Internal Service Funds

Employee Training Fund	856,852
Equipment Replacement Fund	6,988,814
Equipment Maintenance Fund	8,945,238
Building Maintenance Fund	4,674,225
Central Services Fund	396,985
Workers' Compensation Fund	6,534,674
Public Liability Fund	3,274,495
Information Technology Fund	16,093,237
Subtotal Revolving/Internal Service Funds	47,764,520

DUAL APPROPRIATIONS - WORKING BUDGET

Dual appropriations are identified with revenues generated by one fund and transferred to another fund. Both funds are credited with the applicable revenue, and the total is reflected in the "Less Dual Appropriations" in item I. The dual appropriations are:

Transfers to the General Fund

<u>Indirect Cost Reimbursement</u>	
CDBG Fund	154,260
Street Light Assessment District Fund	112,971
Zero Waste Fund	2,195,402
Marina Enterprise Fund	438,683
Sanitary Sewer Fund	1,122,644
Clean Storm Water Fund	214,695
Permit Service Center Fund	1,734,781
Unified Program (CUPA) Fund	90,763
Subtotal Transfers to General Fund:	6,064,199

Transfer to Safety Members Pension Fund from General Fund	551,804
Transfer to General Fund – Stabilization Reserves from General Fund	640,000
Transfer to General Fund – Catastrophic Reserves from General Fund	520,000
Transfer to Health State Aid Realignment from General Fund	1,953,018
Transfer to Paramedic Tax Fund from General Fund	670,158
Transfer to Capital Improvement Fund (CIP) from General Fund	10,004,736
Transfer to Phone System Replacement - VOIP from General Fund	198,000
Transfer to FUND\$ Replacement Fund from General Fund	1,929,000
Transfer to Equipment Replacement Fund from General Fund	1,336,699
Transfer to Public Liability Fund from General Fund	2,895,888
Transfer to Catastrophic Loss Fund from General Fund	1,351,564
Transfer to Police Employee Retiree Health Assistance Plan from General Fund	400,136
Transfer to Sick Leave Entitlement Fund from General Fund	201,501
Transfer to Workers' Compensation Fund from General Fund	959,470
Transfer to General Fund from UC Settlement Fund	881,120
Transfer to Clean Storm Water Fund from UC Settlement Fund	293,708
Transfer to General Fund from Health State Aid Realignment Fund	2,643,280
Transfer to PERS Savings Fund from Capital Improvement Fund	151,632
Transfer to Berkeley Repertory Theater Debt Service Fund from Capital Improvement	499,802
Transfer to 2010 COP (Animal Shelter) Fund from Capital Improvement Fund	402,613
Transfer to Workers' Compensation Fund from Capital Improvement Fund	406,952
Transfer to IT Cost Allocation Fund from Capital Improvement Fund	544,357
Transfer to Private Sewer Lateral Fund from Sewer Fund	90,501
Transfer to Catastrophic Loss Fund from Permit Service Center Fund	50,555
Transfer to Catastrophic Loss Fund from Unified Program (CUPA) Fund	5,082
Transfer to General Fund from Parking Meter Fund	1,742,288
Transfer from Special Tax Bonds CFD#1 ML-ROOS to CFD#1 District Fire Protect Bond (Measure Q)	100,000
Transfer to First Source Fund from Parks Tax Fund	11,625
Transfer to First Source Fund from Capital Improvement Fund	29,943
Transfer to First Source Fund from Marina Fund	1,875
Transfer to Public Art Fund from Parks Tax Fund	17,437
Transfer to Public Art Fund from Capital Improvement Fund	44,915
Transfer to Public Art Fund from Marina Fund	2,813
Subtotal Transfers to Other Funds:	<u>31,532,472</u>
Sub-Total Dual Appropriations	<u>37,596,671</u>
Grand Total Dual Appropriations	85,361,191

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund # Fund	FY 2020 Revised #1	2nd AAO			FY 2020 Revised #2
		Unencumbered Carryover	Other Adjustments	Total Amend.	
11 General Fund Discretionary	229,507,149		253,754	253,754	229,760,903
101 Library - Tax	26,523,110		14,301	14,301	26,537,411
103 Library - Grants	64,230		-	-	64,230
104 Library - Friends & Gift	150,552		-	-	150,552
105 Library - Foundation	126,211		-	-	126,211
106 Asset Forfeiture	201,000		-	-	201,000
107 Special Tax Measure E	1,316,894		-	-	1,316,894
108 First Source Fund	47,327		-	-	47,327
110 Sec 108 Loan Gty Asst.	546,979		1,100	1,100	548,079
111 Fund Raising Activities	92,408		-	-	92,408
113 Sports Field (Vendor Oper)	226,291		45,000	45,000	271,291
114 Gilman Fields Reserve	73,173		-	-	73,173
115 Animal Shelter	60,011		6,264	6,264	66,275
116 Paramedic Tax	3,872,044		-	-	3,872,044
117 CA Energy Commission	44,249		-	-	44,249
119 Domestic Violence Prev - Vit Stat	25,646		-	-	25,646
120 Affordable Housing Mitigation	5,694,114		-	-	5,694,114
121 Affordable Child Care	13,275		-	-	13,275
122 Inclusionary Housing Program	673,017		-	-	673,017
123 Condo Conversion	997,980		-	-	997,980
124 Parking In-Lieu Fee	82,010		-	-	82,010
125 Playground Camp	6,395,075	490,000	4,217,500	4,707,500	11,102,575
126 State-Prop 172 Pub.Safety	538,901		453,896	453,896	992,797
127 State Transportation Tax	8,172,020	1,392,571	10,000	1,402,571	9,574,591
128 CDBG	3,828,317		-	-	3,828,317
129 Rental Housing Safety Program	1,913,186		-	-	1,913,186
130 Measure B - Local St & Road	5,026,860	103,263	620,737	724,000	5,750,860
131 Measure B - Bike and Pedestrian	620,377		-	-	620,377
132 Measure B - Paratransit	485,694		-	-	485,694
133 Measure F Alameda County VRF St & Rd	862,228		-	-	862,228
134 Measure BB - Local St & Road	6,911,376	1,299,965	300,035	1,600,000	8,511,376
135 Meaure BB - Bike & Pedestrian	666,962	52,561	80,618	133,179	800,141
136 Measure BB - Paratransit	451,489		-	-	451,489
137 One Time Funding	139,080		-	-	139,080
138 Parks Tax	19,855,010	922,855	500,000	1,422,855	21,277,865
139 Street And Open Space Impr	1,140,512		-	-	1,140,512
140 Measure GG - Fire Prep Tax	4,920,134		99,920	99,920	5,020,054
141 1st Response Adv Life Supp	60,500		(5,356)	(5,356)	55,144
142 Streetlight Assesment District	3,131,941		-	-	3,131,941
143 Berkeley Bus Ec Dev	168,387		-	-	168,387
145 Bayer (Miles Lab)	8,500		-	-	8,500
146 Employee Training	856,852		-	-	856,852
147 UC Settlement	1,183,788		119,500	119,500	1,303,288
148 Cultural Trust	168,156		-	-	168,156
149 Private Party Sidewalks	272,458		-	-	272,458
150 Public Art Fund	140,608		-	-	140,608
152 Vital & Health Statistics Trust Fund	28,195		-	-	28,195
156 Hlth State Aid Realign Trust	4,128,010		-	-	4,128,010
157 Tobacco Cont.Trust	482,074		(31)	(31)	482,043
158 Mental Health State Aid Realign	4,124,453		22,842	22,842	4,147,295
159 Citizens Option Public Safety Trust	332,672		-	-	332,672
161 Alameda Cty Abandoned Vehicle Abatement	100,208		-	-	100,208
307 Capital Grants - Local	341,406	628,139		628,139	969,545
309 OTS DUI Enforcement Education Prg.	329,500		-	-	329,500
310 HUD/Home	831,094		-	-	831,094
311 ESGP	235,790		223,563	223,563	459,353
312 Health (General)	2,212,634	65,036	13,068	78,104	2,290,738
313 Target Case Management Linkages	1,015,439		-	-	1,015,439
314 Alameda County Tay Tip	8		-	-	8
315 Mental Health Service Act	11,386,478	51,988	244,203	296,191	11,682,669
316 Health (Short/Doyle)	4,504,355		22,842	22,842	4,527,197
317 EPSDT Expansion Proposal	377,855		-	-	377,855

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund # Fund	FY 2020 Revised #1	2nd AAO			FY 2020 Revised #2
		Unencumbered Carryover	Other Adjustments	Total Amend.	
318 Alcoholic Bev Ctr OTS/UC	67,804			-	67,804
319 Youth Lunch	320,599			-	320,599
320 Sr. Nutrition Title III	86,227			-	86,227
321 CFP Title X	158,740		115,000	115,000	273,740
324 BUSD Grant	307,624			-	307,624
325 Vector Control	345,210			-	345,210
326 Alameda County Grants	574,215		2,590	2,590	576,805
327 Senior Supportive Social Services	56,597			-	56,597
328 Family Care Support Program	72,128			-	72,128
329 CA Integrated Waste Management	5,244			-	5,244
331 Housing Mitigation	1,051,751			-	1,051,751
333 CALHOME	363,100			-	363,100
334 Community Action	264,258			-	264,258
336 One-Time Grant: No Cap Exp	6,601,804	301,028	416,921	717,949	7,319,753
338 Bay Area Air Quality Management	60,000			-	60,000
339 MTC	2,552,414	698,950		698,950	3,251,364
340 FEMA	2,837,534			-	2,837,534
341 Alameda Cty Waste Mgt.	307,397		201,580	201,580	508,977
343 State Dept Conserv/Recylg	28,000			-	28,000
344 CALTRANS Grant	361,185	700,373	377,605	1,077,978	1,439,163
345 Measure WW Park Bond Grant	2,974,323	33,167		33,167	3,007,490
346 CALTRANS Safe Routes 2 Schools	9,757			-	9,757
347 Shelter+Care HUD	5,168,632			-	5,168,632
348 Shelter+Care County	546,638			-	546,638
349 JAG Grant	122,500			-	122,500
350 Bioterrorism Grant	273,188			-	273,188
501 Capital Improvement Fund	21,280,003	2,055,911	380,945	2,436,856	23,716,859
502 Phone System Replacement	198,000			-	198,000
503 FUND\$ Replacement	16,301,023			-	16,301,023
504 PEG-Public, Education & Government	100,000			-	100,000
506 Measure M - Street & Watershed Impv	1,454,431	103,640		103,640	1,558,071
511 Measure T1 - Infra & Facil.	28,908,491	971,206	4,985,206	5,956,412	34,864,903
552 09 Measure FF Debt Service	1,619,731			-	1,619,731
553 2015 GORBS	2,612,468			-	2,612,468
554 2012 Lease Revenue Bonds BJPFA	502,402			-	502,402
555 2015 GORBS - 2002 G.O. Refunding Bonds	482,600			-	482,600
556 2015 GORBS (2007, Series A)	181,674			-	181,674
557 2015 GORBS (2008 Measure I)	612,562			-	612,562
558 2010 COP (Animal Shelter)	404,498			-	404,498
559 Measure M GO Street & Water Imps	1,647,738			-	1,647,738
560 Infrastructure & Facilities Measure T1	2,470,306			-	2,470,306
601 Zero Waste	50,061,565		138,230	138,230	50,199,795
606 MAR - Costal Conservancy	125,400			-	125,400
608 Marina Operation	8,012,220	319,303		319,303	8,331,523
611 Sewer	37,701,657	169,306	1,749,600	1,918,906	39,620,563
612 Private Sewer Lateral FD	197,441			-	197,441
616 Clean Storm Water	4,911,076			-	4,911,076
621 Permit Service Center	21,219,330		(428,000)	(428,000)	20,791,330
622 Unified Program (CUPA)	921,461			-	921,461
627 Off Street Parking	7,687,979		230,620	230,620	7,918,599
631 Parking Meter	9,975,741	11,911	168,269	180,180	10,155,921
636 Building Purchases and Management	3,301,749			-	3,301,749
671 Equipment Replacement	5,977,948		1,010,866	1,010,866	6,988,814
672 Equipment Maintenance	8,194,536		750,702	750,702	8,945,238
673 Building Maintenance Fund	4,674,225			-	4,674,225
674 Central Services	396,985			-	396,985
675 Computer Replacement Fund	114,000			-	114,000
676 Workers Compensation	6,534,674			-	6,534,674
678 Public Liability	3,274,495			-	3,274,495
680 Information Technology	16,093,237			-	16,093,237
762 Successor Agency - Savo DSF	56,960			-	56,960
774 Sustainable Energy Fin District	28,748			-	28,748

SUMMARY OF APPROPRIATIONS BY FUND

ERMA Fund # Fund	FY 2020 Revised #1	2nd AAO			FY 2020 Revised #2
		Unencumbered Carryover	Other Adjustments	Total Amend.	
776 Thousand Oaks Underground	100,350			-	100,350
777 Measure H - School Tax	500,002			-	500,002
778 Measure Q - CFD#1 Dis. Fire Protect Bond	530,399		285,100	285,100	815,499
779 Spl Tax Bds. CFD#1 ML-ROOS	875,783		565,100	565,100	1,440,883
781 Berkeley Tourism BID	650,000			-	650,000
782 Elmwood Business Improvement District	30,001			-	30,001
783 Solano Ave BID	25,000			-	25,000
784 Telegraph Avenue Bus. Imp. District	515,637			-	515,637
785 North Shattuck BID	182,647			-	182,647
786 Downtown Berkeley Prop & Improv. District	1,400,164			-	1,400,164
801 Rent Board	5,497,649			-	5,497,649
GROSS EXPENDITURE:	672,748,107	10,371,173	18,194,090	28,565,263	701,313,370
Dual Appropriations	-26,171,544	-	(11,425,127)	(11,425,127)	-37,596,671
Revolving & Internal Service Funds	-46,002,952	-	(1,761,568)	(1,761,568)	-47,764,520
NET EXPENDITURE:	600,573,611	10,371,173	5,007,395	15,378,568	615,952,179

FY 2020 Annual Appropriations Ordinance Amendment #2 Recommendations

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
1	11	General Fund	Fire		\$3,622		Fusako Donation		X		Appropriate remaining balance of Fusako Castro donation for purchase of a new fire water rescue boat. Donation was approved by Council on 1/23/18 through Resolution 68,285-N.S.
2	11	General Fund	Public Works		\$40,650		University Avenue Center			X	Appropriate funds for the FY 2020 University Avenue Center Operating Budget
3	11	General Fund	Public Works	\$0	\$203,652	16UD02/PWEN UD1602	City-Wide Undergrounding		X		Appropriate funds for the City-wide undergrounding project. \$200,000 was approved by Council on 11/27/18 for the Undergrounding Project
4	11	General Fund	Public Works	\$0	\$5,830	PWENSR1542	Sewer Laterals & CCTV			X	Appropriate funds for on-going certification for various City-owned buildings.
5	11 Total			\$0	\$253,754						
6	101	Library Tax	Berkeley Public Library		\$14,301		FY19-20 CLSA Distributions			X	Appropriate funds for Pacific Library Partners FY19-20 CLSA Distributions
7	101 Total			\$0	\$14,301						
8	110	Section 108 HUD Loan Grant Asst.	Health, Housing & Community Services		\$1,100	HHH1082001	Section 108 Loan Bank Service Fees			X	Funds for additional bank fees in FY 2020
9	110 Total			\$0	\$1,100						
10	113	Sports Field	Parks, Recreation & Waterfront		\$15,000		Gilman Field Water Line			X	Appropriate funds for EBMUD change order to increase the Gilman Field water line
11	113	Sports Field	Parks, Recreation & Waterfront		\$30,000		Gilman Field Turf			X	Appropriate funds for Field Turf Amendment for maintenance at Gilman Fields.
12	113 Total			\$0	\$45,000						
13	115	Animal Shelter	City Manager's Office		\$6,264		Maddies Grant			X	Spend remaining grant funds on medical equipment for animals at
14	115 Total			\$0	\$6,264						
15	125	Playground Camp	Parks, Recreation & Waterfront		\$2,900,000		Berkeley Tuolumne Camp Construction Support Services			X	Appropriate funds for Berkeley Tuolumne Camp - Construction Support Services (Amendment to Siegel & Strain Design Contract)
16	125	Playground Camp	Parks, Recreation & Waterfront		\$250,000		Berkeley Tuolumne Camp Inspections and Testing			X	Appropriate funds for Berkeley Tuolumne Camp special inspections and materials testing services
17	125	Playground Camp	Parks, Recreation & Waterfront		\$10,000		Camps Bus Transportation			X	Appropriate funds for Camps Bus Transportation
18	125	Playground Camp	Parks, Recreation & Waterfront	\$490,000			Berkeley Tuolumne Camp			X	Carryover funds for Berkeley Tuolumne Camp for Construction Management
19	125	Playground Camp	Parks, Recreation & Waterfront		\$1,057,500		Berkeley Tuolumne Camp			X	Appropriate additional funds for Berkeley Tuolumne Camp Construction Management
20	125 Total			\$490,000	\$4,217,500						
21	126	State Proposition 172	Police		\$453,896		Salary Savings			X	Remove salary savings target for fund built into the FY 2019 budget and not removed in FY 2020 budget.
22	126 Total			\$0	\$453,896						
23	127	State Transportation Tax	Public Works		\$10,000	PRWCP19001	American Public Works Association (APWA) Conference			X	Appropriate funds for staff to attend the American Public Works Association (APWA) Conference
24	127	State Transportation Tax	Public Works	\$482,902		PWENST1902	Bay Cities Paving			X	Carryover funds for the Bay Cities Paving project.
25	127	State Transportation Tax	Public Works	\$24,302		18SD19	Codomnices Creek @ Kains			X	Carryover funds for design phase of Codornices Creek @ Kains
26	127	State Transportation Tax	Public Works	\$784,083		18ST01	Street Rehab FY 2018 Panoramic Hill			X	Carryover funds for the Street Rehab FY 2018 Panoramic Hill project
27	127	State Transportation Tax	Public Works	\$101,284		PWTRCS1406	Shattuck Reconfiguration			X	Carryover from FY 2019 funds for the Shattuck Reconfiguration Project
28	127 Total			\$1,392,571	\$10,000						

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
29	130	Measure B - Local Streets and Roads	Public Works	\$103,263	\$620,737	PWENST1902	Bay Cities Paving			X	Carryover and appropriate funds for the Bay Cities Paving project.
30	130 Total			\$103,263	\$620,737						
31	134	MEAS BB - Local Streets and Roads	Public Works	\$1,299,965	\$300,035	PWENST1902	Bay Cities Paving			X	Carryover and appropriate funds for the Bay Cities Paving project.
32	134 Total			\$1,299,965	\$300,035						
33	135	Measure BB - Bike and Pedestrian	Public Works	\$52,561	\$80,618	17BP07	9th Street Pathway Phase II			X	Carryforward & appropriate funds for construction of 9th Street Pathway Phase II
34	135 Total			\$52,561	\$80,618						
35	138	Parks Tax	Parks, Recreation & Waterfront	\$2,000		PRWPK14002	John Hinkel project			X	Carryover funds for printing of the John Hinkel project
36	138	Parks Tax	Parks, Recreation & Waterfront	\$49,400		PRWPK19003	King School			X	Carryover funds for the King School Park Renovation
37	138	Parks Tax	Parks, Recreation & Waterfront	\$15,000		PRWPK19004	John Hinkel Amphitheater Area			X	Carryover funds for John Hinkel Amphitheater Construction.
38	138	Parks Tax	Parks, Recreation & Waterfront	\$573,143		PRWPK15002	James Kenney Play Area			X	Carryover funds for the James Kenney Play Area
39	138	Parks Tax	Parks, Recreation & Waterfront	\$100		PRWT119004	Grove Park			X	Carryover funds for Grove Park Phase II
40	138	Parks Tax	Parks, Recreation & Waterfront		\$500,000	PRWT119011	Strawberry Park Phase 2			X	Appropriate funds for the Strawberry Park Phase 2 project
41	138	Parks Tax	Parks, Recreation & Waterfront	\$269,920		PRWT1190009	San Pablo Play & Tennis			X	Carryover funds for the San Pablo Play and Tennis Project.
42	138	Parks Tax	Parks, Recreation & Waterfront	\$13,292		PWENSR1542	Sewer Laterals & CCTV			X	Carryover funds for on-going certification for various City-owned buildings.
43	138 Total			\$922,855	\$500,000						
44	140	Measure GG - Fire Preparation Tax	Fire		\$90,500		Michael Brady Contract		X		Contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff. Approved by Council on 1/21/20 through Resolution 69,244-N.S.
45	140	Measure GG - Fire Preparation Tax	Public Works		\$9,420		EBRC			X	Appropriate funds for the East Bay Regional Communications System Authority for the increase in the annual rate from \$336 to \$360 a month.
46	140 Total			\$0	\$99,920						
47	141	1st Response Advanced Life Support	Fire		(\$5,356)		Encumbrance Rollover Correction			X	Remove funds budgeted for encumbrance rollover as they are no longer needed as the fund is not being used anymore
48	141 Total			\$0	(\$5,356)						
49	147	UC Settlement	Non-Departmental		\$119,500		UC Long Range Development Payments			X	Increase transfer to General Fund for FY 2020 for Golden Bear Mitigation Fee payment revenues.
50	147 Total			\$0	\$119,500						
51	157	Tobacco Control	Health, Housing & Community Services		(\$31)		Carryover Correction			X	Carryover from FY 2019 unspent Tobacco Prevention Grant Funds was approved at \$131,815. Actual carryover amount was \$131,784.
52	157 Total			\$0	(\$31)						
53	158	Mental Health State Aid Realignment	Health Housing & Community Services		\$22,842		Reclassification Costs		X		Funds for the reclassification of Mental Health Registered Nurses to Mental Health Nurse classification. Mental Health Nurse classification was approved by Council on 1/21/20 through Resolution 69,253-N.S.
54	158 Total			\$0	\$22,842						

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
55	307	Capital Grants Local	Public Works	\$628,139		PWTRBP1707	9th Street Pathway Phase II			X	Carryforward funds for construction of 9th Street Pathway Phase II
56	307 Total			\$628,139	\$0						
57	311	ESGP	Health, Housing & Community Services		\$223,563	HHHESG2001	Bay Area Community Services Contract		X		Appropriate unspent and returned FY 2017 and FY 2019 ESG funds for contract with Bay Area Community Services to operate the Pathways Project. Approved by Council on 3/12/19 through Resolution No. 68,780-N.S.
58	311 Total			\$0	\$223,563						
59	312	Health (General)	Health, Housing & Community Services	\$65,036	\$13,068		Oral Health Grant			X	Appropriate fund for Oral Health Grant
60	312 Total			\$65,036	\$13,068						
61	315	Mental Health Services Act	Health Housing & Community Services		\$44,138		Annual Fees			X	Fees for Private Fund Development - Special Member Fee (\$1,514) and PEI Sustainability Funding for FY 2020 (\$42,624) payable to California Mental Health Services Authority
62	315	Mental Health Services Act	Health Housing & Community Services		\$22,856		Covenant House Contract Amendment		X		Contract amendment with Covenant House -YEAH! Program to provide mental health services and support to mentally ill transition age youth who are homeless and not currently receiving services. Approved by Council on 7/23/19 through Resolution 69,041-N.S.
63	315	Mental Health Services Act	Health Housing & Community Services		\$31,511		Reclassification Costs		X		Funds for the reclassification of Mental Health Registered Nurses to Mental Health Nurse classification. Mental Health Nurse classification was approved by Council on 1/21/20 through Resolution 69,253-N.S.
64	315	Mental Health Services Act	Health Housing & Community Services		\$145,698		MHSA Plan Position Additions		X		Funds for additional positions in approved City of Berkeley FY 2020 MHSA Plan
65	315	Mental Health Service Act	Public Works	\$51,988		14CB05	Mental Health Reno (2640)			X	Carryover Funds for Mental Health Building Renovation Project (2640)
66	315 Total			\$51,988	\$244,203						
67	316	Health (Short/Doyle)	Health Housing & Community Services		\$22,842		Reclassification Costs		X		Funds for the reclassification of Mental Health Registered Nurses to Mental Health Nurse classification. Mental Health Nurse classification was approved by Council on 1/21/20 through Resolution 69,253-N.S.
68	316 Total			\$0	\$22,842						
69	321	C.F.P Title X	Health, Housing & Community Services		\$115,000		Grant Budget			X	Revise Title X budget for additional allocation from the U.S. Department of Health & Human Services
70	321 Total			\$0	\$115,000						
71	326	Alameda County Grants	Health, Housing & Community Services		\$2,590		Berkeley High School Health Center Grant			X	Revise grant budget for Berkeley High School Health Center funds from Alameda County to match approved allocation amount
72	326 Total			\$0	\$2,590						
73	336	One-Time Grant	Health, Housing & Community Services		\$75,000		Memorandum of Understanding for a Winter Relief Program		X		Execute a memorandum of understanding (MOU) between Alameda County and the City of Berkeley for a Winter Relief Program, consisting of \$75,000 allotted from Alameda County to the City, which will provide homeless people on the streets of Berkeley housing respite through May 31, 2020. Approved by Council on 12/10/19 through Resolution No. 69,208-N.S.

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
74	336	One-Time Grant	Health, Housing & Community Services		\$44,729		FDA Grant			X	Revise FDA grant budget for Retail Food Standards Program for additional funds
75	336	One-Time Grant	Health, Housing & Community Services		\$27,192		FDA Grant			X	2020 FDA Grants for: Training to Support Retail Program Standards; Implementation of Risk-based Plan Review; and Verification Audits of Standards 3 and 5
76	336	One-Time Grant	Public Works	\$301,028		18SD19	Codomices Creek @ Kains			X	Carryover funds for design phase of Codomices Creek @ Kains
77	336	One-Time Grant	Parks, Recreation & Waterfront		\$270,000		Portable Toilets - HEAP			X	Appropriate funds from HEAP for port-a-poty and sanitation efforts @ existing and expanded locations.
78	336 Total			\$301,028	\$416,921						
79	339	MTC	Public Works	\$254,000		PWTRPK1706	goBerkeley RSPP			X	Carryover funds for Nielson Nygaard contract to provide community outreach services for the gB PSPP Pilot
80	339	MTC	Parks, Recreation & Waterfront	\$444,950		PRWPP15001	Bay Trail Project			X	Carryover funds for completion of the Bay Trail Project.
81	339 Total			\$698,950	\$0						
82	341	Alameda County Waste Management	Public Works		\$201,580		Foodware Containers			X	Appropriate funds for the single source Foodware contract and Recology contract
83	341 Total			\$0	\$201,580						
84	344	CALTRANS Grant	Public Works		\$377,605	PWTRSW1706	Gilman RR Pedestrian Xing Safety			X	Revise project budget to reflect increased funding agreement from CalTrans
85	344	CALTRANS Grant	Public Works	\$700,373		PWTRBP1707	9th Street Pathway Phase II			X	Carryforward & appropriate funds for construction of 9th Street Pathway Phase II
86	344 Total			\$700,373	\$377,605						
87	345	Measure WW	Parks, Recreation & Waterfront	\$33,167			AAO #1 Correction			X	Carryover request for John Hinkel Park was listed as \$387,555 and should have been \$418,722.
88	345 Total			\$33,167	\$0						
89	501	Capital Improvements	Parks, Recreation & Waterfront	\$1,041,091	\$8,909	PRWWF19001	Waterfront Masterplan		X		Carryover funds from FY 2019 for the Waterfront Masterplan. Approved by Council on 5/14/19.
90	501	Capital Improvements	Parks, Recreation & Waterfront		\$4,300	PRWT119011	Strawberry Park Phase 2			X	Carryover funds for the Strawberry Park Phase 2 project
91	501	Capital Improvements	Parks, Recreation & Waterfront		\$269,041	PRWT119009	San Pablo Play & Tennis			X	Carryover funds for the San Pablo Play and Tennis Project.
92	501	Capital Improvements	Parks, Recreation & Waterfront		\$7,058	PWENSR1542	Sewer Laterals & CCTV			X	Appropriate funds for on-going certification for various City-owned buildings.
93	501	Capital Improvements	Public Works	\$136,740		18ST01	Street Rehab FY 2018 Panoramic Hill			X	Carryover for the Street Rehab FY 2018 Panoramic Hill project
94	501	Capital Improvements	Public Works	\$597,076		PWTRCS1406	Shattuck Reconfiguration			X	Carryover from FY 2019 funds for the Shattuck Reconfiguration Project
95	501	Capital Improvements	Public Works		\$91,637		UUD Grizzly Peak #48			X	Appropriate funds for Survey of the Underground Utility District (UUD) No. 48 @ Grizzly Peak
96	501	Capital Improvements	Public Works	\$45,369		PWENSR1542	Sewer Laterals & CCTV			X	Appropriate funds for on-going certification for various City-owned buildings.
97	501	Capital Improvements	Public Works	\$235,635		PWENCB1805	PSB Envelope Leak Repair			X	Carryover from FY 2019 funds for the Public Safety Building Envelope Leak Repair project
98	501 Total			\$2,055,911	\$380,945						
99	506	Measure M	Public Works	\$23,200		18ST01	Street Rehab FY 2018 Panoramic Hill			X	Carryover for the Street Rehab FY 2018 Panoramic Hill project
100	506	Measure M	Public Works	\$80,440		PWENSG1801	LID FY18 Woolsey St.			X	Carryover from FY 2019 funds for the Low Impact Improvements for Woolsey Street

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
101	506 Total			\$103,640	\$0						
102	511	Measure T1	Parks, Recreation & Waterfront	\$39,467		PRWT119011	Strawberry Park Phase 2			X	Carryover funds for the Strawberry Park Phase 2 project
103	511	Measure T1	Parks, Recreation & Waterfront		\$1,501,980	PRWT119006	University Ave, Marina, Spinnaker St			X	Appropriate funds for Construction on University Avenue, Marina, Spinnaker Street.
104	511	Measure T1	Parks, Recreation & Waterfront		\$289,741	PRWT119005	Live Oak			X	Appropriate additional funds to increase the Live Oak budget for the Mar Con Builders amendment.
105	511	Measure T1	Parks, Recreation & Waterfront	\$210,729		PRWT119004	Grove Park			X	Carryover funds for Grove Park Phase II
106	511	Measure T1	Parks, Recreation & Waterfront		\$267,823	PRWT119003	Frances Albrier Community Centerr			X	Appropriate funding for the Frances Albrier Community Center planning and design
107	511	Measure T1	Public Works		\$600,000	PWENCB1405	B Brothers Inc. Contract			X	Appropriate additional T1 funds for the balance of the B Brothers contract and additional professional services for the 2640 MLK Mental Health Services Center Renovation
108	511	Measure T1	Public Works	\$269,615		PWT1EL1910	Marina Corp Yard Electrical Upgrade			X	Carryover funds from FY 2019 for constructions cost of the Marina Corp Yard Electrical Upgrade.
109	511	Measure T1	Public Works		\$512,608	PW1G11905	Rose Garden			X	Appropriate funds for Construction of Rose Garden Drainage
110	511	Measure T1	Public Works		\$1,692,908	T1PW08/PWT1 ST1908	T1 Sts: Monterey & Ward			X	Appropriate funds for Street Improvements for T1 Phase 1 @ Monterey Avenue & Ward Street
111	511	Measure T1	Public Works		\$120,146	T1PW08/PWT1 ST1908	T1 Sts: Monterey & Ward			X	Appropriate funds for Street Improvements for T1 Phase 1 @ Monterey Avenue & Ward Street
112	511	Measure T1	Public Works	\$451,395		T1PW09/PWT1 CB1909	CY Equip Mtc Bldg Upgrade			X	Appropriate funds for CY Equip Mtc Bldg Upgrade (Planning/Design Phase)
113	511 Total			\$971,206	\$4,985,206						
114	601	Zero Waste	Public Works		\$138,230	PWZWCB1701	Airco Building Improvements			X	Appropriate funds for Airco Building Improvements
115	601 Total			\$0	\$138,230						
116	608	Marina Operations/Maint.	Parks, Recreation & Waterfront	\$148,138		PRWPP15001	Bay Trail Project			X	Carryover funds for the Bay Trail Project.
117	608	Marina Operations/Maint.	Parks, Recreation & Waterfront	\$171,165		PRWWF19004 & F20003	Hana Japan & Hs Lordships			X	Carryover funds for painting and bean repair of Hana Japan & painting and roof repair of Hs Lordships.
118	608 Total			\$319,303	\$0						
119	611	Sanitary Sewer Operation	Public Works	\$169,306		PWENSR1902 (19SR02)	Euclid Rehab			X	Carryover funds from FY 2019 for constructions cost of the Euclid Backline
120	611	Sanitary Sewer Operation	Public Works		\$837,489	PWENSR1908 (19SR02)	Sewer Master Plan		X		Funds for Sanitary Sewer Master Plan. Approved by Council on 6/11/19 through Resolution No. 68.951-N.S.
121	611	Sanitary Sewer Operation	Public Works		\$384,833	PWENSR2004(20SR04)	SS Rehab - W. Frontage Road			X	Funds for rehabilitation of sanitary sewer mains along West Frontage Road and crossing under I-80
122	611	Sanitary Sewer Operation	Public Works		\$527,278	PWENSR2005	URG Repair			X	Appropriate funds to design and construct/rehabilitate defective sanitary sewer mains, manholes and sewer laterals at various locations.
123	611 Total			\$169,306	\$1,749,600						
124	621	Permit Service Center	Planning & Development		(\$428,000)		Reduce budget			X	Eliminate cost for professional services as digital permitting system contract will not be executed this year and janitorial
125	621 Total			\$0	(\$428,000)						
126	627	Zero Waste	Public Works		\$230,620		EV Charging Stations			X	Appropriate funds to Ramp up EV Charging Station CSG
127	627 Total			\$0	\$230,620						

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
128	631	Parking Meter Fund	Public Works	\$11,911	\$168,269	PWENCB1907	125-127 University Parking Lot			X	Carryover funds from FY 2019 & appropriate funds for construction of 125-127 University Parking Lot Improvement
129	631 Total			\$11,911	\$168,269						
130	671	Equipment Replacement	Public Works		\$255,000		Ambulance Purchase			X	Appropriate funds to purchase an ambulance
131	671	Equipment Replacement	Public Works		\$755,866		BPD Vehicles Shortfall			X	Appropriate funds to cover the shortfall to purchase 13 Berkeley Police Department Vehicles.
132	671 Total			\$0	\$1,010,866						
133	672	Equipment Maintenance	Public Works		\$750,702		Fuel Maintenance			X	Appropriate funds for shortfall in fuel budget and Zonar GPS contract & tools.
134	672 Total			\$0	\$750,702						
135	778	CFD NO. 1 DIASTER FIRE PROT	Fire & Emergency Services		\$216,100		Measure Q			X	Appropriate fund for measure Q (lighting package for F550, security camera system, office design&shelves, forklift and trailer, office project-PG&E and security gate)
136	778	CFD NO. 1 DIASTER FIRE PROT	Fire & Emergency Services		\$69,000		Measure Q			X	Appropriate fund for Measure Q (F250 and lighting package) to support the above ground water system.
137	778 Total			\$0	\$285,100						
138	779	CFD NO.1 MELLO-ROOS	Non-Departmental		\$565,100		Transfer to Fund 778		X		Increase transfer to Fund 778 (CFD No. 1 Disaster Fire Protection) for Fire Captain position approved by Council on 6/25/19 and additional allocations included in AAO #2.
139	779 Total			\$0	\$565,100						
140	Grand Total			\$10,371,173	\$18,194,089						



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Economic Development Manager

Subject: Renewal of the North Shattuck Business Improvement District (NSBID)

RECOMMENDATION

Adopt a Resolution declaring intent to reestablish the NSBID for the ten-year period beginning July 1, 2020 (FY21) and ending June 30, 2030, setting a public hearing for June 16, 2020 on reestablishment of the District, and directing the City Clerk to conduct all necessary proceedings for reestablishment of the NSBID.

SUMMARY

Since 2001, the NSBID provides cleaning, marketing, and hospitality services for Berkeley's North Shattuck commercial district. The current NSBID is set to expire on June 30, 2020, and the North Shattuck Association (NSA), as the District's Owners' Association, has begun the legal process to renew the NSBID for a slightly expanded geographic area (increasing from 51 parcels to a total count of 54 parcels) for a third term of 10 years. The new term for the District would begin on July 1, 2020 and end June 30, 2030. This Council item is the next step in the process to re-establish the NSBID for next 10 years.

The NSBID is proposed to be renewed pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et. seq. Assessments are also subject to the requirements of California Constitution Article XIII D, also known as Proposition 218. As shown in the attached Management District Plan and Engineer's Report, a professional engineer has determined that the assessed parcels will receive special benefits from the NSBID's services in accordance with Prop 218. Petitions have been received from property owners representing over 30% of the proposed assessment; therefore Council may now begin the ballot process.

By adopting the attached Resolution of Intention (Attachment 1), Council will be directing staff to begin the ballot phase of the renewal process. Ballots will be mailed to all owners of assessed parcels within the District. Property owners will have at least 45 days to return their ballots to the City. Ballots must be returned prior to the close of the public hearing scheduled to take place at the June 16, 2020 City Council meeting. At the June 16, 2020 meeting, Council may renew the NSBID if there is no majority protest among the returned ballots. A "no" vote on the ballot by property owners who would pay

more than fifty percent (50%) of the assessment represented by the returned ballots (weighted by dollar amount) constitutes a majority protest.

The City of Berkeley does not own any parcels within the proposed boundaries of the NSBID.

FISCAL IMPACTS OF RECOMMENDATION

If the NSBID is reauthorized, Alameda County will collect for the City an assessment on commercial properties in the North Shattuck Business District (C-NS zoning district) in Fiscal Year 2021 and nine subsequent fiscal years through 2030. The proposed initial assessment is \$210,364, and this amount may increase by up to five (5) percent per year during the duration of the renewed District. Annual assessment funds will be deposited into NSBID Fund 785-21-208-251-0000-000-000-412110 and expended from fund 785-21-208-251-0000-000-446-636110. The City receives this revenue from Alameda County and disburses it to a private non-profit organization that was formed to manage the services provided by the NSBID, the North Shattuck Association (hereafter, the Association.) The Association Board would have the authority to raise assessment as much as five percent per year to keep pace with inflation and other program costs.

As described in the Management District Plan in Attachment 1, Exhibit A, the NSBID finances maintenance and a variety of marketing activities for the North Shattuck business district. It therefore indirectly enhances sales tax, business license tax, property tax and other business-related City revenue sources.

CURRENT SITUATION AND ITS EFFECTS

The current item initiates the renewal of the NSBID for the period FYs 2021-2030, following procedures established in State property law BID authorizing legislation (Property and Business Improvement District Law of 1994, Streets and Highways Code, Section 36600 et. seq.) and implementing legislation that the City approved under its own Charter authority (Berkeley Municipal Code Chapters 7.84 and 7.94).

The NSBID was first established for a ten year period by Resolution of the Berkeley City Council on July 10, 2001 (Resolution No. 61,168-N.S.) after a formal balloting of district property owners was successfully completed. The City then contracted with the Association to implement the NSBID Management District Plan that had been developed by a steering committee of merchants and property owners. The district successfully renewed for a second ten year period on May 3, 2011 (Resolution No. 65,265-N.S), and this represents its third renewal since inception.

BACKGROUND

A Property-based Business Improvement District, or PBID, is a benefit assessment district formed and renewed by property owners to provide enhanced services within the established boundaries. These services are concentrated within a distinct geographic area and are paid for by means of a special assessment on property within the District.

A nonprofit corporation owners' association representing assessed property owners is responsible for providing these services, which are undertaken in coordination with 'baseline' services provided by local government.

On October 24, 2019 the Board of Directors of the North Shattuck Association, nonprofit corporation owners' association representing assessed property owners, voted to take steps to renew the NSBID for a third ten-year period by hiring a consultant (New City America) to develop a new Management District Plan and oversee the renewal process. Accordingly, as is required in the enabling legislation, the staff and board members circulated a petition to all property owners within the boundaries of the District. Per the requirement for establishment and renewal of a Property Based Assessment District under BMC 7.94.030, on January 7, 2020 NSA's Executive Director Heather Hensley presented the City with petitions signed by property owners in the proposed District who will pay more than 30 percent of the assessments. The weighted petitions and ownership were verified as valid by the City of Berkeley Finance Department on January 23, 2020 and certified by the City Clerk on February 12, 2020. The method and basis for each parcel's assessment is detailed on pages 18 and 19 of the attached Management District Plan, Engineer's Assessment Report (Attachment 1, Exhibit A).

Majority Protest Process

"The Right to Vote on Taxes Act" (also known as Proposition 218) was adopted by the voters in 1996. Among other things, Proposition 218 requires a specific process for cities to impose or increase benefit assessments on real property. The City has determined that the North Shattuck Business Improvement District renewal is subject to Proposition 218 regulations. Proposition 218 defines the process for establishing or adjusting property-based assessments. The process requires that a notice of the proposed assessment be sent to all property owners in the assessment district and that 45 days after the notice is sent a public hearing is conducted by City Council. During the 45-day period and up until the close of the public hearing, a property owner may protest the assessment by submitting a written protest. If written protests against the proposed assessment are presented by a majority of the owners of the identified parcels, weighted according to the proportional financial obligation of the affected property, the City Council may not impose the assessment.

Assessments

Property owners, merchants, and other North Shattuck stakeholders have emphasized that an assessment formula for the District needs to be fair, balanced, and commensurate with benefits received. Each property owner will pay based on benefits received. The variables used for the annual assessment formula are based on parcel lot size, building size, and linear lot frontage. The sources of assessable data are detailed on page 6 of the Management District Plan (Attachment 1, Exhibit A). The building square footage, and lot square footage are sourced from the City of Berkeley Department of Finance, Land Management Module which includes Planning and

Building Department data, and the lot frontage is provided by the Alameda County Assessor parcel maps.

The initial rates of assessment, and formula, are listed in Table 1 below. Assessment rates may be increased by up to 5% per year to account for inflation and program cost increases, subject to the review and approval of the NSA Board of Directors.

Table 1. Initial Assessment Rate per Property Variable, Annual Costs		
Building Size (sq. ft.)	Lot Size (sq. ft.)	Linear Frontage (ft.)
\$0.16	\$0.10	\$12.00

Management District Plan and Budget

The Management District Plan outlines three main areas of focus for the NSBID:

- Civil Sidewalks – which includes landscaping, enhanced trash removal, graffiti abatement, sidewalk and gutter cleaning, personnel to manage in house or contracted maintenance and/or ambassador/security teams;
- District Identity and Placemaking – including banners or seasonal decorations, public space or design improvements, public art displays, event production; and
- Contingency and Administration – which includes district management including staff, office supplies and rent, utilities, and reserves.

The total anticipated assessment budget is \$210,364.00 (rounded to the nearest whole dollar) and the split between the three focus areas is outlined below in Table 2.

Table 2. Assessment Budget		
Budget Category	Amount	%
Civil Sidewalks - Landscaping & Trash Removal	\$85,000	40%
District Identity and Placemaking	\$52,000	25%
Contingency and Administration	\$73,364	35%
TOTAL	\$210,364	100%

The Management District Plan provides for services above and beyond those “baseline services” currently provided by the City of Berkeley. The NSBID and its renewal consultant team conducted individual meetings with property and business owners, along with the Association’s General Business meeting and developed service priorities based on the information and opinions collected via this outreach. The information from each step of this process was integrated and culminated in the development of the Management District Plan (Attachment 1, Exhibit A).

District Activities

Over the life of the NSBID, the Association has been actively involved in maintaining, marketing and promoting, and advocating for the District. The NSBID Executive Director coordinates with the City of Berkeley on service, parking, street behavior, permitting,

and security issues, and oversees NSBID funded maintenance and beautification activities including sidewalk sweeping and tree well cleaning, graffiti removal, sidewalk planter installation and maintenance, decorative light pole banners, and winter holiday lighting and décor.

To promote and market the District, the North Shattuck Association (NSA) produces events, curates social media content, compiles e-blasts, and maintains a district website. Holiday promotions and special events geared to both a local and regional audience have been developed by the District including the Chocolate & Chalk Art festival, Sunday Streets, the “Taste of North Berkeley” restaurant walk which showcases neighborhood boutiques and eateries. The NSA coordinates weekly North Berkeley Farmers’ Market, as well as producing winter holiday events and street entertainment. They have also partnered with nearby schools for arts related fundraisers.

The Association serves the District’s businesses and property owners as an advocate and ombudsman, providing technical assistance and development support, and engaging in business attraction. The Executive Director of the NSA also represents the District as a member of the Berkeley Business District Network (BBDN), Visit Berkeley, and the Chamber of Commerce.

Included in the Management District Plan (Attachment 1, Exhibit A) for the NSBID is a breakdown of the annual budget and District activities. The assessment levels will be the same for each property regardless of use type, and the boundaries of the district are proposed to expand slightly to capture a few commercial properties on the north side of Rose Street (total parcel count is 54) that are contiguous with the existing district. The work plan will remain essentially the same, any changes will be based on the area’s needs and as opportunities arise within the existing activity categories outlined in the Management District Plan.

ENVIRONMENTAL SUSTAINABILITY

By maintaining and enhancing the District, the NSBID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of transportation. The District is walking distance from the North Berkeley and Downtown Berkeley BART Stations. Several AC transit lines provide easy accessibility to visitors coming to this popular regional destination. Because the District is well served by public transportation and biking infrastructure, these services support environmental sustainability goals of encouraging alternative transportation choices and reducing vehicle miles traveled.

RATIONALE FOR RECOMMENDATION

Property and Business Improvement District Law of 1994 Streets and Highways Code, Section 36600 et. seq. requires that the BID initiate the renewal of the NSBID for the next operational period (10 years). The State property law BID authorizing legislation and all associated procedures for re-establishment must be followed to properly

implement legislation that the City approved under its own Charter authority (Berkeley Municipal Code Chapters 7.84 and 7.94.).

Following renewal, the NSA Board will prepare an Annual Report for each fiscal year in which assessments are to be levied. The report shall include any proposed changes in the rates for the district, the improvements and activities proposed for the year, and an estimate of the cost for providing them. Council action will be required to approve the BID's Annual Report, and its intent to levy assessments for the following year. This private/public partnership generates significant resources for revitalization of the North Shattuck District has a positive effect on the physical and economic health of the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered by the Association Board. The decision to seek a renewal of the NSBID, and slightly expand the current boundaries of the district was unanimous.

CONTACT PERSON

Eleanor Hollander, Office of Economic Development, 981-7536.

Attachments:

- 1: Resolution of Intention to Reestablish North Shattuck BID
Exhibit A: Management District Plan and Engineer's Report

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

RESOLUTION OF INTENTION TO REESTABLISH THE NORTH SHATTUCK
BUSINESS IMPROVEMENT DISTRICT

WHEREAS, the Property and Business Improvement District Law of 1994 (California Streets and Highways Code section 36600 et. Seq., hereafter the "Act") authorizes cities to fund property related improvements, maintenance and activities through the levy of assessments upon the real property that benefits from those assessments; and

WHEREAS, as authorized by the Act, the City Council established the North Shattuck Business Improvement District (the "District") by Resolution No. 61,168- N.S. on July 10, 2001; and

WHEREAS, as authorized by the Act, the City Council renewed the established the North Shattuck Business Improvement District (the "District") by Resolution No. 65,265- N.S. on May 3, 2011 for another term of ten years; and

WHEREAS, this District has successfully provided improvements and activities for two terms of ten years as authorized in the referenced legislation and Resolution is expiring; and

WHEREAS, in accordance with the Act and City of Berkeley legislation to implement it (Berkeley Municipal Code Chapters 7.84 and 7.94), property owners in the North Shattuck Commercial District have presented petitions asking the City of Berkeley to initiate special assessments proceedings to reestablish the District for an additional ten years for the purpose of undertaking and implementing the services described in the *North Shattuck Business Improvement District Management District Plan (MDP)*.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. Pursuant to Streets and Highways Code Section 36600 et. seq. and Berkeley Municipal Code Chapter 7.84, the City Council declares its intent to consider the reestablishment of a property and business improvement district to continue to be named the North Shattuck Business Improvement District.

Section 2. The proposed boundaries of the District are set forth in the description and map that are included in Section 2 "North Shattuck Business Improvement District Boundaries" of the MDP.

Section 3. The improvements and activities proposed are articulated in the complete MDP that is available to all property owners at the addresses specified in Section 7 "Assessment Roll of Properties Included" of the MDP.

April 14, 2020

Section 4. Council intends to levy assessments on property within the boundaries of the District according to the method and basis described in Section 4 “Assessment Methodology” of the MDP.

Section 5. A public hearing shall be held before the City Council on June 16, 2020 in the Council Chambers, 1231 Addison Street, Berkeley, California in compliance with Resolution No. 66,576-N.S. Following the hearing, the Council will consider adoption of a resolution reestablishing the District. At this hearing the Council will hear all interested persons for or against the reestablishment of the District, the extent of the District, and the furnishing of specified types of improvements and activities.

If written protests are received from the owners of properties in the proposed District that will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to establish the District shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated. Any person having a question regarding the hearing proceedings may telephone (510) 981-6900. Any person having a question regarding the establishment and operation of the proposed District may telephone (510) 981-7536.

Section 6. The City Clerk is directed to give notice of said hearings as provided in section 36623 of the Act and section 53753 of the Government Code, which requires that the agency shall give notice by mail to the record owner of each identified parcel. The public hearing shall be held not less than 45 days after the adoption of this Resolution.

Section 7. The City Clerk shall certify to the passage of this Resolution and cause the same to be published in accordance with the Act.

Exhibit

A: Management District Plan and Engineer’s Report



MANAGEMENT DISTRICT PLAN FOR THE RENEWAL OF THE NORTH SHATTUCK BUSINESS IMPROVEMENT DISTRICT (BID)

*Prepared pursuant to the City of Berkeley's Municipal Code
Chapter 7.94: Property and Business Improvement District
and the California Streets and Highways Code Sections 36500 et seq.
for the North Shattuck Business District*

Prepared for:
The North Shattuck Association and BID Renewal Committee
The City Council of Berkeley, California
JANUARY 2020

by
New City America, Inc.

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The North Shattuck Business Improvement District Renewal Management District Plan

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Attachment:

A. Engineer's Report

Section 1

Management District Plan Summary

The name of this renewed Business Improvement District (“BID”) is the North Shattuck Business Improvement District (“North Shattuck BID” or the “District”). The District is formed under Chapter 7.94 of the Berkeley Municipal Code, as amended from the Property and Business Improvement District and the California Streets and Highways Code Sections 36500 et seq. relating to the establishment of property based Business Improvement Districts.

The levy of assessments on real property within the proposed District will fund physical improvements to individual properties, attract new customers and visitors, and increase business sales. The assessments will fund maintenance, special events and activities, and other special benefits within the District, enhancing the North Shattuck area and creating jobs, attracting and retaining businesses, and improving physical infrastructure and performing ongoing maintenance.

North Shattuck BID Steering Committee

Since 2000, the North Shattuck Association has provided the property owners a series of special benefit services funded by the North Shattuck BID, approved by property owners by a mail ballot procedure in 2000, and then renewed in 2010. Services began July 1, 2010 (Fiscal Year 2011). This plan will represent the second renewal of the original district, with some changes in the assessment methodology, a minor expansion and a change in the priorities of the special benefit services provided to property owners.

Since the initiation of the renewal work in the Fall of 2019, the North Shattuck Business Improvement District BID Renewal Steering Committee has worked diligently to review the current plan, determine where changes should be made and advise its BID Consultant on how the district services should be prioritized over the next ten years.

How can a renewed BID benefit property owners in North Shattuck?

The renewed North Shattuck BID is a *Special Benefits District* whereby property owners’ vote, through a mail ballot procedure, to pay a supplemental cost their property tax bills to fund those special benefit services prioritized for the district. *The BID will not replace current “baseline” City services, but it can fund solutions to supplement City services in the areas including:*

- *Safety - Ensuring that the public experience in the public rights of way is civil and accommodating;*
- *Beautification - Sidewalk cleanliness and enhanced landscaping;*
- *Promotion - Enhancing the brand/image of North Shattuck including a strong social media presence;*
- *Event Production - Managing, curating, and producing events in the district;*
- *Advocacy - Creating and facilitating on-going positive public relations for North Shattuck businesses and property owners.*

Special Benefit Budget Category Analysis

The renewed North Shattuck *Management District Plan* gives the property owners greater flexibility in determining the type and frequency of special benefit services that will be allocated on a year-to-year basis. As North Shattuck evolves, services that are needed one year may not be needed the next. *Therefore, “bundles” or categories of special benefit funding are created and divided into four broad categories.* The four categories of services include (1) Civil Sidewalks, (2) District Identity and Placemaking, (3) Administration, and (4) Contingency.

Each section will give the North Shattuck Association the overall percentages per services for the life of the District, but the flexibility to prioritize or minimize a budget line item service found within that category during the life of the District. The categories of services and their percentages represent the service plan the North Shattuck property owners will be voting on when the District comes up for a mail ballot in early 2020.

PROPOSED FIRST YEAR BUDGET FOR THE NORTH SHATTUCK BUSINESS IMPROVEMENT DISTRICT – FY 2021

Category of Special Benefit Services	Annual Amount, First Year (rounded off numbers)	Percentage of total budget
Civil Sidewalks	\$ 85,000	40%
District Identity/Placemaking	\$ 52,000	25%
Administration	\$ 63,000	30%
Contingency	\$ 10,364	5%
Total	\$210,364.00	100%

METHOD OF FINANCING

The financing of the North Shattuck BID is based upon the levy of special assessments upon real properties that receive special benefits from the improvements and activities. See Section 4 for assessment methodology and compliance with Article XIII (d) of the California State Constitution. There will be three factors used in the determination of proportional costs to the parcels in the District. These three factors are:

- Linear frontage
- Lot size or the footprint of the parcel
- Building square footage.

Costs

The costs per parcel are based upon the three factors listed above. All assessments must be proportional to the special benefits received.

Proposed First Year Annual Costs per Property Variable

<i>Annual Building Square Footage Cost</i>	<i>Annual Lot Size Cost</i>	<i>Annual Linear Frontage Cost</i>
\$0.16	\$0.10	\$ 12.00

- Annual assessments are based upon an allocation of program costs by assessable linear frontage, (assessable on all sides of the parcels that receive benefits); PLUS, lot or parcel square footage; PLUS, assessable building square footage.
- Current and future residential condominium owners are assessed for their building square footage only.

Cap on Annual Assessments

The District budget and assessments may be subject to annual increases not to exceed 5% per year. Increases will be determined by the Owners' Association/North Shattuck Association and will vary between 0% and 5% annually. Changes in land uses, the development of vacant parcels, the conversion of tax exempt (if any) to profitable land uses, the demolition of buildings, building improvements that increase square footages, and new building construction or residential condominium development, may alter the District's budget and individual property assessments. Linear frontage and parcel size are normally not altered in the redevelopment of a site.

Bonds

The District will not issue any bonds related to any program.

District Formation

Under Chapter 7.94 of the Berkeley Municipal Code and the Property and Business Improvement District and the California Streets and Highways Code Sections 36500 et seq., the North Shattuck Business District renewal requires a submission of petitions from property owners in the proposed district representing more than 30% of the total assessments to be paid into the BID.

Once the City verifies the petitions of support totaling a minimum of 30% (\$63,109.00) of the first year annual budget projected to be \$ 210,364.00 in assessments; the Berkeley City Council may adopt a **Resolution of Intention** to mail out ballots to all affected property owners. The anticipated date for this action is March 24, 2020. The City will then hold a public hearing and tabulate the ballots. The North Shattuck BID will be renewed if the weighted majority of all returned mail ballots support District formation and if the City Council adopts a **Resolution of Formation** to levy the assessments on the benefiting parcels. The final public hearing for formation of the renewed district is anticipated to be held on May 26, 2020, based upon the successful completion of the petition drive. If no

majority protest exists, and the resolutions are adopted successfully, the renewed District would go into effect on July 1, 2020 (FY21).

Boundaries

The proposed North Shattuck BID consists of approximately 13 square blocks consisting of 54 parcels owned by 48 property owners, including any parcels owned by the City of Berkeley. See the North Shattuck proposed BID map in Section 2, page 9. The District is generally bounded by:

- *On the south:* by Delaware Street;
- *On the north:* the north side of Rose Street, between Shattuck Avenue and Shattuck Place;
- *On the west:* all of the parcels fronting along Shattuck Avenue from parcel number 2176 – 3 – 1 on the south and parcel 2455-67 on the north;
- *On the east:* all of the parcels fronting along Shattuck Avenue from parcel 2261 – 1-2 on the north and parcel 2177-15-1 on the south;

Assessable Data* in the proposed North Shattuck BID: (as of Jan. 1st 2020)

Building Sq. Ft	Lot Sq. Ft.	Linear Frontage	Residential Condominium Bldg. Sq. Ft.
538,331 sq. ft.	633,186 sq. ft.	5,076 linear ft.	0

*Sources:

Building Sq. Ft and Lot Sq. Footage: City of Berkeley Department of Finance, Land Management Module, Planning and Building Department Data, 2020.

Lot Frontage: County of Alameda, Assessor Parcel Maps, 2019.

Term

Under Article V of the BMC section 7.94.040, the District may be established for a maximum of ten years.

Time and Manner for Collecting Assessments

The North Shattuck BID assessments will appear as a separate line item on annual property tax bills prepared by the County of Alameda Tax Assessor. The assessments are collected at the same time and in the same manner as ad valorem property taxes paid to the County of Alameda. The assessments have the same lien priority and penalties for delinquent payments as ad valorem property taxes. Any delinquent assessments owed for the first year will be added to the property tax roll for the following year together with any applicable interest and penalties. The “property owner” means any person shown as the owner/taxpayer on the last equalized assessment roll or otherwise known to be the owner/taxpayer by the City. The County of Alameda will assess a collection fee of 1.7% of the total annual assessment for all District parcels.

Government Assessment

The North Shattuck BID Management Plan assumes that the City of Berkeley will pay assessments for the public property they own in the District (if any). Article XIII D, Section

4 of the California Constitution provides that public agencies such as the City and the University of California are not exempt from the assessments.

Parcels owned by the City of Berkeley and other public agencies identified in Article XIII D Section 7 of the California Constitution will receive benefits commensurate with assessments they pay. These publicly owned parcels are presumed to benefit equally to the privately-owned parcels with respect to the special benefit services outlined in this Management District Plan.

Governance

Pursuant to Article V and Section 36650 of the California Streets and Highway Code, a District Management Corporation or Owners' Association will review District budgets and policies annually within the limitations of the Management District Plan. The Owner's Association must file Annual Reports with the City of Berkeley and will oversee the day-to-day implementation of services as defined in the Management District Plan.

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. (Streets & Highway. Code § 36612.)

The existing North Shattuck Association, an established public benefit non-profit corporation, will serve in the capacity of the Owners Association to run the day to day operations of the district.

Disestablishment

North Shattuck BID participants will have an annual period in which to submit petitions to the City Council to disestablish the BID. If the property owners vote by weighted majority to disestablish the District, assessments will be removed from the parcels the following fiscal year. Unexpended surplus funds will be returned to property owners based upon a parcel's percentage contribution to the previous fiscal year's assessments.

Exemptions or Reductions in Rates

Under this Management District Plan and consistent with Proposition 218 and Article XIII (D) of the State Constitution, no parcel receiving special benefits from the establishment of a property assessment district is exempt from payment of the assessment.

Section 2 North Shattuck Business Improvement District Boundaries

Boundaries

The renewed North Shattuck BID consists of approximately 13 square blocks consisting of 54 parcels owned by 48 property owners. See the North Shattuck proposed BID map in Section 2, page 9. The District is generally bounded by:

- *On the south:* on the northern parcels of both sides of Delaware Street;
- *On the north:* on the parcels on both sides of Rose Street between Shattuck Avenue and Shattuck Place;
- *On the west:* on the western side of all of the parcels which front along Shattuck Avenue between Delaware Street on the south and Rose Street on the north;
- *On the east:* on the eastern side of all of the parcels which front along Shattuck Avenue between Delaware Street on the south and Rose street on the north
The eastern boundary also incorporates the commercial parcels on both sides of the western parcels of the intersection of Walnut and Vine Streets.

Benefit Zones

The District consists of one benefit zone.

District Boundary Rationale

The North Shattuck BID boundaries are comprised of parcels that showcase an array of commercial retailers, restaurants, coffee shops, bakeries, grocery stores, professional businesses, and residential apartments. The North Shattuck BID boundaries are set by the northern boundary of the Downtown Berkeley BID to the south on Shattuck Avenue and by the residential neighborhoods to the north, west and east.

Summation

A list of all parcels included in the proposed North Shattuck BID are shown as Appendix 1, attached to this report identified by their respective Alameda County assessor parcel numbers. The boundary map of the proposed North Shattuck BID is shown on the proposed district map (page 9).

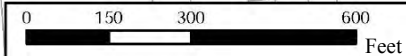
All identified assessed parcels within the above-described boundaries shall be assessed to fund supplemental special benefit programs, services and improvements as outlined in this Management District Plan. All North Shattuck BID funded services, programs and improvements provided within the above described boundaries shall confer special benefit to identified assessed parcels inside the District boundaries and none will be provided outside of the District. Each assessed parcel within the North Shattuck BID will proportionately and especially benefit from the District funded programs and services (i.e. Civil Sidewalks, District Identity and Placemaking, Administration and Contingency).

Map of North Shattuck Business Improvement District -2020



LEGEND

- Included Parcel
- Assessor Block Numbers
- Assessor Parcel Numbers
- Total Assessed Parcel Count = 54



Section 3

District Improvement and Activity Plan

Explanation of Special Benefit Services

All the improvements and activities detailed below are provided only to properties within the boundaries of the North Shattuck BID, as the improvements and activities will provide special benefits to the owners of these properties.

The City of Berkeley will continue to provide *general benefit or “baseline” services* in the North Shattuck district which will include public safety, fire suppression, periodic street tree trimming, street sweeping, trash collection of public refuse containers, etc. The frequency of these general benefits may change from year to year and time to time based upon municipal budget constraints. However, City general benefits or baseline services will not be withdrawn from the North Shattuck BID unless they are withdrawn by an equal amount Citywide. ***The BID funded special benefits will not replace City funded general or “baseline” benefits, but rather will provide special benefits to parcel owners over and above the general benefits provided by the City of Berkeley.***

All services funded by the assessments outlined in the Management District Plan are intended to directly benefit the properties within the District to support increased commerce, business attraction and retention, to retain and increase commercial property rentals, attract new residential developments, enhance safety and cleanliness in the District, improve District identity,

Special Benefit Budget Category Analysis

This renewal Plan gives property owners greater flexibility in determining the type and frequency of special benefit services that will be allocated on a year-to-year basis. As North Shattuck evolves over the next ten years, services that are needed one year may not be needed the next. Therefore, “bundles” or categories of special benefit funding have been created and divided into four broad categories – Civil Sidewalks, District Identity and Placemaking, Administration and Contingency. The bundles are allocated funding percentages with the flexibility to prioritize or minimize a service within each bundle.

PROPOSED FIRST YEAR BUDGET FOR THE NORTH SHATTUCK BUSINESS IMPROVEMENT DISTRICT – FY 2021

TABLE 3-A

Category of Special Benefit Services	Annual Amount, First Year (rounded off numbers)	Percentage of total budget
Civil Sidewalks	\$ 85,000	40%
District Identity/Placemaking	\$ 52,000	25%
Administration	\$ 63,000	30%
Contingency	\$ 10,364	5%
Total	\$210,364.00	100%

The proposed “bundles” of special benefit services are listed below. All services listed below are special benefits and supplemental to current baseline City services.

CIVIL SIDEWALKS

Examples of this category of special benefit services and costs may include, but are not limited to:

- Regular sidewalk and gutter sweeping
- Regular sidewalk steam cleaning
- Beautification of the district, including landscaping
- Enhanced trash and recycling emptying (over and above city services)
- Timely graffiti removal, within 48 hours as necessary
- Personnel to manage the in-house or contracted maintenance and/or security teams;

DISTRICT IDENTITY AND PLACEMAKING

Examples of this category of special benefit services and costs may include, but are not limited to:

- Banners and seasonal decorations
- Funding of communication efforts, including: newsletters, website maintenance, social media and public relation efforts
- Branding of the North Shattuck BID properties so a positive image is promoted to the public;
- Public art displays
- Public space design and improvements
- Development and project management of special events including the Snow Day Event, Chocolate and Chalk Art Festival, Sunday Streets, Taste of North Berkeley, Food and Wine Walk, Marketplace Events etc.

ADMINISTRATION/PROGRAM MANAGEMENT

Examples of this category of special benefit services and costs may include, but is not limited to:

- District Management/Assistants/Event Production Specialists
- Office rent and Insurance;
- Office supplies, including postage
- Accounting/filing fees
- Sponsorship/donations;
- Dues, subscriptions and memberships
- Utilities/phone/internet server;

CONTINGENCY/CITY AND COUNTY FEES/RESERVE

Examples of this category of special benefit services and costs include, but is not limited to:

- Delinquencies, City/County fees, reserves

Method of Financing

The financing of the renewed North Shattuck BID is based upon the levy of special assessments upon real properties that receive special benefits from the improvements and activities. See Section 4 for assessment methodology and compliance with Article XIII (d) of the California State Constitution. There will be three factors used in the determination of proportional costs to the parcels in the District. These three factors are:

- Linear frontage in feet
- Lot size or “the footprint” of the parcel by square foot (LSF).
- Gross building square footage (BSF).

Costs per parcel

The costs per parcel are based upon the three factors listed above. All assessments must be proportional to the special benefits received.

**PROPOSED FIRST YEAR ANNUAL COSTS PER PROPERTY VARIABLE
TABLE 3-B**

<i>Annual Building Square Footage Cost</i>	<i>Annual Lot Size Cost</i>	<i>Annual Linear Frontage Cost</i>
\$0.16	\$0.10	\$ 12.00

- Annual assessments are based upon an allocation of program costs by assessable linear frontage, (assessable on all sides of the parcels that receive benefits); PLUS, lot or parcel square footage; PLUS, assessable building square footage.
- Current and future residential condominium owners are assessed for their building square footage only, including ground floor residential condominiums.

Cap on Annual Assessments

The District budget and assessments may be subject to annual increases not to exceed 5% per year. Increases will be determined by the Owners’ Association/District Management Corporation and will vary between 0% and 5% annually. Changes in land uses, the development of vacant parcels, the conversion of tax exempt to profitable land uses, the demolition of buildings, building improvements that increase square footages, and new building construction or residential condominium development, may alter the District’s budget and individual property assessments. Linear frontage and parcel size are normally not altered in the redevelopment of a site. Changes to assessments are more likely to occur upon changes to building square footages. Changes may also occur upon the conversion of single parcels to multiple parcels due to the construction of residential or commercial condominiums.

Bonds

The District will not issue any bonds related to any program.

Operating Budget

The ten-year budget projections are based upon the following assumptions:

- Assessments **may be subject to annual increase**, based upon the action of the North Shattuck Association, not to exceed 5% per year.
- Changes in land use, demolition or expansion of existing buildings, and new development will occur.

The budget for specific programs may be reallocated within each budget category by up to 10% during the first five years of the District. The Management Association may alter the budget based upon service needs and such changes shall be included in the Annual report and submitted to the Berkeley City Council for review and approval.

TEN-YEAR PROJECTION OF MAXIMUM ASSESSMENT FOR THE RENEWED NORTH SHATTUCK BID BY FISCAL YEAR (FY) FY21-FY30 TABLE 3-C

Projected Budget	FY1	FY2	FY3	FY4	FY5
Civil Sidewalks	\$85,000.00	\$89,250.00	\$93,712.50	\$98,398.13	\$103,318.03
District Identity/Placemaking	\$52,000.00	\$54,600.00	\$57,330.00	\$60,196.50	\$63,206.33
Administration	\$63,000.00	\$66,150.00	\$69,457.50	\$72,930.38	\$76,576.89
Contingency	\$10,364.00	\$10,882.20	\$11,426.31	\$11,997.63	\$12,597.51
Total	\$210,364.00	\$220,882.20	\$231,926.31	\$243,522.63	\$255,698.76

Projected Budget	FY6	FY7	FY8	FY9	FY10
Civil Sidewalks	\$108,483.93	\$113,908.13	\$119,603.54	\$125,583.71	\$131,862.90
District Identity/Placemaking	\$66,366.64	\$69,684.97	\$73,169.22	\$76,827.68	\$80,669.07
Administration	\$80,405.74	\$84,426.03	\$88,647.33	\$93,079.69	\$97,733.68
Contingency	\$13,227.38	\$13,888.75	\$14,583.19	\$15,312.35	\$16,077.97
Total	\$268,483.69	\$281,907.88	\$296,003.27	\$310,803.44	\$326,343.61

Notes:

- Assumes a possible 5% maximum yearly increase on all budget items, if approved annually by the District Management/ Owner's Association Board of Directors.
- Any accrued interest or delinquent payments will be expended in the above categories.

Section 4

Assessment Methodology

The renewed North Shattuck BID is a property-based special benefit assessment district being established pursuant to the Berkeley Business Improvement District enabling ordinance adopted by the Berkeley City Council in 2000. Due to the special benefit nature of assessments levied within a BID, program costs are to be distributed amongst all identified specially benefited properties based on the proportional amount of special program benefits each property is expected to derive from the assessments collected.

The ordinance refers to the requirement that relative benefit received from BID funded programs and activities be used to determine the amount of assessment paid. Only those properties expected to derive special benefits from BID funded programs and activities may be assessed and only in an amount proportional to the relative special benefits expected to be received.

General vs. Special Benefits

As provided by Proposition 218, assessment district programs and activities confer a combination of general and special benefits to properties, but the only program benefits that can be assessed are those that provide special benefit to the assessed properties. “Special Benefit” as defined by the California State Constitution, Article XIII (d), means “*a particular and distinct benefit over and above general benefits conferred on real property located in the District or to the public at large.*” For the purposes of this analysis, “General Benefits” are benefits provided within North Shattuck that are not special in nature, are not “particular and distinct” and are not over and above the benefits that other city parcels receive.

General benefits are not restricted to benefits conferred only on persons and property outside the assessment district but can include benefits both conferred on real property located in the district or to the public at large. “At large” means not limited to any particular person – and means all members of the public - including those who live, work, and shop within the district - and not simply transient visitors.

The property uses within the boundaries of the proposed North Shattuck BID which will receive special benefits from BID funded programs and services are currently a mix of retail, service, office, religious, residential and parking. Services, programs and improvements provided by the North Shattuck BID are primarily designed to provide special benefits to identified parcels within the boundaries of the District.

Parcels that receive the special benefit programs, services and improvements outlined in this Management District Plan will attract more customers, employees, tenants and investors as a result of these programs, services and improvements, thereby increasing business volumes, sales transactions, occupancies, and rental income, and for future residents, make North Shattuck more walkable, attractive and livable. These benefits are particular and distinct in that they are not provided to non-assessed parcels within or outside of the District. Because these programs, services and improvements will only be

provided to each individual assessed parcel within the North Shattuck BID boundaries, these programs, services and improvements will constitute "special benefits."

Existing City of Berkeley 'baseline' services will not be replaced or duplicated by North Shattuck BID funded services. The purpose of this District is to fund supplemental programs, improvements and services within the North Shattuck boundaries above and beyond what is being currently funded either via normal tax supported methods or other funding sources. The assessments to be levied on parcels within the North Shattuck BID are for services, programs and improvements directly benefiting each individual parcel within this area and support increased cleanliness, commerce, business attraction and retention, increased commercial property rental income and improved District identity. No BID funded services, activities, or programs will be provided beyond the North Shattuck BID boundaries.

While every attempt is made to provide BID services and programs to confer benefits only to those identified assessed parcels within the District, the California State Constitution, Article XIII (d), was amended via Proposition 218 to provide that general benefits exist, either by design or unintentionally, in all assessment districts and that a portion of the program costs must be considered attributable to general benefits and assigned a value. General benefits cannot be funded by assessment revenues. General benefits might be conferred on parcels within the District, or "spillover" onto parcels surrounding the District, or to the public at large who might be passing through the District with no intention of transacting business or residing within the District or interest in the District itself. Empirical assessment engineering analysis throughout BIDs in California have found that general benefits within a given similar special benefit district tend to range from 1-5% of the total costs.

There are three methods that have been used by the North Shattuck BID Assessment Engineer for determining general and special benefit values within assessment districts:

- (1) *The parcel by parcel allocation method*
- (2) *The program/activity line item allocation method, and*
- (3) *The composite district overlay determinant method.*

A majority of BIDs in California for which the Assessment Engineer has provided assessment engineering services since the enactment of Proposition 218 in 1996, have used Method #3, the composite district overlay determinant method which will be used for this BID. This method of computing the value of general benefit involves a composite of three distinct types of general benefit – general benefit to assessed parcels within the District, general benefit to the public at large within the District and general benefit to parcels outside the District.

North Shattuck BID Programs and Improvements

The total special and general benefit program activities and budget allocations that will be provided to each individual parcel assessed in the proposed North Shattuck BID are shown in the chart below:

Total Year 1 – FY 2021 Special and General Benefit Costs
Table 4-A

Category of Special Benefit Services	Year 1 Annual Amount	Year 1 Non-Assessment Costs	Year 1 Total Costs	% of Total
Civil Sidewalks	\$ 85,000	\$ 1,735	\$ 86,735	40%
District Identity/Placemaking	\$ 52,000	\$ 1,061	\$ 53,061	25%
Administration	\$ 63,000	\$ 1,286	\$ 64,286	30%
Contingency	\$ 10,364	\$ 211	\$ 10,575	5%
Total	\$210,364.00	\$4,293.00	\$214,657.00	100%

All program costs associated with general benefits will be derived from sources or credits other than BID assessments. Sample “other” revenue sources can be derived from special events, grants, volunteer hours and must simply equal a total of \$ 4,293 per year which would equal the general benefit cost of 2% of the computed total BID cost of \$ 214,657 from the table above. Here, program costs are spread among property variables that are common to each parcel include linear frontage, lot or parcel size and building square footage. Assessed valuation cannot be used as the basis for revenue generation in the state of California since Proposition 13 sets the assessed valuation at the time of purchase of the parcel, therefore adjacent parcels may be similar in size, but have different assessed valuations. We must therefore spread the assessments among the consistent factors of each parcel, based upon FY 2020 tax data.

Benefit Zones

State law and the State constitution, Article XIID require that special assessments be levied according to the special benefit each individual parcel receives. There is one benefit zone in the proposed renewed North Shattuck BID.

Assessment District Revenue Generation in Fiscal Year 2021 from Each Assessable Property Variable:

Table 4-B

Property Variable	Total Revenue Generated	Percentage of budget
Building Sq. Ft.	\$ 86,133	41%
Lot Sq. Ft.	\$ 63,319	30%
Linear Frontage	\$ 60,912	29%
Total	\$ 210,364.00	100%

Annual Costs per property variable and Benefit Zone, Year 1, FY 2021 Table 4–C

<i>Annual Building Square Footage Cost</i>	<i>Annual Lot Size Cost</i>	<i>Annual Linear Frontage Cost</i>
\$0.16	\$0.10	\$ 12.00

Linear Frontage Defined

Individual parcels will be assessed for all sides of each parcel fronting on a public street. Alley frontage is not assessed. Each side of the parcel (excluding alley areas) will receive Civil Sidewalks special benefit services based upon the frequency of services articulated in this plan, linear front footage data was obtained from the County Assessor’s parcel maps.

Building Square Footage Defined

Building square footage is defined as gross building square footage throughout the North Shattuck BID. The building square footage of a parcel has been verified by the City of Berkeley Department of Finance, Land Management Module, based on Planning and Building Department data. Apartment buildings within the boundaries of the North Shattuck BID will be assessed as commercial buildings since there is a landlord/tenant relationship within that property that is commercial in nature.

Lot Square Footage Defined

Lot square footage is defined as the total amount of area within the borders of the parcel. The lot square footage of a parcel has been verified by the City of Berkeley Department of Finance, Land Management Module, based on Planning and Building Department data.

Commercial Condominium Parcels Defined

Ground floor commercial condominiums will be treated as independent “mini” commercial buildings and assessed based on their actual building square footage, the footprint of land they cover or lot size of the commercial condominium, and the amount of direct primary street frontage on the exterior of the building. Ground floor commercial condominiums will pay 100% of the special benefits for the assessment, based upon which geographic benefit zone they are within.

Current and future residential condominium parcels are assessed as a separate category. These residential condominium individual parcels will be assessed *for their building square footage only at the rate of \$0.16 per square foot per year for the first year of the BID, or possibly higher if assessments have been increased annually as provided in this plan and completed in future years.* The rationale for assessing future residential condominiums only for the building square footage rate is provided below.

Residential condominium parcels are assessed differently than multi-unit, for-rent apartment buildings, due to the frequency of special benefit services required by each parcel as described below. The multi-unit apartment buildings are commercial properties

in which the tenant and landlord have an economic relationship as opposed to residential condominium buildings where individual property owners own separate “air space parcels” on a single floor. Future residential apartment buildings can be bought or sold just as like commercial buildings whereas residential condominium individual units are separately owned and must be individually bought and sold.

Distinctions between residential apartment buildings with tenants and residential condominium building with individual parcel owners are as follows:

1. *The Davis Sterling Act of 1985 establishes rules and regulations for residential condominium owners based upon “separate interests” (i.e. ownership rights), as opposed to renters who only have a possessory interest.*
2. *Generally, residential condominium unit owners demonstrate greater care for their property and concerns about quality of life issues due to their investment in real estate.*
3. *Residential owners and have the right to vote in a Proposition 218 hearing, tenants do not have that right.*
4. *Residential condominium owners are required to contribute to legally established Homeowners Associations to oversee building maintenance, tenants are not.*
5. *Residential tenants may have their dwelling units sold or have their rent raised arbitrarily due the lack of ownership of their residential units.*

The assessment methodology has been written to confer special benefits to future residential condominium individual assessed parcels since future residential condominium owners have unique investment backed expectations about the care and maintenance of the building and its surroundings compared to the interest of residential tenants who have a possessory not an ownership interest.

Exemptions or Reductions in Rates

Under this Management Plan and consistent with Proposition 218 and Article XIII (D) of the State Constitution, no parcel receiving special benefit for the establishment of a property assessment district shall be exempted from payment.

Calculation of Assessments

The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the improvement or the maintenance and operation expenses of an improvement or for the cost of property service being provided. Per California Constitution Article XIII D, Section 2(i), “Special Benefit,” means a separate and distinct benefit over and above general benefits conferred on a real property located in the district or to the public at large. No assessment will be imposed on any parcel that exceeds the reasonable cost of the proportional special benefits conferred upon that parcel. Only special benefits are assessable, and these benefits must be separated from any general benefits. Properties are assessed as defined on the County Assessor’s most current parcel maps. The preceding methodology is applied to the database of parcels

within the District. The process for compiling the property database includes the following steps:

- A report was generated from data obtained from the Alameda County Tax Assessors office and the City of Berkeley.
- A list of properties to be included within the District is provided in Section 7.

First Year (FY 2021) Parcel Assessment Calculation

The annual assessment method to calculate all parcels for the North Shattuck BID will be:

Total Linear Frontage X \$ 12.00 per foot, plus
 Total Lot Square Footage X \$0.10 per square foot, plus
 Total Building Square Footage X \$0.16 per square foot, equals
TOTAL PARCEL ANNUAL ASSESSMENT

Future Development

As a result of continued new development, the North Shattuck BID will experience the addition or subtraction of assessable commercial buildings or the conversion of vacant parcels into new commercial and residential units. The Management District Plan assessment methodology will reflect any and all land use changes in the District with annual adjustments being submitted to both the City and the County, as these assessment calculation and property variable alterations occur.

Maximum Assessment

Assessments may be subject to annual increases not to exceed 5% per year. Increases will be determined by the BID District Management Corporation and will vary between 0% and 5% in any given year. The maximum the assessments may be increased is 5% over the previous fiscal year’s base assessments. The absence of increase in any given year does not give the District Management Corporation or the Owner’s Association the authority to accumulate increases above 5% in any successive year. The following projections illustrate a potential 5% annual increase.

**Maximum Assessments by Property Variable for the renewed
 North Shattuck BID – FY 2021
 Table 4 – D**

Projected Assessment	FY 1	FY2	FY3	FY4	FY5
Linear Frontage	\$12.000	\$12.6000	\$13.2300	\$13.8915	\$14.5861
Building SF	\$0.1600	\$0.1680	\$0.1764	\$0.1852	\$0.1945
Lot SF	\$0.1000	\$0.1050	\$0.1103	\$0.1158	\$0.1216

Projected Assessment	FY6	FY7	FY8	FY9	FY10
Linear					
Frontage	\$15.3154	\$16.0811	\$16.8852	\$17.7295	\$18.6159
Building SF	\$0.2042	\$0.2144	\$0.2251	\$0.2364	\$0.2482
Lot SF	\$0.1276	\$0.1340	\$0.1407	\$0.1477	\$0.1551

Term

The renewed North Shattuck BID shall be renewed for the maximum allowable period of ten years commencing July 1st, 2020 (FY 21). Provisions for annual disestablishment are available if the property owners no longer desire to fund the special services articulated in this plan.

Budget Adjustments

Annual budget surpluses, if any, will be rolled into the following year's budget. Assessments will be set annually. Revenues from delinquent accounts may be expended in the year they are received.

Time and Manner for Collecting Assessments

In September 2020, the North Shattuck BID assessments for FY 21 will appear as a separate line item on annual property tax bills prepared by the County of Alameda. The assessments are collected at the same time and in the same manner as ad valorem property taxes paid to the County of Alameda. The assessments have the same lien priority and penalties for delinquent payment as the ad valorem property taxes.

Disestablishment

California Streets and Highways Code section 36670 provides for the disestablishment of a District. Property owners dissatisfied with the results, management or quality of the services may petition the City Council to disestablish the District, in the same method in which they petitioned the City Council to establish it. The threshold to trigger the balloting for the disestablishment for the North Shattuck BID is by a 30% weighted petition of property owners submitted to the City of Berkeley.

Section 36670 of the California Streets and Highway Code states:

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

Unexpended surplus funds will be returned to property owners based upon each property owner's percentage contribution to the previous fiscal year's assessments.

Section 5 District Rules and Regulations and Governance

The renewed North Shattuck Business Improvement District Owners' Association will adhere to the open meeting and open records provisions of the Ralph M. Brown Act (California Government Code 54950 et seq., 1953) and will seek to be as open and transparent to the BID assesseses and the public at large as is reasonably possible.

Pursuant to Section 36650 of the California Streets and Highway Code, a District Management Corporation or Owners' Association, will review District budgets and policies annually within the limitations of the Management District Plan. The Owners' Association will file Annual Reports with the City of Berkeley and will oversee the day-to-day implementation of services as defined in the Management District Plan.

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. (Sts. & Hy. Code § 36612.)

The existing North Shattuck Association, shall serve in the capacity of the Owners Association consistent with State Stature and the local enabling ordinance.

Section 6 Implementation Timetable

The North Shattuck BID is expected to be re-established and begin assessing benefiting parcels as of the third quarter of 2020 (July 1, 2020, FY21). It is anticipated that the first assessment revenues from the renewed North Shattuck BID will be transferred from the City to the North Shattuck Association by January 2021.

Section 7

Assessment Roll of Properties Included

Assessor Parcel Number	Site #	Site Street	Bldg SF	Lot SF	Frontage	Annual Assessment
058 -2173-002-03	1600	SHATTUCK AVE #1010	29,500	23,875	141	\$8,799.50
058 -2173-004-00	1620	SHATTUCK AVE	2,044	1,698	35	\$916.84
058 -2173-005-00	1650	SHATTUCK AVE	1,700	4,600	103	\$1,968.00
058 -2174-001-00	1652	SHATTUCK AVE	4,296	3,969	42	\$1,588.26
058 -2174-002-00	1654	SHATTUCK AVE	3,117	3,142	33	\$1,208.92
058 -2174-003-00	1662	SHATTUCK AVE	2,950	2,835	30	\$1,115.50
058 -2174-004-01	1670	SHATTUCK AVE	2,617	3,299	35	\$1,168.62
058 -2174-006-02	1690	SHATTUCK AVE	10,896	15,761	135	\$4,939.46
058 -2175-001-01	1700	SHATTUCK AVE	8,976	12,730	95	\$3,849.16
058 -2175-003-00	1708	SHATTUCK AVE	2,872	5,163	40	\$1,455.82
058 -2175-004-00	1720	SHATTUCK AVE	624	2,175	35	\$737.34
058 -2175-005-00	1730	SHATTUCK AVE	1,340	2,819	50	\$1,096.30
058 -2175-006-00	1748	SHATTUCK AVE	2,500	2,625	50	\$1,262.50
058 -2176-001-01	1752	SHATTUCK AVE	1,160	10,350	115	\$2,600.60
058 -2176-003-01	2083	DELAWARE	33,006	19,065	155	\$9,047.46
058 -2177-015-01	1797	SHATTUCK AVE	56,931	19,340	200	\$13,442.96
058 -2178-018-00	2109	VIRGINIA ST	9,480	22,425	200	\$6,159.30
058 -2178-023-00	1619	SHATTUCK AVE	1,850	5,175	45	\$1,353.50
058 -2178-024-01	1607	SHATTUCK AVE	17,530	29,657	252	\$8,794.50
058 -2178-026-00	1625	SHATTUCK AVE	4,760	4,025	35	\$1,584.10
058 -2178-027-00	1625	SHATTUCK AVE	11,450	4,025	35	\$2,654.50
058 -2178-028-00	1625	SHATTUCK AVE	11,450	4,025	35	\$2,654.50
059 -2260-001-00	2100	VINE ST	10,090	8,958	100	\$3,710.20
059 -2260-002-01	2110	VINE ST	28,520	19,263	150	\$8,289.50
059 -2260-015-01	1549	SHATTUCK AVE	2,255	3,720	40	\$1,212.80
059 -2260-015-02	1543	SHATTUCK AVE	4,813	5,251	62	\$2,039.18
059 -2260-016-00	1537	SHATTUCK AVE	7,271	5,520	45	\$2,255.36
059 -2260-017-00	1533	SHATTUCK AVE	3,780	5,355	45	\$1,680.30
059 -2260-018-00	1531	SHATTUCK AVE	13,038	7,200	60	\$3,526.08
059 -2260-019-00	1525	SHATTUCK AVE	5,064	7,380	60	\$2,268.24
059 -2260-020-03	1519	SHATTUCK AVE	7,642	8,330	70	\$2,895.72
059 -2260-021-00	1517	SHATTUCK AVE	2,423	3,720	30	\$1,119.68
059 -2260-022-01	1515	SHATTUCK AVE	2,256	3,240	30	\$1,044.96
059 -2260-022-02	1511	SHATTUCK AVE	9,537	8,427	70	\$3,208.62
059 -2261-001-02	1451	SHATTUCK AVE	17,932	33,750	377	\$10,768.12
059 -2261-004-03	1444	WALNUT ST	8,548	4,400	40	\$2,287.68
059 -2261-005-00	2113	VINE ST	1,280	4,407	40	\$1,125.50
059 -2261-006-00	2111	VINE ST	6,711	4,400	40	\$1,993.76
059 -2261-007-00	1495	SHATTUCK AVE	6,750	6,750	75	\$2,655.00
059 -2261-008-00	1481	SHATTUCK AVE	2,555	3,150	35	\$1,143.80

059 -2261-009-00	1475	SHATTUCK AVE	3,400	3,590	40	\$1,383.00
059 -2261-010-00	1463	SHATTUCK AVE	5,664	6,300	73	\$2,412.24
059 -2262-001-00	1400	SHATTUCK AVE	19,118	9,338	148	\$5,768.68
059 -2262-005-00	1480	SHATTUCK AVE	2,369	11,900	120	\$3,009.04
059 -2262-006-00	2085	VINE ST	3,091	4,200	35	\$1,334.56
059 -2262-021-02	1425	HENRY ST	50,528	84,942	518	\$22,794.68
059 -2262-021-03	1425	HENRY ST		6,098	96	\$1,761.80
059 -2263-003-01	2044	VINE ST	10,094	15,525	115	\$4,547.54
059 -2263-006-01	1516	SHATTUCK AVE	11,813	12,960	95	\$4,326.08
059 -2263-009-00	1540	SHATTUCK AVE	5,515	4,050	30	\$1,647.40
059 -2263-010-01	1550	SHATTUCK AVE	37,323	85,050	300	\$18,076.68
059 -2263-024-01	1536	SHATTUCK AVE		16,959	60	\$2,415.90
060- 2455-064-01	2095	ROSE ST	3,702	10,075	135	\$3,219.82
060- 2455-067-00	2091	ROSE ST	24,200	16,200	46	\$6,044.00

ATTACHMENT A

NORTH SHATTUCK BUSINESS IMPROVEMENT DISTRICT RENEWAL

ASSESSMENT ENGINEER'S REPORT

*Being Renewed for a 10 Year Term Pursuant
to the City of Berkeley's Municipal Code Chapter 7.94 and
the California Streets and Highways Code Section 36600 et seq.
Property & Business Improvement District Act of 1994, as amended*

*Prepared by
Edward V. Henning
California Registered Professional Engineer # 26549
Edward Henning & Associates*

JANUARY 28, 2020

FINAL V1.1

ASSESSMENT ENGINEER’S REPORT

To Whom It May Concern:

I hereby certify to the best of my professional knowledge and experience that each of the identified benefiting properties located within the proposed renewed North Shattuck Business Improvement District ("NSBID") being renewed for a ten (10) year term will receive a special benefit over and above the benefits conferred on the public at large and that the amount of the proposed assessment is proportional to, and no greater than the benefits conferred on each respective property.

Prepared by Edward V. Henning, California Registered Professional Engineer # 26549



Edward V. Henning

RPE #26549

January 28, 2020

Edward V. Henning

Date

(NOT VALID WITHOUT SIGNATURE AND CERTIFICATION SEAL HERE)

Introduction

This report serves as the “detailed engineer’s report” required by Section 4(b) of Article XIID of the California Constitution (Proposition 218) to support the benefit property assessments to be levied within the proposed renewed NSBID in the City of Berkeley, California being renewed for a ten (10) year term. The discussion and analysis contained within this Report constitutes the required “nexus” of rationale between assessment amounts levied and special benefits derived by real properties within the proposed renewed NSBID.

Background

The NSBID is a property-based benefit assessment district being renewed for a ten (10) year term pursuant to the City of Berkeley’s Municipal Code Chapter 7.94 (the “Code”) and Section 36600 et seq. of the California Streets and Highways Code (as amended), also known as the Property and Business Improvement District Law of 1994 (the “Act”). Due to the benefit assessment nature of assessments levied within a business improvement district (“BID”), district costs are to be distributed amongst all identified benefiting properties based on the proportionate amount of special benefit each property is expected to derive from the programs funded by the assessments levied. Within the Code and the Act, frequent references are made to the concept of relative “benefit” received from BID programs and activities versus amount of assessment paid. Only those properties expected to derive special benefits from BID funded programs and activities may be assessed and only in an amount proportional to the relative special benefits expected to be received.

Supplemental Article XIID Section 4(b) California Constitution
Proposition 218 Procedures and Requirements

Proposition 218, approved by the voters of California in November of 1996, adds a supplemental array of procedures and requirements to be carried out prior to levying a property-based assessment like the NSBID. These requirements are in addition to requirements imposed by State and local assessment enabling laws. These requirements were “chaptered” into law as Article XIID Section 4(b) of the California Constitution.

Since Article XIID provisions will affect all subsequent calculations to be made in the final assessment formula for the NSBID, these supplemental requirements will be taken into account. The key provisions of Article XIID along with a description of how the NSBID complies with each of these provisions are delineated below.

(Note: All section references below pertain to Article XIII of the California Constitution):

Finding 1. From Section 4(a): “Identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed”.

Setting:

The proposed renewed NSBID is located along the North Shattuck Avenue business corridor and is comprised of parcels that showcase an array of highly rated commercial retailers, restaurants, coffee shops, bakeries, grocery stores, professional businesses, and residential apartments. (See attached map in Appendix 2).

General Boundary Description

The NSBID encompasses approximately 13 blocks centered along North Shattuck Avenue in the City of Berkeley between Rose Street on the north and Delaware Street on the south.

Benefit Zones

There is one benefit zone within the proposed renewed NSBID.

NSBID Boundary Rationale

The NSBID boundaries are comprised of the commercial parcels along the North Shattuck Avenue corridor between Rose Street on the north and Delaware Street on the south. The NSBID is generally surrounded by residential land uses and zoning on the north, west and east sides and the Downtown Berkeley BID on the south.

Northern Boundary

The northern boundary of the BID is approximately Rose Street. Generally, all parcels north of the northern boundary are residential uses on residentially zoned parcels. The Property and Business Improvement District Law of 1994, California Streets & Highway Code § 36632 states, “*Properties zoned solely for residential use.....are conclusively presumed not to benefit from the improvements and service funded through these assessments and shall not be subject to any assessment pursuant to this part.*” Thus, no residential zoned/used parcel is included in the NSBID.

The NSBID will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No NSBID programs and services will be provided north of the northern NSBID boundary.

Eastern Boundary

The eastern boundary of the BID is generally the eastern property line of those North Shattuck Avenue parcels between Delaware Street on the south and Rose Street on the north. Generally, all parcels east of the eastern boundary are residential uses on residentially zoned parcels. The Property and Business Improvement District Law of 1994, California Streets & Highway Code § 36632 states, “*Properties zoned solely for residential use.....are conclusively presumed not to benefit from the improvements and service funded through these assessments and shall not be subject to any assessment pursuant to this part.*” Thus, no residential zoned/used parcel is included in the NSBID.

The NSBID will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No NSBID programs and services will be provided east of the eastern NSBID boundary.

Southern Boundary

The southern boundary of the BID at Delaware Street is defined by the northerly terminus of the Downtown Berkeley BID. State BID Law precludes two property-based BIDs from overlapping, thus the southern NSBID boundary is Delaware Street.

The NSBID will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No NSBID programs and services will be provided south of the southern NSBID boundary.

Western Boundary

The western boundary of the BID is generally the western property line of those North Shattuck Avenue parcels between Delaware Street on the south and Rose Street on the north. Generally, all parcels west of the western boundary are residential uses on residentially zoned parcels. The Property and Business Improvement District Law of 1994, California Streets & Highway Code § 36632 states, “*Properties zoned solely for residential use.....are conclusively presumed not to benefit from the improvements and service funded through these assessments and shall not be subject to any assessment pursuant to this part.*” Thus, no residential zoned/used parcel is included in the NSBID.

The NSBID will only provide services to the individual assessed parcels within the boundaries; services will not be provided to parcels that are not assessed. No NSBID programs and services will be provided west of the western NSBID boundary.

Summation:

A list of all parcels included in the proposed renewed NSBID is shown as Appendix 1, attached to this Report identified by their respective Alameda County assessor parcel number. The boundary of the proposed renewed NSBID is shown on the map of the proposed renewed NSBID in Appendix 2 of this Report.

All identified assessed parcels within the above-described boundaries shall be assessed to fund supplemental special benefit programs, services and improvements as outlined in this Report and in the Management District Plan. All NSBID funded services, programs and improvements provided within the above described boundaries shall confer special benefit to identified assessed parcels inside the NSBID boundaries and none will be provided outside of the NSBID. Each assessed parcel within the NSBID will proportionately and especially benefit from the NSBID funded programs and services (i.e. Civil Sidewalks, District Identity and Placemaking, Administration and Contingency).

These services, programs and improvements are intended to improve commerce, employment, rents and occupancy rates and investment viability of individually assessed parcels and businesses on them within the NSBID. The NSBID confers special benefits on each individually assessed parcel by reducing litter and debris, improving aesthetics and marketing goods and services available from individually assessed parcels and the businesses on them within the NSBID, all considered necessary in a competitive properly managed business district.

All NSBID funded services programs and improvements are supplemental, above normal base level services provided by the City of Berkeley and are only provided for the special benefit of assessed parcels within the boundaries of the proposed renewed NSBID.

The NSBID includes 54 parcels of which all are identified as assessable which are listed in the Assessment Roll included as Appendix 1.

Finding 2. From Section 4(a): “Separate general benefits (if any) from the special benefits conferred on parcel(s). Only special benefits are assessable. “

QUANTITATIVE BENEFIT ANALYSIS

As stipulated in Article XIID Section 4(b) of the California Constitution, assessment district programs and activities confer a combination of general and special benefits to properties, but the only program benefits that can be assessed are those that provide special benefit to the assessed properties. For the purposes of this analysis, a “general benefit” is hereby defined as: “A benefit to properties in the area and in the surrounding community or benefit to the public in general resulting from the improvement, activity, or service to be provided by the assessment levied”. “Special benefit” as defined by the California State Constitution means a distinct benefit over and above general benefits conferred on real property located in the district or to the public at large.

The property uses within the boundaries of the NSBID that will receive special benefits from NSBID funded programs and services are currently an array of highly rated commercial retailers, restaurants, coffee shops, bakeries, grocery stores, professional businesses, and residential apartments. Services, programs and improvements provided and funded by the NSBID (i.e. Civil Sidewalks, District Identity and Placemaking, Administration and Contingency) are designed to provide special benefits to identified assessed parcels and the array of land uses within the boundaries of the NSBID as described in the Work Plan Details starting on page 10 of this Report.

The proposed renewed NSBID programs, improvements and services and Year 1 – 2021 budget allocations are shown in the Table below:

Year 1 – 2021 NSBID Special Benefit Budget (Assessment Revenue Only)

WORK PLAN CATEGORY	ALLOCATION	%
Civil Sidewalks	\$85,000	40.4062%
District Identity	\$52,000	24.7191%
Administration	\$63,000	29.9481%
Contingency	\$10,364	4.9267%
TOTAL	\$210,364	100%

The special benefits conferred on assessed parcels within the NSBID are particular and distinct to each and every identified assessed parcel within the NSBID and are not provided to non-assessed parcels outside of the NSBID. These programs, services and improvements will only be provided to each individual assessed parcel within the NSBID boundaries and, in turn, confer proportionate “special benefits” to each assessed parcel.

In the case of the NSBID, the very nature of the purpose of the NSBID is to fund supplemental programs, services and improvements to assessed parcels within the NSBID boundaries above and beyond what is being currently funded either via normal tax supported methods or other funding sources. The City of Berkeley does not provide these programs and services. All benefits derived from the assessments to be levied on assessed parcels within the NSBID are for services, programs and

improvements directly benefiting each individual assessed parcel within the NSBID. No NSBID funded services, activities or programs will be provided outside of the NSBID boundaries.

While every attempt is made to provide NSBID services and programs to confer benefits only to those identified assessed parcels within the NSBID, the California State Constitution was amended via Proposition 218 to stipulate that general benefits exist, either by design or unintentional, in all assessment districts and that a portion of the program costs must be considered attributable to general benefits and assigned a value. General benefits cannot be funded by assessment revenues. General benefits might be conferred on parcels within the district, or “spillover” onto parcels surrounding the district, or to the public at large who might be passing through the district with no intention of transacting business within the district or interest in the district itself.

Empirical assessment engineering analysis throughout California has found that general benefits within a given business improvement district tend to range from 2-6% of the total costs. There are three methods that have been used by this Engineer for determining general and special benefit values within assessment districts:

- (1) The parcel by parcel allocation method
- (2) The program/activity line item allocation method, and
- (3) The composite district overlay determinant method.

A majority of BIDs in California for which this Assessment Engineer has provided assessment engineering services since the enactment of Proposition 218, (Article XIIIID Section 4(b) of the California Constitution) have used Method #3, the composite district overlay determinant method which will be used for the NSBID. This method of computing the value of general benefit involves a composite of three distinct types of general benefit – general benefit to assessed parcels within the district, general benefit to the public at large within the district and general benefit to parcels outside the district.

General Benefit – Assessed Parcels within NSBID

NSBID funded programs are narrowly designed and carefully implemented to specially benefit the assessed NSBID parcels and are only provided for the special benefit to each and every assessed parcel within the NSBID. It is the opinion of this Engineer, based on over 30 years of professional assessment engineering experience, that nearly 100% of benefits conferred on assessed parcels within the NSBID are distinct and special but in the case of the NSBID, it is projected that there are 0.25% general benefits conferred on these assessed parcels. This high ratio of special benefits to general benefits is because the NSBID funded programs and services are specially geared to the unique needs of each assessed parcel within the NSBID and are directed specially only to these assessed parcels within the NSBID. This concept is further reinforced by the proportionality of special benefits conferred on each assessed parcel within the NSBID as determined by the special benefit assessment formula as it is applied to the unique and varying property characteristics of each assessed parcel. The computed 0.25% general benefit value on the 86 assessed parcels within the NSBID equates to \$526 or (.25% x \$210,364).

General Benefit – Public At Large

While the NSBID funded programs are narrowly designed and carefully implemented to specially benefit the assessed NSBID properties and are only provided for the special benefit to each and every assessed parcel within the NSBID, these NSBID funded programs may also provide an incidental general benefit to the public at large within the NSBID. Assessment Engineering experience in California has found that generally well over 95% of people moving about within district boundaries are engaged in business related to assessed parcels and businesses contained on them within the district, while the public at large “just passing through” is typically much less than 5%. Based on this experience curve and the focused nature of the proposed renewed NSBID funded programs and over 30 years of assessment engineering experience, it is the opinion of this Engineer that general benefit factors for each of the NSBID funded special benefit program element costs that might provide an immediate general benefit to the public at large are as shown in the chart below. These factors are applied to each program element costs in order to compute the dollar and percent value of general benefits to the public at large. The total dollar value of this general benefit type equates to \$1,630 as delineated in the Table below:

GENERAL BENEFITS TO “PUBLIC AT LARGE”

	A	B	C	E
Program Element	Dollar Allocation	General Benefit Percent	General Benefit Factor	General Benefit Value (A x C)
Civil Sidewalks	\$85,000	1.50%	0.0150	\$1,275
District Identity	\$52,000	0.40%	0.0040	\$208
Administration	\$63,000	0.20%	0.0020	\$126
Contingency	<u>\$10,364</u>	0.20%	0.0020	<u>\$21</u>
Total	\$210,364			\$1,630

Spillover General Benefits to Parcels Outside of NSBID

While NSBID programs and services will not be provided directly to parcels outside the NSBID boundaries, it is reasonable to conclude that NSBID services may confer an indirect general benefit on parcels immediately adjacent to the NSBID boundaries. An inventory of the NSBID boundaries finds that the NSBID is surrounded by 72 parcels, of which 1 is a commercial use and 71 are residential or public uses adjacent to or across a street or alley from the proposed renewed NSBID. There are 0 non-identified (i.e. not assessed) exempt parcels within the proposed renewed NSBID.

The 71 parcels outside the NSBID boundaries adjacent to or across streets or alleys from assessed parcels within the NSBID can reasonably be assumed to receive some indirect general benefit as a result of NSBID funded programs, services and improvements. Based on over 30 years of assessment engineering experience, it is the opinion of this Engineer that a benefit factor of 1.0 be attributed to the 54 identified assessed parcels within the NSBID; a benefit factor of 0.05 be attributed to general benefits conferred on the 1 commercial parcel adjacent to or across a street or alley from the proposed renewed NSBID; and a benefit factor of 0.005 be attributed to general benefits conferred on the 71 residential and public parcels adjacent to or across a street or alley from the proposed renewed NSBID.

The cumulative dollar value of this general benefit type equates to \$1,597 (\$195 + \$1,402) as delineated in the Table below:

“Spillover” General Benefits

Parcel Type	Quantity	Benefit Factor	Benefit Units	Benefit Percent	Benefit Value
Assessed Parcels Inside BID	54	1.000	54.00	99.2465%	\$210,364
Commercial Perimeter Parcels Outside BID	1	0.050	0.05	0.0919%	\$195
Other Perimeter Parcels Outside BID	71	0.005	0.36	<u>0.6616%</u>	<u>\$1,402</u>
TOTAL			54.41	100.00%	\$211,961

Composite General Benefit

Based on the general benefit values delineated in the three sections above, the total value of general benefits conferred on assessed parcels within the NSBID, the public at large and parcels outside the NSBID equates to \$3,753 (\$526 + 1,630 + 1,597) or 1.7528% of the total benefits. The 1.7528% will be conservatively rounded up to 2% or \$4,293. This leaves a value of 98% assigned to special benefit related costs. The general benefit value of \$4,293 when added to the special benefit value of \$210,364 (Year 1 –2021 assessments) equates to a total Year 1 – 2021 benefit value of \$214,657. Remaining costs that are attributed to general benefits, will need to be funded by other sources such as grants, or event program income, and/or sponsorships.

A breakdown of projected special and general benefits for each year of the proposed 10-year term is shown in the following Table:

10 Year Special + General Benefits

YR	FY	PROGRAM CATEGORY	SPECIAL BENEFIT ASSESSMENTS	GENERAL BENEFIT NON-ASSESSMENTS	TOTAL ADJUSTED BENEFITS	% OF TOTAL
1	2021	Civil Sidewalks	\$85,000	\$1,735	\$86,735	40.4062%
		District Identity	\$52,000	\$1,061	\$53,061	24.7191%
		Administration	\$63,000	\$1,286	\$64,286	29.9481%
		Contingency	<u>\$10,364</u>	<u>\$211</u>	<u>\$10,575</u>	<u>4.9267%</u>
		Total	\$210,364	\$4,293	\$214,657	100.00%
2	2022	Civil Sidewalks	\$89,250	\$1,822	\$91,072	40.4062%
		District Identity	\$54,600	\$1,114	\$55,714	24.7191%
		Administration	\$66,150	\$1,350	\$67,500	29.9481%
		Contingency	<u>\$10,882</u>	<u>\$222</u>	<u>\$11,104</u>	<u>4.9267%</u>
		Total	\$220,882	\$4,508	\$225,390	100.00%
3	2023	Civil Sidewalks	\$93,713	\$1,913	\$95,626	40.4062%
		District Identity	\$57,330	\$1,170	\$58,500	24.7191%
		Administration	\$69,458	\$1,418	\$70,876	29.9481%
		Contingency	<u>\$11,426</u>	<u>\$233</u>	<u>\$11,659</u>	<u>4.9267%</u>
		Total	\$231,927	\$4,734	\$236,661	100.00%

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4	2024	Civil Sidewalks	\$98,399	\$2,009	\$100,408	40.4062%
		District Identity	\$60,197	\$1,229	\$61,426	24.7191%
		Administration	\$72,931	\$1,489	\$74,420	29.9481%
		Contingency	<u>\$11,997</u>	<u>\$245</u>	<u>\$12,242</u>	<u>4.9267%</u>
		Total	\$243,524	\$4,972	\$248,496	100.00%
5	2025	Civil Sidewalks	\$103,319	\$2,109	\$105,428	40.4062%
		District Identity	\$63,207	\$1,290	\$64,497	24.7191%
		Administration	\$76,578	\$1,563	\$78,141	29.9481%
		Contingency	<u>\$12,597</u>	<u>\$257</u>	<u>\$12,854</u>	<u>4.9267%</u>
		Total	\$255,701	\$5,219	\$260,920	100.00%
6	2026	Civil Sidewalks	\$108,485	\$2,214	\$110,699	40.4062%
		District Identity	\$66,367	\$1,355	\$67,722	24.7191%
		Administration	\$80,407	\$1,641	\$82,048	29.9481%
		Contingency	<u>\$13,227</u>	<u>\$270</u>	<u>\$13,497</u>	<u>4.9267%</u>
		Total	\$268,486	\$5,480	\$273,966	100.00%
7	2027	Civil Sidewalks	\$113,909	\$2,325	\$116,234	40.4062%
		District Identity	\$69,685	\$1,423	\$71,108	24.7191%
		Administration	\$84,427	\$1,723	\$86,150	29.9481%
		Contingency	<u>\$13,888</u>	<u>\$284</u>	<u>\$14,172</u>	<u>4.9267%</u>
		Total	\$281,909	\$5,755	\$287,664	100.00%
8	2028	Civil Sidewalks	\$119,604	\$2,441	\$122,045	40.4062%
		District Identity	\$73,169	\$1,494	\$74,663	24.7191%
		Administration	\$88,648	\$1,809	\$90,457	29.9481%
		Contingency	<u>\$14,582</u>	<u>\$298</u>	<u>\$14,880</u>	<u>4.9267%</u>
		Total	\$296,003	\$6,042	\$302,045	100.00%
9	2029	Civil Sidewalks	\$125,584	\$2,563	\$128,147	40.4062%
		District Identity	\$76,827	\$1,569	\$78,396	24.7191%
		Administration	\$93,080	\$1,899	\$94,979	29.9481%
		Contingency	<u>\$15,311</u>	<u>\$313</u>	<u>\$15,624</u>	<u>4.9267%</u>
		Total	\$310,802	\$6,344	\$317,146	100.00%
10	2030	Civil Sidewalks	\$131,863	\$2,691	\$134,554	40.4062%
		District Identity	\$80,668	\$1,647	\$82,315	24.7191%
		Administration	\$97,734	\$1,994	\$99,728	29.9481%
		Contingency	<u>\$16,077</u>	<u>\$329</u>	<u>\$16,406</u>	<u>4.9267%</u>
		Total	\$326,342	\$6,661	\$333,003	100.00%

NSBID WORK PLAN

Overview

The Programs and activities to be funded by the NSBID include maintenance, safety, image enhancement, streetscape beautification and operations. The property uses within the boundaries of the NSBID that will receive special benefits from NSBID funded programs, services and improvements are currently an array of highly rated commercial retailers, restaurants, coffee shops, bakeries, grocery stores, professional businesses, and residential apartments. NSBID funded activities are primarily designed to provide special benefits as described below to identified assessed parcels and array of land uses within the boundaries of the NSBID.

These benefits are particular and distinct to each and every identified assessed parcel within the NSBID and are not provided to non-assessed parcels outside of the NSBID. These programs, services and improvements will only be provided to each individual assessed parcel within the NSBID boundaries and, in turn, confer proportionate "special benefits" to each assessed parcel.

In the case of the NSBID, the very nature of the purpose of this NSBID is to fund supplemental programs, services and improvements to assessed parcels within the NSBID boundaries above and beyond what is being currently funded either via normal tax supported methods or other funding sources. The City of Berkeley does not provide these supplemental programs and services. All benefits derived from the assessments to be levied on assessed parcels within the NSBID are for services, programs and improvements directly benefiting each individual assessed parcel within the NSBID. No NSBID funded services, activities or programs will be provided outside of the NSBID boundaries.

The total projected 10-year budget (special benefits) for FY2021 – FY2030 of the NSBID are shown in the Table on page 13 of this Report assuming a maximum increase of 5% per year, commensurate to special benefits received by each assessed parcel.

WORK PLAN DETAILS

The services to be provided by the NSBID include Civil Sidewalks, District Identity and Placemaking, Administration and Contingency. Each of these work plan elements are designed to contribute to the cohesive commercial fabric and to ensure economic success and vitality of the NSBID. The assessed parcels in the BID will specially benefit from the NSBID programs in the form of increasing commerce and improving economic success and vitality through meeting the NSBID goals to maintain and improve the commercial core by providing services to attract customers in an effort to increase commerce, to increase building occupancy and lease rates.

The following programs, services and improvements are proposed by the NSBID to specially benefit each and every individually assessed parcel within the NSBID boundaries. NSBID services, programs and improvements will not be provided to parcels outside the NSBID boundary.

Civil Sidewalks

Civil Sidewalks is a term to define the cleanliness of the sidewalks in the proposed renewed NSBID

Examples of Civil Sidewalk services and activities may include, but are not limited to:

- Regular sidewalk and gutter sweeping
- Regular sidewalk steam cleaning

- Beautification of the district
- Enhanced trash emptying (over and above city services)
- Timely graffiti removal, within 48 hours as necessary
- Personnel to manage the in-house or contracted maintenance and/or security teams

The goal of the Civil Sidewalks work plan component is to ensure that all identified assessed parcels are clean and well maintained, thereby creating an attractive NSBID for the special benefit of each and every assessed NSBID parcel. These supplemental services will assist in creating a clean and orderly environment for the special benefit of each assessed parcel in the NSBID. A dirty environment deters commerce and may fail to attract patrons and visitors, and reduce commercial rents and commercial occupancies. For the array of land uses within the NSBID (i.e. an array of highly rated commercial retailers, restaurants, coffee shops, bakeries, grocery stores, professional businesses, and residential apartments), this work plan component is designed to increase pedestrian traffic, increase commerce and customer activity, attract and retain new business and patrons, and may increase commercial rents and commercial occupancies for the assessed parcels within the NSBID boundaries. Each assessed parcel will specially benefit from the Civil Sidewalks programs which will only be provided to, and for the direct benefit of, each identified assessed parcel within the NSBID boundaries.

District Identity and Placemaking

The District Identity and Placemaking component strives to build and improve the identity of the NSBID.

The District Identity and Placemaking services would include, but not be limited to:

- Web site updating
- Funding of Social media and public relations
- Holiday and seasonal decorations
- Branding of the North Shattuck BID properties so a positive image is promoted to the public;
- Public art displays
- Public space design and improvements
- Development and project management of Special Events including the Snow Day Event, Chocolate and Chalk Art Festival, Taste of North Berkeley, Food and Wine Walk Event

In general, the District Identity and Placemaking component is designed to promote the image of NSBID and attract and increase pedestrian traffic.

The NSBID Identity program is also designed with the intent to increase the public’s awareness of the NSBID as a single destination in order to attract consumers to the rich collection of attractions, events, and services which will ultimately lead to increased commerce and increase awareness of the NSBID as a destination for consumers and tenants and increase occupancy and commerce on the assessed parcels. The website is designed to provide visitors information about the NSBID and comply with the open meetings and records provisions of the Brown Act.

Administration

The Administration component includes activities such as: personnel, operations, professional services (e.g. legal, accounting, insurance), production of the Annual Planning Report and Budget, preparation for the regular and Annual Board meetings, preparation of taxes, City required quarterly reports,

facilitation of meetings of the Owners’ Association, Brown Act compliance, outreach to NSBID property and business owners, and participation in professional peer/best practice forums such as the the California Downtown Association or the International Downtown Association. It may also cover the costs associated with NSBID renewal.

The Administration component is key to the proper expenditure of NSBID assessment funds and the administration of NSBID programs and activities for the special benefit of all parcels and land uses within the NSBID. The Administration work plan component exists only for the purposes of the NSBID and directly relates to the implementation of cleaning and beautification, district identity and improvement programs and services, which specially benefit each identified assessed parcel within the NSBID boundaries.

Contingency

This work plan component sets aside a 5% contingency/reserve which provides for costs related to operating the NSBID. Those costs may include, but not be limited to:

- City and/or County fees associated with their oversight and implementation of the NSBID,
- The implementation of the Management Plan and the Engineer’s Report.
- City fees to collect and process the assessments, delinquencies and non-payments. A percent of the budget is held in reserve to offset delinquent and/or slow payment of assessments. This component also funds any government expenses charged for collection and distribution of NSBID revenue.
- Other unanticipated costs related to the compliance of the Management District Plan and Engineer’s report.
- Funding for renewal of the NSBID;

In summary, all NSBID funded services, programs and improvements described above confer special benefits to identified assessed parcels inside the NSBID boundaries and none will be provided outside of the NSBID. Each assessed parcel within the NSBID will proportionately specially benefit from the Civil Sidewalks, District Identity, Administration and Contingency components of the Management Plan. All NSBID funded services programs and improvements are considered supplemental, above normal base level services provided by the City of Berkeley and are only provided for the special benefit of each assessed parcel within the boundaries of the NSBID.

WORK PLAN BUDGET

Each identified assessed parcel within the NSBID will be assessed the full amount of the proportionate special benefit conferred upon it based on the level of NSBID funded services provided. The projected NSBID program cost allocation (special benefit) budget for Year 1 (FY2021) is shown in the following Table:

NSBID Year 1 (FY2021) Special Benefit Assessment Budget

WORK PLAN CATEGORY	ALLOCATION	%
Civil Sidewalks	\$85,000	40.4062%
District Identity	\$52,000	24.7191%
Administration	\$63,000	29.9481%
Contingency	\$10,364	4.9267%
TOTAL	\$210,364	100%

In order to carry out the NSBID programs outlined in the previous section, a Year 1 assessment budget of \$210,908 is projected. Since the NSBID is planned for a 10-year term, projected program costs for future years (Years 2-10) are set at the inception of the NSBID. While future inflationary and other program cost increases are unknown at this point, a built in maximum increase of 5% per annum, commensurate to special benefits received by each assessed parcel, is incorporated into the projected program costs and assessment rates for the 10-year NSBID term. It is noted that the 5% maximum annual rate increase is deemed necessary in order to offset substantial service and improvement cost increases projected over the next several years and to provide levels of service and types of improvements expected and requested by NSBID stakeholders. Carryovers, if any, may be reapportioned the following year for related programs, services and improvements. Detailed annual budgets will be prepared by the Owner’s Association Board and included in an Annual Plan or Report for the Berkeley City Council’s review and approval.

It is recognized that market conditions may cause the cost of providing goods and services to fluctuate from year to year during the 10-year term of the proposed renewed NSBID. Accordingly, the Owners’ Association shall have the ability to reallocate up to 10% of any budget line item within the budget categories based on such cost fluctuations subject to the review and approval by the Owners’ Association Board and included in the Annual Planning Report that will be approved by the Berkeley City Council pursuant to Streets and Highways Code Section 36650. Any accrued interest or delinquent payments may be expended in any budget category. A 10-year projected NSBID budget is shown in the following Table:

YEAR 1-10 PROJECTED DISTRICT ASSESSMENT BUDGET SUMMARY (Special Benefits)
 (Assumes 5% max rate increase per year)

YR	FY	Civil Sidewalks	District Identity	Administration	Contingency	TOTAL
		40.4062%	24.7191%	29.9481%	4.9267%	100.00%
1	2021	\$85,000	\$52,000	\$63,000	\$10,364	\$210,364
2	2022	\$89,250	\$54,600	\$66,150	\$10,882	\$220,882
3	2023	\$93,713	\$57,330	\$69,458	\$11,426	\$231,927
4	2024	\$98,399	\$60,197	\$72,931	\$11,997	\$243,524
5	2025	\$103,319	\$63,207	\$76,578	\$12,597	\$255,701
6	2026	\$108,485	\$66,367	\$80,407	\$13,227	\$268,486
7	2027	\$113,909	\$69,685	\$84,427	\$13,888	\$281,909
8	2028	\$119,604	\$73,169	\$88,648	\$14,582	\$296,003
9	2029	\$125,584	\$76,827	\$93,080	\$15,311	\$310,802
10	2030	\$131,863	\$80,668	\$97,734	\$16,077	\$326,342

The NSBID assessments may increase for each individual parcel each year during the 10-year effective operating period, but not to exceed 5% per year, commensurate to special benefits received by each assessed parcel, and must be approved by the Owners’ Association Board of Directors, included in the Annual Planning Report and adopted by the Berkeley City Council. Any accrued interest and delinquent payments will be expended within the budgeted categories. The Owners’ Association Board of the Directors (“Property Owner’s Association of the NSBID) shall determine the percentage increase to the annual assessment and the methodology employed to determine the amount of the increase. The Owners’ Association Executive Director shall communicate the annual increase to the City each year

in which the NSBID operates at a time determined in the Administration Contract held between the Owners’ Association and the City of Berkeley.

No bonds are to be issued in conjunction with the proposed renewed NSBID.

Pursuant to Section 36671 of the Streets and Highways Code, any funds remaining after the 10th year of operation will be rolled over into the renewal budget or returned to stakeholders. NSBID assessment funds may be used to pay for costs related to the following NSBID renewal term. If the NSBID is not renewed or terminated for any reason, unexpended funds will be returned to the property owners.

Finding 3. From Section 4(a): “(Determine) the proportionate special benefit derived by each parcel in relationship to the entirety of the.....cost of public improvement(s) or the maintenance and operation expenses.....or the cost of the property related service being provided.

Each identified assessed parcel within the district will be assessed based on property characteristics unique only to that parcel. Based on the specific needs and corresponding nature of the program activities to be funded by the proposed renewed NSBID (i.e. Civil Sidewalks, District Identity and Placemaking, Administration and Contingency). It is the opinion of this Assessment Engineer that the assessment factors on which to base assessment rates relate directly to the proportionate amount of building area, land area and street frontage within one benefit zone.

The calculated assessment rates are applied to the actual measured parameters of each parcel and thereby are proportional to each and every other identified assessed parcel within the district. Larger buildings and parcels and/or ones with larger frontages are expected to impact the demand for services and programs to a greater extent than smaller building, land and/or street frontages and thus, are assigned a greater proportionate degree of assessment program and service costs. The proportionality is further achieved by setting targeted formula component weights for the respective parcel by parcel identified property attributes.

The proportionate special benefit cost for each parcel has been calculated based on proportionate formula components and is listed as an attachment to the Management NSBID Plan and this Report. The individual percentages (i.e. proportionate relationship to the total special benefit related program and activity costs) is computed by dividing the individual parcel assessment by the total special benefit program costs.

Finding 4. From Section 4(a): “No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.”

Not only are the proposed program costs reasonable due to the benefit of group purchasing and contracting which would be possible through the proposed renewed NSBID, they are also considerably less than other options considered by the NSBID Renewal Committee. The actual assessment rates for each parcel within the NSBID directly relate to the level of service and, in turn, special benefit to be conferred on each parcel based on the respective building area, land area and street frontage of each parcel within one benefit zone.

Finding 5. From Section 4(a): “Parcels.....that are owned or used by any (public) agency shall not be exempt from assessment.....”

The State Constitution - Article 13D (Proposition 218) states that “parcels within a NSBID that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly-owned parcels in fact receive no special benefit.”

There are currently, no publicly owned parcels within the NSBID.

There is no compelling evidence that future publicly owned parcels would not proportionately specially benefit from NSBID funded programs, services and improvements as delineated herein and, thus, will be assessed similar to privately owned parcels, if and when this occurs.

Finding 6. From Section 4(b): “All assessments must be supported by a detailed engineer’s report prepared by a registered professional engineer certified by the State of California”.

This report serves as the “detailed engineer’s report” to support the benefit property assessments proposed to be levied within the proposed renewed NSBID.

Finding 7. From Section 4(c): “The amount of the proposed assessment for each parcel shall be calculated (along with) the total amount thereof chargeable to the entire district, the duration of such payments, the reason for such assessment and the basis upon which the amount of the proposed assessment was calculated.”

The individual and total parcel assessments attributable to special property benefits are shown in Appendix 1 to the Management District Plan and this Report. The proposed renewed NSBID and resultant assessment levies will continue for 10-years and may be renewed again at that time. The reasons (purposes) for the proposed assessments are outlined in Finding 2 above as well as in the Management District Plan. The calculation basis of the proposed assessment is attributed to building area, land area and street frontage.

Assessment Formula Methodology

Step 1. Select “Basic Benefit Unit(s)”

Background - Assessment Formula Development

The method used to determine special benefits derived by each identified assessed property within a BID begins with the selection of a suitable and tangible basic benefit unit. For property related services, such as those proposed in the NSBID, the benefit unit may be measured in linear feet of street frontage or parcel size in square feet or building size in square feet or any combination of these factors. Factor quantities for each parcel are then measured or otherwise ascertained. From these figures, the amount of benefit units to be assigned to each property can be calculated. Special circumstances such as unique geography, land uses, development constraints etc. are carefully reviewed relative to specific programs and improvements to be funded by the district in order to determine any levels of different benefit that may apply on a parcel-by-parcel or categorical basis.

Based on the factors described above such as geography and nature of programs and activities proposed, an assessment formula is developed which is derived from a singular or composite basic benefit unit factor or factors. Within the assessment formula, different factors may be assigned different “weights” or percentage of values based on their relationship to programs/services to be funded.

Next, all program and activity costs, including incidental costs, district administration and ancillary program costs, are estimated. It is noted, as stipulated in Article XIID Section 4(b) of the California Constitution, and now required of all property-based assessment districts, indirect or general benefits costs may not be incorporated into the assessment formula and levied on the district properties; only direct or “special” benefits and costs may be considered. Indirect or general benefit costs, if any, must be identified and, if quantifiable, calculated and factored out of the assessment cost basis to produce a “net” cost figure. In addition, Article XIID Section 4(b) of the California Constitution also no longer automatically exempts publicly owned property from being assessed unless the respective public agency can provide clear and convincing evidence that their property does not specially benefit from the programs and services to be funded by the proposed special assessments. (See page 15, Finding 5 regarding Publicly owned parcels). If special benefit is determined to be conferred upon such properties, they must be assessed in proportion to special benefits conferred in a manner similar to privately owned property assessments.

From the estimated net program costs, the value of a basic benefit unit or “basic net unit cost” can be computed by dividing the total amount of estimated net program costs by the total number of benefit units. The amount of assessment for each parcel can be computed at this time by multiplying the Net Unit Cost times the number of Basic Benefit Units per parcel. This is known as “spreading the assessment” or the “assessment spread” in that all costs are allocated proportionally or “spread” amongst all benefitting properties within the district.

The method and basis of spreading program costs varies from one district to another based on local geographic conditions, types of programs and activities proposed, and size and development complexity of the district.

NSBID Assessment Formula

Based on the specific needs and corresponding nature of the program activities to be funded by the proposed renewed NSBID (i.e. an array of highly rated commercial retailers, restaurants, coffee shops, bakeries, grocery stores, professional businesses, and residential apartments) it is the opinion of this Assessment Engineer that the assessment factors on which to base assessment rates relate directly to the proportionate amount of building area, land area and street frontage within one benefit zone.

The “Basic Benefit Units” will be expressed as a combined function of gross building square footage (Benefit Unit “A”), land square footage (Benefit Unit “B”), street frontage (Benefit Unit “C”). Based on the shape of the proposed renewed NSBID, as well as the nature of the NSBID program elements, it is determined that all identified properties will gain a direct and proportionate degree of special benefit based on the respective amount of building area, land area and street frontage within one benefit zone.

For the array of land uses within the BID, the interactive application of building and land areas and street frontage quantities are a proven method of fairly and equitably spreading special benefit costs to these beneficiaries of BID funded services, programs and improvements. Each of these factors directly

relates to the degree of special benefit each assessed parcel will receive from BID funded activities. There are no parcels zoned solely residential within NSBID.

Building area is a direct measure of the static utilization of each parcel and its corresponding impact or draw on BID funded activities. In the opinion of this Assessment Engineer, the targeted weight of this factor, building area, should generate approximately 40% of the total NSBID revenue (40.94481% when adjusted for precise parcel measurements and program costs).

Land area is a direct measure of the current and future development capacity of each parcel and its corresponding impact or draw on NSBID funded activities. In the opinion of this Assessment Engineer, the targeted weight of this factor, land area, should generate approximately 30% of the total BID revenue (30.0996% when adjusted for precise parcel measurements and program costs).

Street Frontage is a direct measure of the current and future development capacity of each parcel and its corresponding impact or draw on BID funded activities. Street frontage includes all public street frontages of a parcel. In the opinion of this Assessment Engineer, the targeted weight of this factor, street frontage, should generate approximately 30% of the total NSBID revenue (28.95559% when adjusted for precise parcel measurements and program costs).

Special Circumstances

1. Commercial Condominiums (Future)

Ground floor commercial condominiums will be treated as independent “mini” commercial buildings and assessed based on their actual building square footage, the footprint of land they cover and the amount of direct primary street frontage on the exterior of the building. Ground floor commercial condominiums will be assessed at the full assessment rates in effect at the time such units are built. If upper floor commercial condominiums are included in a development complex, then all commercial condominium units in the complex shall be assessed for their respective building areas and a pro-rated portion of the total parcel land area and street frontage at the full assessment rates in effect at the time such units are built.

2. Residential Condominiums (Future)

Residential condominiums regardless of their location in a development complex shall be assessed at the building area assessment rate in effect at the time they are built. Such units shall not be assessed for land area nor street frontage.

3. Changes to Building or Parcel Size

Any changes in building size, parcel size and street frontage(s) as a result of new construction or demolition or land adjustments including but not limited to lot splits, consolidations, subdivisions, street dedications, right of way setbacks shall have their assessment adjusted upon final City approval of such parcel adjustments.

4. Other Future Development

Other than future maximum rates and the assessment methodology delineated in this Report, per State Law (Government Code Section 53750), future assessments may increase for any given parcel if such an increase is attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land. Any change in assessment formula methodology

or rates other than as stipulated in this Plan would require a new Proposition 218 ballot procedure in order to approve any such changes.

Step 2. Quantify Total Basic Benefit Units

Taking into account all identified specially benefiting parcels within the NSBID and their respective assessable benefit units, the rates, cumulative quantities and assessment revenues by factor are shown in the following Tables:

Year 1 – FY 2021 - Assessable Benefit Units

BLDG AREA (SF)	LAND AREA (SF)	STREET FRONTAGE (LF)	# OF ASSESABLE PARCELS
538,331	633,186	5,076	54

Year 1 – FY 2021 Projected Assessment Revenue

BLDG ASSMT \$	LAND ASSMT \$	STREET FRONTAGE ASSMT REVENUE	SUBTOTAL ASSMT REVENUE
\$86,132.96	\$63,318.60	\$60,912.00	\$210,363.56
40.94481%	30.09960%	28.95559%	100.00%

Step 3. Calculate Benefit Units for Each Property.

The number of Benefit Units for each identified benefiting parcel within the proposed renewed NSBID was computed from data extracted from County Assessor records and maps (Lot Frontage) and from the City of Berkeley’s land management database with inputs from the building and planning departments (Building Square Footage, or BSF, and Lot Square Footage, LSF). These data sources delineate current land uses, building areas, property areas and dimensions of record for each tax parcel. While it is understood that this data does not represent legal field survey measurements or detailed title search of recorded land subdivision maps or building records, it does provide an acceptable basis for the purpose of calculating property-based assessments. All respective property data being used for assessment computations will be provided to each property owner in the NSBID for their review. If a property owner believes there is an error on a parcel’s assessed footages, the NSBID may confirm the data with the County Assessor’s office or the City of Berkeley. If NSBID data matches the Assessor’s lot frontage data, or the City’s BSF or LSF data the property owner may opt to work with the Assessor’s office or the City to correct the data so that the NSBID assessment may be corrected.

Step 4. Determine Assessment Formula

Based on the nature of the programs to be funded as well as other rationale outlined in Step 1 above, it is the opinion of this Engineer that the NSBID assessments will be based on building area, land area, and street frontage.

The proposed assessment formula is as follows:

$$\text{Assessment} = \text{Building Area (Unit A) Sq Ft} \times \text{Unit A Rate, plus} \\ \text{Land Area (Unit B) Sq Ft} \times \text{Unit B Rate, plus} \\ \text{Street Frontage (Unit C) Lin Ft} \times \text{Unit C Rate}$$

YEAR 1 –2019/20 Assessment Rates

BLDG ASSMT RATE (\$/SF)	LAND ASSMT RATE (\$/SF)	STREET FRONTAGE ASSMT RATE (\$/LF)
\$0.16	\$0.10	\$12.00

The complete Year 1 – FY 2021 assessment roll of all parcels to be assessed by this NSBID is included in this Plan as Appendix I.

Assessment Formula Unit Rates

Using figures from the Assessable Benefit Units Table and the Projected Assessment Revenue Table on page 18 of this Report, the assessment rates and weighted multipliers for each factor are calculated as follows:

Building Area Rate (Unit A)

$$(\$210,363.56 \times 40.94481\%)/538,331 \text{ units} = \$0.16/\text{sq ft building area}$$

Land Area Rate (Unit B)

$$(\$210,363.56 \times 30.09960\%)/633,186 \text{ units} = \$0.10/\text{sq ft land area}$$

Street Frontage Rate (Unit C)

$$(\$210,363.56 \times 28.95559\%)/5,076 \text{ units} = \$12.00/\text{lin ft street frontage}$$

Step 5. Estimate Total NSBID Costs

The total projected 10-year budget (special benefits) for 2021 – 2030 of the NSBID are shown in the Table on page 13 of this Report assuming a maximum increase of 5% per year, commensurate to special benefits received by each assessed parcel.

Step 6. Separate General Benefits from Special Benefits and Related Costs (Article XIID Section 4(b) of the California Constitution – Proposition 218)

Total Year 1 total benefits are estimated at \$214,657. General benefits are factored at 2.0% of the total benefits (see Finding 2 on pages 5-19 of this Report) with special benefits set at 98%. Article XIID Section 4(b) of the California Constitution limits the levy of property assessments to costs attributed to special benefits only. The 2% general benefit cost is computed to be \$4,293 with a resultant 98% special benefit limit computed at \$210,364. *Based on current property data and land uses, this is the maximum amount of Year 1 (2021) revenue that can be derived from property assessments from the subject NSBID.* All program costs associated with general benefits will be funded from sources other than NSBID assessments such as grants, program income, membership dues and credits.

Step 7. Calculate “Basic Unit Cost”

With a YR 1 – FY 2021 assessment revenue portion of the budget set at \$210,364 (special benefit only), the Basic Unit Costs (rates) are shown earlier in Step 4. Since the NSBID is proposed to be renewed for a 10-year term, maximum assessments for future years (2022-2030) must be set at the inception of the proposed renewed NSBID. An annual inflationary assessment rate increase of up to 5%, commensurate to special benefits received by each assessed parcel, may be imposed for future year assessments, on approval by the NSBID Property Owner’s Association. The maximum assessment rates for the 10-year proposed renewed NSBID term of 2021-2030 are shown in the Table below. The assessment rates listed constitute the maximum assessment rates that may be imposed for each year of the proposed renewed NSBID term (FY2021-2030).

**NSBID – 10 Year Maximum Assessment Rates
(Includes a 5%/Yr. Max Increase)**

YEAR (FY)	BLDG ASSMT RATE (\$/SF)	LAND ASSMT RATE (\$/SF)	FRONTAGE ASSMT RATE (\$/LF)
YR 1-FY 2021	\$0.160	\$0.10	\$12.00
YR 2- 2022	\$0.1680	\$0.1050	\$12.6000
YR 3- 2023	\$0.1764	\$0.1103	\$13.2300
YR 4- 2024	\$0.1852	\$0.1158	\$13.8915
YR 5- 2025	\$0.1945	\$0.1216	\$14.5861
YR 6-2026	\$0.2042	\$0.1277	\$15.3154
YR 7-2027	\$0.2144	\$0.1341	\$16.0812
YR 8-2028	\$0.2251	\$0.1408	\$16.8853
YR 9-2029	\$0.2364	\$0.1478	\$17.7296
YR 10-2030	\$0.2482	\$0.1552	\$18.6161

Step 8. Spread the Assessments

The resultant assessment spread calculation results for each parcel within the NSBID are shown in the Management NSBID Plan and were determined by applying the NSBID assessment formula to each identified benefiting property.

Miscellaneous NSBID Provisions

Time and Manner of Collecting Assessments:

Assessments for the Property Tax Year beginning July 1, 2020 and ending June 30, 2030, shall be collected at the same time and in the same manner as ad valorem taxes paid to the Alameda County (Operation Years 2021-2030). The NSBID assessments shall appear as a separate line item on the property tax bills issued by the Alameda County Assessor. The City of Berkeley is authorized to collect any assessments not placed on the County tax rolls, or to place assessments, unpaid delinquent assessments, or penalties on the County tax rolls as appropriate to implement the Management NSBID Plan.

Bonds: No bonds are to be issued in conjunction with this proposed renewed NSBID.

Duration

As allowed by State BID Law, the NSBID will have a ten (10) year operational term from January 1, 2021 to December 31, 2030. The proposed renewed NSBID operation is expected to begin services on January 1, 2021. If the NSBID is not renewed at the end of its proposed 10 year term, services will end on December 31, 2030.

APPENDIX 1

NSBID YR 1 – 2021 ASSESSMENT ROLL

NORTH SHATTUCK BUSINESS IMPROVEMENT DISTRICT – ASSESSMENT ENGINEER’S REPORT

Assessor Parcel Number	Site #	Site Street	Building Area	Land Area	Street Frontage	Year 1-2021 Assessment
058 -2173-002-03	1600	SHATTUCK AVE #1010	29,500	23,875	141	\$8,799.50
058 -2173-004-00	1620	SHATTUCK AVE	2,044	1,698	35	\$916.84
058 -2173-005-00	1650	SHATTUCK AVE	1,700	4,600	103	\$1,968.00
058 -2174-001-00	1652	SHATTUCK AVE	4,296	3,969	42	\$1,588.26
058 -2174-002-00	1654	SHATTUCK AVE	3,117	3,142	33	\$1,208.92
058 -2174-003-00	1662	SHATTUCK AVE	2,950	2,835	30	\$1,115.50
058 -2174-004-01	1670	SHATTUCK AVE	2,617	3,299	35	\$1,168.62
058 -2174-006-02	1690	SHATTUCK AVE	10,896	15,761	135	\$4,939.46
058 -2175-001-01	1700	SHATTUCK AVE	8,976	12,730	95	\$3,849.16
058 -2175-003-00	1708	SHATTUCK AVE	2,872	5,163	40	\$1,455.82
058 -2175-004-00	1720	SHATTUCK AVE	624	2,175	35	\$737.34
058 -2175-005-00	1730	SHATTUCK AVE	1,340	2,819	50	\$1,096.30
058 -2175-006-00	1748	SHATTUCK AVE	2,500	2,625	50	\$1,262.50
058 -2176-001-01	1752	SHATTUCK AVE	1,160	10,350	115	\$2,600.60
058 -2176-003-01	2083	DELAWARE	33,006	19,065	155	\$9,047.46
058 -2177-015-01	1797	SHATTUCK AVE	56,931	19,340	200	\$13,442.96
058 -2178-018-00	2109	VIRGINIA ST	9,480	22,425	200	\$6,159.30
058 -2178-023-00	1619	SHATTUCK AVE	1,850	5,175	45	\$1,353.50
058 -2178-024-01	1607	SHATTUCK AVE	17,530	29,657	252	\$8,794.50
058 -2178-026-00	1625	SHATTUCK AVE	4,760	4,025	35	\$1,584.10
058 -2178-027-00	1625	SHATTUCK AVE	11,450	4,025	35	\$2,654.50
058 -2178-028-00	1625	SHATTUCK AVE	11,450	4,025	35	\$2,654.50
059 -2260-001-00	2100	VINE ST	10,090	8,958	100	\$3,710.20
059 -2260-002-01	2110	VINE ST	28,520	19,263	150	\$8,289.50
059 -2260-015-01	1549	SHATTUCK AVE	2,255	3,720	40	\$1,212.80
059 -2260-015-02	1543	SHATTUCK AVE	4,813	5,251	62	\$2,039.18
059 -2260-016-00	1537	SHATTUCK AVE	7,271	5,520	45	\$2,255.36
059 -2260-017-00	1533	SHATTUCK AVE	3,780	5,355	45	\$1,680.30
059 -2260-018-00	1531	SHATTUCK AVE	13,038	7,200	60	\$3,526.08
059 -2260-019-00	1525	SHATTUCK AVE	5,064	7,380	60	\$2,268.24
059 -2260-020-03	1519	SHATTUCK AVE	7,642	8,330	70	\$2,895.72
059 -2260-021-00	1517	SHATTUCK AVE	2,423	3,720	30	\$1,119.68
059 -2260-022-01	1515	SHATTUCK AVE	2,256	3,240	30	\$1,044.96
059 -2260-022-02	1511	SHATTUCK AVE	9,537	8,427	70	\$3,208.62
059 -2261-001-02	1451	SHATTUCK AVE	17,932	33,750	377	\$10,768.12
059 -2261-004-03	1444	WALNUT ST	8,548	4,400	40	\$2,287.68
059 -2261-005-00	2113	VINE ST	1,280	4,407	40	\$1,125.50
059 -2261-006-00	2111	VINE ST	6,711	4,400	40	\$1,993.76
059 -2261-007-00	1495	SHATTUCK AVE	6,750	6,750	75	\$2,655.00
059 -2261-008-00	1481	SHATTUCK AVE	2,555	3,150	35	\$1,143.80
059 -2261-009-00	1475	SHATTUCK AVE	3,400	3,590	40	\$1,383.00
059 -2261-010-00	1463	SHATTUCK AVE	5,664	6,300	73	\$2,412.24
059 -2262-001-00	1400	SHATTUCK AVE	19,118	9,338	148	\$5,768.68
059 -2262-005-00	1480	SHATTUCK AVE	2,369	11,900	120	\$3,009.04
059 -2262-006-00	2085	VINE ST	3,091	4,200	35	\$1,334.56
059 -2262-021-02	1425	HENRY ST	50,528	84,942	518	\$22,794.68
059 -2262-021-03	1425	HENRY ST		6,098	96	\$1,761.80
059 -2263-003-01	2044	VINE ST	10,094	15,525	115	\$4,547.54

NORTH SHATTUCK BUSINESS IMPROVEMENT DISTRICT – ASSESSMENT ENGINEER’S REPORT

059 -2263-006-01	1516	SHATTUCK AVE	11,813	12,960	95	\$4,326.08
059 -2263-009-00	1540	SHATTUCK AVE	5,515	4,050	30	\$1,647.40
059 -2263-010-01	1550	SHATTUCK AVE	37,323	85,050	300	\$18,076.68
059 -2263-024-01	1536	SHATTUCK AVE		16,959	60	\$2,415.90
060- 2455-064-01	2095	ROSE ST	3,702	10,075	135	\$3,219.82
060- 2455-067-00	2091	ROSE ST	24,200	16,200	46	\$6,044.00

APPENDIX 2

NSBID BOUNDARY MAP





Office of the City Manager

16

CONSENT CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: 1601 Oxford Interest Rate Reduction

RECOMMENDATION

Adopt a Resolution:

1. Waiving the Housing Trust Fund Guidelines Section V.B.2 and allowing an interest rate of 1% for Satellite Affordable Housing Associates' (SAHA) 1601 Oxford's development loan; and
2. Authorizing the City Manager to execute all original or amended documents or agreements to effectuate this action.

FISCAL IMPACTS OF RECOMMENDATION

City Housing Trust Fund (HTF) program funds are provided in the form of a loan consistent with the HTF Guidelines. The loans are structured to be repaid with any residual receipts, meaning cash flow left over after operating costs and senior debts (like banks and the State) are paid. If no cash flow is available, no payments are made until the end of the term (55 years from project completion). Reducing the City's interest rate from 3% to 1% reduces the interest the City will earn. With a 1% interest rate and no repayments during the term, the loan could accrue \$3.3M in interest. By comparison, a loan of the same size with 3% interest and no repayments would accrue \$9.9M in interest over 55 years. In this case, the project would not be able to proceed without the interest rate reduction, so the comparison is not between 3% interest and 1% interest, but between 1% interest and no interest, since the City cannot earn interest if there is no loan.

CURRENT SITUATION AND ITS EFFECTS

On March 5, 2020, the Housing Advisory Commission made the following recommendation:

Action: M/S/C (Simon-Weisberg/Sharenko) to recommend to Council to reduce the interest rate of Satellite Affordable Housing Associates' 1601 Oxford Housing Trust Fund loan to 1%.

Vote: Ayes: Johnson, Lord, Mendonca, Sargent, Sharenko, and Simon-Weisberg. Noes: None. Abstain: None. Absent: Owens (unapproved) and Wright (approved). Recused: Wolfe.

Council approved \$6M in HTF funding for 1601 Oxford on October 16, 2018. The project's sponsor, SAHA, has secured financing, with one grant application pending, and is preparing to close all financing and start construction by mid-June 2020.

In February 2020, SAHA requested a reduction in 1601 Oxford's development loan interest rate from 3% to 1%. Without the reduction, the project will not be able to attract a low income housing tax credit investor and will be infeasible. The interest rate is set in the HTF Guidelines, and requires a waiver by Council in order to reduce the interest rate.

Affordable housing development often relies on low income housing tax credits, which are effectively purchased by investors who have tax liabilities they want to offset. Under IRS rules, a tax credit investor is only able to claim tax credits and deductions while it maintains a positive balance in its "capital account" for the project. The capital account is reduced over time by the amount of tax losses allocated to the investor (99.99% of the project's losses). Accruing interest on loans contributes to the amount of losses, and reduces the capital account at a faster rate.

In order to keep the capital account positive for the 15-year tax credit period, SAHA requested a reduction in the City's loan interest rate. SAHA requested similar interest rate reductions from Alameda County and California Housing and Community Development (HCD) from 3% to 1% and 0%, respectively. SAHA's tax credit financing consultants strategized and ran scenarios, and determined the project would need all three interest rates reduced in order to be viable.

The City previously approved reductions in interest rates for other tax credit projects for similar reasons, and expects more requests in the future. Recent federal tax reform exacerbated the issue with capital accounts. The reduction of the marginal corporate tax rate reduced the overall equity contributions of tax credit investors. Tax reform also requires projects to depreciate property over 30 years rather than 40 years, which means depreciation losses are accelerated and the investor's capital account reaches zero more quickly. Reducing interest rates is a key solution to this problem.

It is important that City funding work with tax credit projects and program requirements, since that is an essential funding source for affordable housing developments. Staff are considering recommending an amendment to the HTF guidelines that would allow the City Manager to adjust the interest rate as needed so the City could respond more quickly when this issue arises.

Reducing the interest rate for 1601 Oxford's HTF loan is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BACKGROUND

1601 Oxford is a 35-unit affordable housing development that will serve seniors earning up to 60% of the area median income.

Since Council's October 2018 funding reservation, SAHA has pursued various sources, and successfully secured A1 bond funding (from Alameda County), No Place Like Home funding (from HCD), state 4% tax credits, and a tax-exempt bond. The reservation of tax credits and tax exempt bond started a 180-day window during which SAHA must close its construction financing and start construction.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability impacts of reducing the interest rate for 1601 Oxford.

RATIONALE FOR RECOMMENDATION

The City has not historically prioritized earning interest from its HTF investments, instead prioritizing the creation and preservation of affordable housing opportunities consistent with local priorities and the purpose of the HTF program. Two reasons for providing funds in the form of a loan are (1) loans work with tax credit financing requirements, which grants do not and (2) the loans help secure long term affordability and City involvement in any future proposed changes. Reducing the interest rate is consistent with the HTF program goals, and will support the creation of new affordable housing units in Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

The City could decline to reduce its interest rate, but that would make the project infeasible with tax credits and create a \$9M gap in its financing. This would not be consistent with the City's Strategic Plan goal, and is therefore not recommended.

CONTACT PERSON

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

Attachments:

1: Resolution

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

REDUCTION OF DEVELOPMENT LOAN INTEREST RATE FOR 1601 OXFORD

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, there is a great need for affordable and special needs housing in the City of Berkeley as stated in the General Plan Housing Element and the City of Berkeley's Consolidated Plan; and

WHEREAS, on October 16, 2018, City Council reserved \$6 million to support the development of 1601 Oxford, Satellite Affordable Housing Associates' (SAHA) affordable housing project for seniors; and

WHEREAS, SAHA applied for and was awarded an allocation of tax credits from the California Tax Credit Allocation Committee; and

WHEREAS, recent tax reform made low income housing tax credit financing more difficult; and

WHEREAS, on February 20, 2020, SAHA requested a reduction of the City's HTF loan interest rate for 1601 Oxford from three percent (3%) to one percent (1%) in order to make the tax credit financing viable; and

WHEREAS, on March 5, 2020, the Housing Advisory Commission recommended reducing the interest rate for 1601 Oxford to one percent (1%).

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley waives the requirements of Section V.B.2 of the Housing Trust Fund Guidelines and approves an interest rate of one percent (1%) in order to make the project feasible with low income housing tax credit financing.

BE IT FURTHER RESOLVED that all funding reservations are conditioned upon the completion of the environmental review process, except as authorized by 24 CFR, Part 58, and that should HOME and/or CDBG funds constitute a portion of the funding for any project, a final commitment of HOME and/or CDBG funds shall occur only upon the satisfactory completion of the appropriate level of environmental review and also upon the receipt of approval of the request for release of funds and related certification from the U.S. Department of Housing and Urban Development, when applicable. The funding reservation for any of the HOME and/or CDBG funded projects is conditioned upon the City of Berkeley's determination to proceed with, modify, or cancel the project based on the results of subsequent environmental review under the National Environmental Policy Act.

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

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CONSENT CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services
 Department
 Subject: Shelter Plus Care Program Renewal Grants

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to receive funds and execute any agreements and amendments resulting from the renewal of the following grants:

1. Four Shelter Plus Care grants from U.S. Department of Housing and Urban Development (HUD) for up to: a) \$3,305,842 for Tenant-Based Rental Assistance (TBRA) for the period June 1, 2020 through May 31, 2021; b) \$191,491 for sponsor-based rental assistance for the Supportive Housing Network for the period of June 1, 2020 through May 31, 2021, with Resources for Community Development as the project sponsor; c) \$186,380 for sponsor-based rental assistance for the Pathways Project for the period June 1, 2020 through May 31, 2021, with Bonita House, Inc. as the project sponsor; and d) \$2,176,630 in tenant-based rental assistance for the COACH Project grant for the period of January 1, 2021 through December 31, 2021.
2. One grant from the County of Alameda for \$708,195 to provide tenant-based rental assistance to individuals who have HIV/AIDS and other disabilities from March 1, 2020 through February 28, 2021.

In its renewal application to HUD, the City requested to consolidate three of the above grants: 1) Tenant-Based Rental Assistance; 2) Supportive Housing Network and 3) Pathways Project. If approved, the three grants would be consolidated into one with a combine grant amount of up to \$3,683,713.

FISCAL IMPACTS OF RECOMMENDATION

Each of the four Shelter Plus Care grants and the grant from Alameda County provides funds for rental subsidies from the federal Department of Housing and Urban Development (HUD). The grants serve homeless and disabled individuals and families in Berkeley, and must be renewed on an annual basis. Four of the grants fund rental subsidies for units while city staff and community agency partners provide the supportive services that fulfills the 25% match required for these grants. The COACH grant also includes funding for supportive services provided by the City's Aging Services Division. The COACH grant serves single adults regardless of age.

The total award amount represents a 7% decrease in funding from FY2020. HUD uses its Fair Market Rent (FMR) limits as the basis for the amount it awards for rental assistance. Due to the annual fluctuation of the FMR amounts, the Shelter Plus Care program often has to balance the goal of enrolling as many eligible households as possible, especially when HUD's FMRs result in grant increases, while recognizing the uncertainty of future grant amounts. Additionally, since HUD's FMRs haven't kept pace with the actual cost of renting a unit in Berkeley, the Shelter Plus Care program, along with Berkeley Housing Authority, has set its FMR at 110% of the FMR, which is allowable by HUD. While this allows the Shelter Plus Care program to be more competitive while searching for units, these increased rents can sometimes result in budget constraints, especially, when HUD decreases its grant amounts. These decreases also impact staffing as both program delivery and administration costs are budgeted within the grant amounts.

HUD allows up to 7% of each grant to be used to administer the rental subsidies to support the Health, Housing and Community Service Department's grant-related administrative activities. (Budget codes for the four HUD grants are: 347-51-504-530/535 various; funds to be deposited in revenue accounts 805-7906-331-1023 and 6064 (FUND\$) and 347-51-504-535-0000-000-000-431110 (ERMA). For the contract with Alameda County, budget codes are: 348-51-504-530-535-various and funds to be deposited in revenue accounts 806-7906-331-1023 and 6064 (FUND\$) and 348-51-504-535-0000-000-000-431110 (ERMA).

CURRENT SITUATION AND ITS EFFECTS

Based on a national competition, the federal Department of Housing and Urban Development (HUD) and the County of Alameda awarded funding to the City of Berkeley to four Shelter Plus Care grants that provide rental assistance to a minimum of 272 households. The City's Shelter Plus Care Program provides federal rental subsidies that are matched by locally provided services to transition formerly homeless, disabled individuals and families into permanent, supportive housing. Two of the grants provide tenant-based rental subsidies for a minimum of 249 households to rent from private property owners in Berkeley, Oakland, Albany and Emeryville. The remaining two grants provide sponsor-based rental subsidies that are dedicated for units owned and operated by the project sponsors. Resources for Community Development is the sponsor for one of these grants which provides 12 subsidies to serve homeless individuals in Berkeley who are diagnosed with a serious mental illness and/or a history of drug and alcohol dependence. Bonita House, Inc. is the project sponsor for the other grant which provides 11 sponsor-based rental subsidies to serve homeless individuals in Berkeley who are dually diagnosed with a serious mental illness and a history of drug and alcohol dependence.

Each of the participants in the program receives case management and other supportive services provided by one or more of the following agencies: Bay Area

Community Services, Berkeley Food and Housing Project; City of Berkeley Mental Health Division; City of Berkeley Aging Services Division; Bonita House, Inc.; Building Opportunities for Self-Sufficiency; East Bay AIDS Center; Lifelong Medical Care; and the Women's Daytime Drop-In Center.

BACKGROUND

Since 1995, the City of Berkeley Shelter Plus Care Program has been an important component of the continuum of housing available to disabled homeless people. The Shelter Plus Care Program is funded by HUD and the County of Alameda to provide housing subsidies for people who are homeless with a disability. The program combines a rental subsidy with ongoing supportive services to assist chronically homeless individuals and families to obtain and maintain housing.

The Berkeley Shelter Plus Care Program is a partnership between the Health, Housing & Community Service Department and nine community agencies. The Health, Housing & Community Service Department provides operational and programmatic oversight, and inspects rental units to ensure that each unit meets federal housing quality standards, and makes monthly rental subsidy payments to property owners. The community agencies along with the Department's Divisions on Aging Services and Mental Health provide ongoing case management and support to participants in the program. The City of Berkeley Shelter Plus Care grants provide 272 units of supportive housing for homeless and disabled people.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The City of Berkeley Shelter Plus Care Program successfully provides stable housing and ongoing services to some of the most indigent and underserved of the City's residents. Authorizing the acceptance of the five Shelter Plus Care renewal grants, will assure that 272 homeless and disabled individuals and families in Berkeley continue to benefit from receiving ongoing rental assistance and the supportive services necessary to retain stable housing.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Jennifer Vasquez, Community Services Specialist, HHCS, (510) 981-5431

Attachment:

1: Resolution

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

SHELTER PLUS CARE PROGRAM RENEWAL GRANTS

WHEREAS, the U.S. Department of Housing and Urban Development and the County of Alameda have awarded the City of Berkeley Health, Housing & Community Services Department the following five Shelter Plus Care grants – up to: 1) \$3,305,842 for Tenant-Based Rental Assistance for the period June 1, 2020 through May 31, 2021; 2) \$191,491 for sponsor-based rental assistance for the Supportive Housing Network for the period of June 1, 2020 through May 31, 2021, with Resources for Community Development as the project sponsor; 3) \$186,380 for sponsor-based rental assistance for the Pathways Project for the period June 1, 2020 through May 31, 2021, with Bonita House, Inc. as the project sponsor; 4) \$2,176,630 in tenant-based rental assistance for the COACH Project grant for the period of January 1, 2020 through December 31, 2020; and 5) \$708,195 provided through a contract with Alameda County to provide tenant-based rental assistance to individuals who have HIV/AIDS or other disabilities from March 1, 2020 through February 28, 2021; and

WHEREAS, the combined total for the five grants is an estimated \$6,568,538 to provide direct rental assistance, and of this amount approximately 7% is available to support the Health, Housing and Community Service Department's grant-related administrative activities (For the four HUD grants budget codes 347-51-504-530/535 various; funds to be deposited in revenue accounts 805-7906-331-1023 and 6064 (FUND\$) and 347-51-504-535-0000-000-000-431110 (ERMA). For the contract with Alameda County, budget codes 348-51-504-530-535-various and funds to be deposited in revenue accounts 806-7906-331-1023 and 6064 (FUND\$) and 348-51-504-535-0000-000-000-431110 (ERMA); and

WHEREAS, the Shelter Plus Care grants are an annual renewal of an existing program that provides rental subsidies and ongoing support services for more than 272 homeless and disabled individuals and families in Berkeley; and

WHEREAS, the rent subsidies provided through the City's Shelter Plus Care Program are matched by services provided by the City's Mental Health Division and Aging Services Division and seven community-based agencies that assist formerly homeless, disabled individuals and families to retain stable housing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to receive funds and execute any agreements and amendments resulting from the five grants awarded from the U.S. Department of Housing and Urban Development and the County of Alameda for the City's Shelter Plus Care Program as follows – up to: 1) \$3,305,842 for Tenant-Based Rental Assistance (TBRA) for the period June 1, 2020 through May 31, 2021; 2) \$191,491 for sponsor-based rental assistance for the Supportive Housing Network for the period of June 1, 2020 through May 31, 2021, with Resources for Community Development as the project sponsor; 3) \$186,380 for sponsor-based rental assistance for the Pathways Project for the period June 1, 2020 through May 31, 2021, with Bonita House, Inc. as the

project sponsor; and 4) \$2,176,630 in tenant-based rental assistance for the COACH Project grant for the period of January 1, 2021 through December 31, 2021; and 5) \$708,195 provided through a contract with Alameda County to provide tenant-based rental assistance to individuals who have HIV/AIDS and other disabilities from March 1, 2020 through February 28, 2021. A signed copy of said documents, agreements and any amendments will be kept on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

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 200 Marina Blvd, LLC for the Doubletree Hotel

RECOMMENDATION

Adopt first reading of an Ordinance 1) authorizing the City Manager to execute the attached Ground Lease with 200 Marina Blvd, LLC, the owner/ground lessee of the Doubletree Hotel located at the Berkeley Marina for a 60-year term effective from May 14, 2020 through December 31, 2080; and 2) approving a related Capital Contribution Agreement that 200 Marina Blvd, LLC contribute \$3 million to Marina street improvements.

FISCAL IMPACTS OF RECOMMENDATION

The City's total annual rent received is expected to be similar to current levels, with annual price increases. Over the last 3 years, the City received an average of approximately \$1.4 million/year.

The City receives rent in two ways: minimum rent, a fixed amount paid monthly; and percentage rent, calculated as a percentage of hotel gross revenues, paid quarterly with a credit given for minimum rent.

Under the new lease, minimum rent will increase from \$306,000/year to \$841,591/year. Minimum rent will be adjusted annually for inflation, and, starting in 2040, may be reset to an amount equal to 60% of the average annual rent for the three years prior.

Percentage rent, which is paid quarterly with a credit given for minimum rent, will remain at 5% of room revenue and 2.5% of food and beverage revenue. Starting in 2040, and every 10 years thereafter, there will be an opportunity to reset those percentages if they are no longer reflective of market trends. The City commissioned a percentage rent evaluation in 2018, and concluded that the existing percentage rent levels are consistent with the market.

Revenue from this lease will be deposited into the Marina Fund, budget code 608-52-544-592-0000-000-000-461120.

In addition, 200 Marina Blvd LLC (200 Marina) will make a one-time payment to the City in the amount of \$3 million upon execution of the lease as part of the Capital Contribution Agreement, to allow the City to complete the planned improvements to Marina streets. Revenue from this agreement will be deposited into the Marina Fund, budget code 825-5903-347.60-99.

CURRENT SITUATION AND ITS EFFECTS

Two years ago, Junson Capital reached out to City staff to inquire about potentially extending the 2008 Ground Lease and modernizing some of the lease provisions to facilitate future hotel financing efforts. Junson Capital had just completed a refinancing effort, made more complicated because many of the 2008 Ground Lease provisions dated back to 1969 and did not contemplate modern hotel financing requirements. Though 200 Marina had more than 40 years remaining on the 2008 Ground Lease, Junson Capital was interested in extending the term so that they could continue to get competitive financing in the future.

The City engaged outside counsel, Burke, Williams and Sorensen, LLP, the same team that had worked with the City to develop the amended and restated lease in 2008. The City also commissioned hotel valuation consultants, HVS, to assess the value of a potential lease extension in dollar terms. HVS concluded that the total value of an additional 22 years of term (the amount sought by Junson Capital) would be worth approximately \$5.5 million. This value is shared by both the City and 200 Marina. 200 Marina's value exists because they own and operate the hotel; and the City's value exists because we manage the land. Following extensive negotiations, Junson agreed to pay \$3 million to the City, which the City would commit to expend on Marina street improvements. The City is preparing to bid the [University Ave/Spinnaker Way/Marina Blvd Street Improvement project](#), three of the main streets and the gateway to the Waterfront.¹ The \$8 million project cost is partially covered by Measure T1 bond funding and Public Works SB1 street funds, but requires an additional \$3 million to complete the project.

The City and Junson Capital continued to negotiate additional lease terms over this period, including certain commitments sought by the City. While most of the key business terms remain consistent with the 2008 Ground Lease, the new proposed Ground Lease includes a number of new key terms including:

- **Lease term:** The proposed lease has a term of approximately 60 years, expiring in December of 2080. This is 22 years longer than the current 2008 Ground Lease, which has a 50-year term and expires in December of 2058. The Doubletree Hotel site is on public trust lands, and the granting statute limits leases of public trust lands to a maximum of 66 years.
- **Rent:** Minimum rent increases from \$306,000/year to \$841,591/year. Percentage rent remains at current percentage levels which the City recently confirmed to be

¹ Additional information on the University Ave/Spinnaker Way/Marina Blvd Street Improvement Project is available at https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Berkeley%20Marina%20Streets%20May%202018.pdf.

consistent with market rates, with the Doubletree paying the City 2.5% of food and beverage revenue; and 5% of all other revenue. With the caveat that rent payments fluctuate based on the strength of the economy and the hotel's performance, total rent is expected to be similar to current levels, with annual price increases. Because the minimum rent will be a substantially larger component of total rent, the City will have a downside protection against dramatic rent declines caused by economic or market disruptions. Minimum rent and percentage rent would be reset in 2040.

- **Quality requirement:** The new lease requires 200 Marina and its successor to operate the hotel as a full service hotel in quality equal or better than an Upscale rating as defined by the STR Chain Scale. STR is the primary rating service for the hotel industry in North America and globally. ("Upscale" is the category of the Doubletree Hotel. Other "Upscale" North American hotel brands include Four Points by Sheraton, Hyatt House, Crowne Plaza, and Wyndham.)
- **Energy improvements:** The new lease commits 200 Marina to install at least 10 electric vehicle charging stations that will be accessible to the public. It also commits 200 Marina to increase to Renewable 100, East Bay Community Energy's service for purchasing 100% renewable and 100% carbon-free energy, sourced from wind and solar power in California.
- **Conference facilities:** The new lease increases the number of event days the City may use Doubletree conference facilities at no cost from 6 to 9 days per year. No more than 4 event days may be in the main ballroom.

BACKGROUND

The Doubletree Hotel is the City's largest Waterfront tenant, and its \$1.4 million in annual rent payments make up more than 20% of all Marina Fund revenue. The Hotel also generates close to \$3 million/year in transient occupancy tax (TOT) for the General Fund.

The Doubletree site comprises more than 11 acres. The hotel includes 378 guest rooms, 16,000 square feet of meeting rooms, a restaurant, lounge, indoor pool, fitness center, gift shop, laundry area and business center. The leased area also includes approx. 425 parking spaces, and a 1,000 ft dock which houses the Hornblower Yacht. 200 Marina has just completed an \$8 million renovation to their back patio and restaurant.

The Doubletree Hotel is situated on land that the City ground leased to the original ground lessee/developer, William J. Boykin, in 1969 (Ordinance 4,431 - N.S.) A 1983 amendment to the ground lease (Ordinance 5,561- N.S.), set the percentage rent at 5.0% of all room receipts and 2.5% of all food and beverage receipts, and further provided that the applicable percentage rent percentages would be subject to adjustment to fair market value in 2004, again in 2014, and every ten years thereafter, subject to certain caps on the amount of the increase. The 1983 amendment also extended the term for an additional 20 years to 2052. In 2008, the Council approved a replacement/new Ground Lease with the then current ground lessee, Boykin Berkeley

LLC, extending the term an additional 6 years to 2058 and amending certain other lease terms.

While the 2008 Ground Lease was drafted to be a new lease, many of the terms, including text allowing for a potential reset of the percentage rent percentages, were carried over from the original 1969 lease document. In 2018, the City and 200 Marina, as successor to Boykin Berkeley LLC, engaged separate hotel valuation consultants to examine whether the percentage rent percentages were still reflective of the current market rates. The parties concluded that they were, and therefore the existing percentages (5% of room revenue and 2.5% of food and beverage) were continued. At this time, there are approximately 39 years remaining on the 2008 Ground Lease.

Over the years, ownership of the hotel has been re-assigned several times. Most recently in 2014 when the 2008 Ground Lease was assigned by Boykin Berkeley LLC to 200 Marina Blvd LLC. While Pyramid Hotel Group manages the Doubletree Hotel property for 200 Marina, Junson Capital is the managing/controlling member of 200 Marina and acts on behalf of the owners of the company. The City has negotiated the terms of the new proposed lease with Junson Capital representatives.

ENVIRONMENTAL SUSTAINABILITY

The new lease provides for at least 10 new electric vehicle charging stations that will be accessible to the public at the Waterfront. Providing EV charging stations for public use directly supports the City's General Plan, Policy T-19, which calls for placing stations at major parking facilities and employment centers, and responds to Berkeley's Climate Action Plan, Goal 8, of encouraging low-carbon vehicles and fuels.

The new lease also commits the Doubletree to opt up to Renewable 100, East Bay Community Energy's highest level, so that the hotel purchases 100% renewable and carbon-free electricity. This commitment helps the City meet its Climate Action Plan goals of lowering greenhouse gas emissions.

RATIONALE FOR RECOMMENDATION

The proposed Ground Lease results in an agreement with modern terms that serves to benefit the City, including a substantial increase in the amount of minimum annual rent and requirements for the ground lessee to maintain a minimum "Upscale" hotel quality level, install EV chargers and provide the City with additional access to hotel conference facilities. The related Capital Contribution Agreement provides \$3 million of funding to the City, which will allow the City to complete needed Marina streets improvements, which are central to the improving the fiscal health of the Waterfront.

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Christina Erickson, Deputy Director, PRW, 981-6703

Attachments:

- 1: Ordinance
Exhibit A: Lease Agreement
Exhibit B: Capital Contribution Agreement

ORDINANCE NO. –N.S.

LEASE AGREEMENT WITH 200 MARINA BLVD, LLC, THE OWNER OF THE
DOUBLETREE HOTEL LOCATED AT THE BERKELEY MARINA

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

Section 1. The City Manager, or designee, is hereby authorized to execute a lease agreement and any amendments thereto with 200 Marina Blvd, LLC, the owner of the Doubletree Hotel located at the Berkeley Marina, for a term of approximately sixty (60) years. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The minimum rent will increase from \$306,000/year to \$841,591/year, and rent payments are more often driven by percentage rent, which will remain at 5% of room revenue and 2.5% of food and beverage revenue. Minimum rent will increase by CPI annually, and both minimum rent and percentage rent will be reset in 2040. The City will get free access to conference facilities for up to nine event days per year. Revenue from this lease will be deposited into the Marina Fund, budget code 825-5903-363.80-00.

In addition, the Doubletree will make a one-time payment to the City in the amount of \$3 million upon execution of the lease as part of the Capital Improvement Agreement, to allow the City to complete the planned improvements to Marina streets. Revenue from this agreement will be deposited into the Marina Fund, budget code 825-5903-347.60-99.

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
Exhibit B: Capital Contribution Agreement

GROUND LEASE

by and between

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

and

**200 MARINA BOULEVARD, BERKELEY, LLC
("Tenant")**

Dated _____, 20__

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**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"

200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company

Notice Address:

c/o Junson Assets Management LLC
Units 5211-12, 52/F, The Center
99 Queen's Road Central, Hong Kong
Attention: Asset Management & Legal
Facsimile: +852 2815 2599
E-Mail: asset.list@junsoncapital.com;
legal.list@junsoncapital.com

And

c/o Junson Assets Management LLC
140 East 45th Street, 20th FL
New York, NY 10017
Attention: Asset Management & Legal

With a copy to:

Sherry Meyerhoff Hanson & Crance LLP
610 Newport Center Drive, Suite 1350
Newport Beach, California 92660
Attention: Andrew P. Hanson, Esq.
Telephone: (949) 719-2199
Facsimile: (949) 719-1212

**BASIC LEASE INFORMATION
(Ground Lease)**

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. **“Inception Date”** August 7, 1969 (see Recital D).
5. **“Premises,” “Existing Improvements,” “Alterations” and “Improvements”** The **“Premises”** are the entire approximately 13.780 acre parcel of land commonly known and referred to as 200 Marina Boulevard on the Berkeley Marina, Berkeley, California (being a portion of APN 60-2545-1), as generally shown on the map attached hereto as Exhibit A (**“Site Map”**) and more particularly described in Exhibit B1. The **“Existing Improvements”** including without limitation the currently existing approximately 378 unit hotel, restaurant, parking area, floats and berths, landscaping, and auxiliary structure/charter yacht facility, are as generally described in Subsection 1.1B below. The **“Alterations”** are all other construction, reconstruction, alterations, additions, or improvements or remodeling, in, on, or about the Improvements, as described in Section 7.1 below. The **“Improvements”** are the Existing Improvements, as modified by the Alterations from time to time.
6. **“Permitted Use”** To construct, maintain and operate on the Premises a major first-class hotel and related facilities (**“Hotel”**), including a first-class restaurant and cocktail lounge (**“Restaurant”**), with an **“STR Chain Scale”** rating issued by Smith Travel Research (STR) of **“Upscale”** or better, in full compliance with the then-applicable Franchise Agreement (as defined in Section 3.5 below), all for the convenience and promotion of commerce, navigation and fishery in the **“Berkeley Marina”** (as defined in Berkeley Municipal Code Section 6.20.010.A) and for no other purpose. The Hotel, Restaurant, and Charter Yacht Facility (as defined in Subsection 1.1B.6 below), together with parking areas and ancillary facilities on the Premises, are collectively referred to as the **“Hotel Facilities.”** The Hotel is currently operated as the **“DoubleTree By Hilton Hotel Berkeley Marina.”**
7. **“Commencement Date”** Tenant and its predecessors have leased the Premises (the **“Original Ground Lease”**), and developed, constructed, operated and maintained various hotel, restaurant and other facilities thereon since August 7, 1969 (**“Inception Date”**). The Commencement Date of this Agreement will be the Effective Date.
8. **“Ground Lease Term”** Approximately 61 additional years, commencing on the Commencement Date and (if not earlier expired or terminated) ending December 31, 2080. The **“Expiration Date”** is the date the Ground Lease Term expires.

BASIC LEASE INFORMATION
(Ground Lease)

9. **“Ground Lease Year”** The 12-month period from January 1 to and including the next succeeding December 31; *provided*, that if the Commencement Date is not a January 1, **“Ground Lease Year 1”** shall be the period from the Commencement Date to and including the next succeeding December 31. The last Ground Lease Year shall be the period from the January 1 immediately preceding the Expiration Date to and including the Expiration Date.
10. **“Annual Rent”**
- A. Generally. Payable as provided in Section 2.3 below, the greater of:
1. **“Minimum Ground Rent”** in the amount of Seventy Thousand One Hundred Thirty Three and no/100th Dollars (\$70,133) per month (approximately \$841,591 per year); or
 2. **“Percentage Rent”** equal to the sum of 5% of **“Hotel Gross Receipts”** and 2.5% of **“Food and Beverage Gross Receipts,”** each as adjusted from time to time as provided herein and as defined in Section 2.4 below. Except as otherwise expressly provided in this Ground Lease, Percentage Rent shall be calculated (and if due paid) on a quarterly basis.
- B. Annual Rent for Calendar Year 2020. Regardless of whether the Commencement Date is January 1, 2020 or thereafter, Annual Rent for the period January 1, 2020 through December 31, 2020 shall be determined as if the Commencement Date were January 1, 2020.
- C. Adjustments. Minimum Ground Rent and Percentage Rent are subject to adjustment on the “CPI Adjustment Dates,” “Minimum Ground Rent Adjustment Dates” and “Percentage Rent Adjustment Dates” (each as defined below), as provided in Sections 2.6 and 2.7 below.
11. **“CPI Adjustment Dates”** January 1, 2021, and each January 1 thereafter during the Ground Lease Term. See Subsection 2.6A below.
12. **“Minimum Ground Rent Adjustment Dates”** January 1, 2040, and each 10 years thereafter during the Ground Lease Term. See Subsection 2.6B below.
13. **“Percentage Rent Adjustment Dates”** January 1, 2040, and each 10 years thereafter during the Ground Lease Term. See Section 2.7 below.
14. **“Hornblower Sublease”** That certain Agreement for Use of Dock and Other Facilities, dated May 28, 2008 between Boykin Berkeley, LLC and Hornblower Yachts, Inc. (**“Hornblower”**), as to which Landlord consented, subject to certain conditions, pursuant to that certain May 30, 2008 letter from Landlord to Boykin Berkeley, LLC and Hornblower, acknowledged and

BASIC LEASE INFORMATION
(Ground Lease)

agreed to by Boykin Berkeley, LLC and Hornblower (“**City Hornblower Consent**”).

15. “**Concessionaires**” See Subsections 1.1C and 2.4C and Section 13.3 below, and Exhibit E.
16. “**STR Chain Scale Rating**” of “**Upscale**” See Subsection 1.1E and ARTICLE 3 below, and Exhibit F.
17. “**Ground Lease Security**” None
18. “**Consumer Price Index**” or “**CPI**” The United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-Hayward, California (1982-1984 equals 100), or the successor of such index, as reasonably determined by Landlord.
19. “**Maintenance Standards**” See Exhibit I.
20. “**Existing Ground Leasehold Mortgage**” and **Related Matters** Cantor Commercial Real Estate Lending, L.P., a Delaware limited partnership, as lender under a note, deed of trust, assignment of leases and other obligations identified on Exhibit H attached hereto (“**Existing Ground Leasehold Mortgage**”), as to which Landlord consented pursuant to that certain Ground Lessor Consent and Estoppel Certificate from Landlord to Tenant, dated August 4, 2017 (“**Consent Agreement and Estoppel**”). See Subsection 1.1D below.

The Existing Ground Leasehold Mortgagee’s current address for notice under ARTICLE 15 below is as follows:

Cantor Commercial Real Estate Lending, L.P.
110 East 59th Street, 6th Floor
New York, New York 10022
Attention: Legal Department
Facsimile No.: (212) 610-3623
E-Mail: legal@ccre.com

With a copy to:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071
Attention: Mark Osher
Facsimile No.: (213) 229 - 6694
E-Mail: mosher@gibsondunn.com

And a copy to:

**BASIC LEASE INFORMATION
(Ground Lease)**

Berkeley Point Capital LLC
One Beacon Street, 14th Floor
Boston, Massachusetts 02108
Attention: Director Loan Servicing
Facsimile No.: (617) 722-5050
E-Mail: servicing.requests@berkpoint.com

**21. "Brand/Flag/Chain"
and Related Matters**

Tenant's current "**Brand/Flag/Chain**" is: DoubleTree by Hilton

Its current "**Franchisor**" is: Hilton Franchise Holding LLC, a
Delaware limited liability company

Its principal business address is:

7930 Jones Branch Drive, Suite 1100
McLean, Virginia 22102

Its address for notices is:

Hilton Worldwide Holdings, Inc.
Attention: General Counsel
7930 Jones Branch Drive, Suite 1100
McLean, Virginia 22102

See ARTICLE 3 below for definitions and related matters.

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 _____, 20__, 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:

BACKGROUND AND RECITALS

- A. Landlord is the owner of certain tidelands in trust for the promotion of commerce, navigation and fishery as evidenced by that certain statutory grant from the State of California to the City of Berkeley, as set forth in Statutes 1913, Chapter 347, as amended (copies of which include, without limitation, the statutes attached hereto as Exhibit C, the "**State Tidelands Grant**").
- B. The Premises (as that term is defined in the Basic Lease Information and more particularly described in Exhibit B1 attached hereto) comprise a portion of such tidelands, and must be used in a manner consistent with the State Tidelands Grant, public trust uses, and applicable law.
- C. Development and use of the Premises for the use or uses as hereinafter more particularly described is necessary for the convenience and promotion of commerce, navigation and fishery on said tidelands and is consistent with the development of a small craft harbor, pursuant to the provisions of Division 1, Chapter 2, Article 3 (Sections 70—72.4) of the Harbors and Navigation Code of the State of California.
- D. Tenant and its predecessors have leased the Premises, and developed, constructed, operated and maintained various hotel, restaurant and other facilities thereon since the Inception Date. Among other things:
 - 1. Landlord and William J. Boykin of Cleveland, Ohio ("**WJB**") entered into that certain lease dated August 7, 1969 ("**Original Ground Lease**"), as amended by that certain (i) Amendment to Lease by and between Landlord and WJB dated September 25, 1969 ("**First Amendment**"); (ii) Amendment to Lease by and between Landlord and WJB dated April 9, 1970 ("**Second Amendment**"); (iii) Amendment to Lease by and between Landlord and WJB dated December 12, 1970 ("**Third Amendment**"); and (iv) Amendment to Lease by and between Landlord and WJB dated December 31, 1970 ("**Fourth Amendment**") for the lease of certain property situated in the City of Berkeley, County of Alameda, State of California. The Premises leased per the Original Ground Lease (consisting of approximately 11.15 acres) are more particularly described in Exhibit B2 attached hereto. The Premises as expanded by the Second Amendment (consisting of approximately 13.780 acres), and which remain the Premises subject to this Ground Lease, are more particularly described in Exhibit B1 attached hereto.
 - 2. Pursuant to that certain Assignment of Lease dated December 15, 1970, by and between WJB and Boykin Berkeley, Inc., an Ohio corporation ("**Boykin Berkeley, Inc.**"), and that certain Consent of Landlord dated January 5, 1971, both of which were recorded on January 7, 1971 as instrument number 1786 at Reel 2764, Image 91 with the Alameda County Recorder's Office, WJB assigned to Boykin

Berkeley Inc., and Boykin Berkeley, Inc. assumed from WJB, the Original Ground Lease, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment (collectively, "**Assigned Lease**").

3. Pursuant to that certain Assignment of Lease dated January 27, 1972, by and between Boykin Berkeley, Inc. and Marina Associates, a limited partnership, George M. Steinbrenner, III, General Partner ("**Marina Associates**"), and that certain Consent of Landlord dated January 28, 1972, both of which were recorded on July 12, 1972 as instrument number 93665 at Reel 3178, Image 901 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. assigned to Marina Associates, and Marina Associates assumed from Boykin Berkeley, Inc. the Assigned Lease. Concurrently, by that certain Grant Deed also recorded on July 12, 1972, as instrument number 93665 at Reel 3178, Image 905, Boykin Berkeley, Inc. assigned to Marina Associates all improvements constructed and being constructed on the Premises held pursuant to the Assigned Lease.
4. Pursuant to that certain unrecorded sublease dated January 27, 1972 ("**Sublease**"), by and between Marina Associates and Boykin Berkeley, Inc., a Short-Form Lease of which was recorded on July 12, 1972 as instrument number 72093667, at Reel 3178, Image 909, and that certain Consent of Landlord dated January 28, 1972, also recorded as instrument number 72093667, at Reel 3178, Image 909, Marina Associates sublet the Premises, with all easements pertinent thereto, all improvements thereon and appurtenances thereunder to Boykin Berkeley, Inc.
5. Pursuant to that certain Assignment of Lease dated January 27, 1981, by and between Marina Associates and U.S. Realty Investments, an unincorporated association in business trust form organized under the laws of the State of Ohio ("**U.S. Realty**"), and that certain Consent of Landlord dated January 28, 1981, both of which were recorded on February 2, 1981 as instrument number 81-016827 with the Alameda County Recorder's Office, Marina Associates assigned to U.S. Realty, and U.S. Realty assumed from Marina Associates, the Assigned Lease.
6. Pursuant to that certain Assignment of Lease dated March 31, 1982, by and between U.S. Realty and Boykin-Berkeley, Inc., an Ohio corporation ("**Boykin-Berkeley, Inc.**"), and that certain Consent of Landlord dated March 29, 1982, both of which were recorded on March 31, 1982 as instrument number 82-045415 with the Alameda County Recorder's Office, U.S. Realty assigned to Boykin-Berkeley, Inc., and Boykin-Berkeley, Inc. assumed from U.S. Realty, the Assigned Lease, subject to but not assuming certain deed of trust and indenture of lease encumbrances. Concurrently, by that certain Grant Deed dated and recorded on March 31, 1982 as instrument number 82-045416 with the Alameda County Recorder's Office, U.S. Realty assigned to Boykin-Berkeley, Inc. all improvements constructed and being constructed on the Premises.
7. Pursuant to that certain Assignment of Lease dated and recorded on March 31, 1982 as instrument number 82-045417 with the Alameda County Recorder's Office, U.S. Realty assigned to Boykin-Berkeley, Inc., and Boykin-Berkeley, Inc. assumed from U.S. Realty, all of U.S. Realty's right, title and interest in the Sublease.

8. Landlord and Boykin-Berkeley, Inc. entered into that certain Amendment to Lease dated August 28, 1983 ("**Fifth Amendment**") to construct additional facilities on the Premises ("**Expansion**"). The Fifth Amendment provided, among other things, for (i) the percentage rental to be adjusted beginning on August 7, 2004, and every ten (10) years thereafter, to the then fair market percentage rental, subject to certain limitations on the amount of the increase, and (ii) adjustment of the term of the leasing of the Premises by Landlord to Boykin-Berkeley, Inc.
9. Pursuant to that certain Assignment of Lease dated March 15, 1991, by and between Boykin Berkeley, Inc. and Boykin Berkeley One, an Ohio corporation, and that certain Landlord's Consent dated March 14, 1991, both of which were originally recorded on June 28, 1991 as instrument number 91167025 and subsequently corrected and recorded on August 9, 1991 as instrument number 91211149 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. assigned to Boykin Berkeley One, and Boykin Berkeley One assumed from Boykin Berkeley, Inc., a four percent (4%) interest in the Assigned Lease, as further amended by the Fifth Amendment.
10. Pursuant to that certain Assignment of Lease dated March 15, 1991, by and between Boykin Berkeley, Inc. and Boykin Berkeley One, as assignors, and Berkeley Marina Associates Limited Partnership, a Delaware limited partnership ("**Berkeley Marina Associates**"), as assignee, and that certain Landlord's Consent dated March 14, 1991, both of which were recorded on June 28, 1991 as instrument number 91171301 and subsequently corrected and recorded on August 9, 1991 as instrument number 91211150 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. together with Boykin Berkeley One assigned to Berkeley Marina Associates, and Berkeley Marina Associates assumed from Boykin Berkeley, Inc. and Boykin Berkeley One, all of Boykin Berkeley, Inc. and Boykin Berkeley One's respective interests in the Assigned Lease, as further amended by the Fifth Amendment.
11. Pursuant to that certain Assignment of Lease dated June 1991, by and between Boykin Berkeley, Inc. and Berkeley Marina Associates, recorded on August 9, 1991 as instrument number 91211151 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. assigned to Berkeley Marina Associates, and Berkeley Marina Associates assumed from Boykin Berkeley, Inc., all of Boykin Berkeley, Inc.'s right, title and interest in and to the assets and property related to the Assigned Lease, as amended by the Fifth Amendment. Berkeley Marina Associates subsequently assigned all of its right, title and interest in and to the Assigned Lease, as amended by the Fifth Amendment, to Boykin-Berkeley, Inc. pursuant to an unrecorded assignment of lease.
12. Landlord and Boykin-Berkeley, Inc. entered into that certain Amendment to Lease dated March 26, 1992 ("**Sixth Amendment**"), granting Boykin-Berkeley, Inc. authority to construct an auxiliary structure on the Premises. The Original Ground Lease, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment are referred to collectively herein as the "**Base Lease.**"
13. Pursuant to that certain Assignment of Lease dated November 4, 1996, by and between Boykin Berkeley, Inc. and Boykin Hotel Properties, L.P. ("**Boykin Hotel**

Properties”), Boykin Berkeley, Inc. assigned to Boykin Hotel Properties, and Boykin Hotel Properties assumed from Boykin Berkeley, Inc., the Base Lease. Concurrently, by that certain Grant Deed dated November 4, 1996 and recorded on November 6, 1996 as instrument number 96282855 with the Alameda County Recorder’s Office, Boykin Berkeley, Inc. assigned to Boykin Hotel Properties all improvements constructed and being constructed on the Premises.

14. Pursuant to that certain Quitclaim Deed dated November 4, 1996 and recorded on November 6, 1996 as instrument number 96282854 with the Alameda County Recorder’s Office, Boykin Berkeley, Inc. and Berkeley Marina Associates remised, released and forever quitclaimed to Boykin Hotel Properties all their rights, title and interest in the Sublease in order to terminate the Sublease.
15. Pursuant to that certain Assignment of Lease dated July 11, 2000, by and between Boykin Hotel Properties and Tenant, recorded on July 18, 2000 as instrument number 2000211933 with the Alameda County Recorder’s Office, Boykin Hotel Properties assigned to Tenant, and Tenant assumed from Boykin Hotel Properties, all of Boykin Hotel Properties’ right, title and interest in the Base Lease.
16. On or about August 2004, Landlord and Boykin Berkeley, LLC reached an impasse regarding interpretation of the fair market percentage rental adjustment provisions set forth in the Fifth Amendment.
17. Landlord and Boykin Berkeley, LLC entered into a Settlement Agreement, dated January 18, 2008 (“**Settlement Agreement**”) which, among other things, resolved the then-dispute between Landlord and Boykin Berkeley, LLC regarding proper interpretation of the percentage rental adjustment clause set forth in the Fifth Amendment. Concurrently with and pursuant to the Settlement Agreement, Landlord and Boykin Berkeley, LLC entered into a new Ground Lease, dated January 18, 2008 (“**2008 Ground Lease**”) to replace the Base Lease, to effect the terms of the Settlement Agreement and to set forth the terms of the leasing of the Premises as then agreed upon by Landlord and Boykin Berkeley, LLC. Under the 2008 Ground Lease, the term was extended until December 31, 2058.
18. Concurrently with and pursuant to the 2008 Ground Lease, Landlord and Boykin Berkeley, LLC, as WJB’s successor-in-interest, replaced that certain Memorandum of Lease dated December 31, 1970 and recorded in the Official Records of Alameda County on January 7, 1971 as instrument number 1785, Reel 2764, Image 89 with that certain Memorandum of Lease dated January 10, 2008 and recorded on January 24, 2008 as instrument number 2008017660 with the Alameda County Recorder’s Office (“**2008 Memorandum**”).
19. Pursuant to the Hornblower Sublease (and subject to the City Hornblower Consent), Boykin Berkeley, LLC terminated a prior 1994 agreement which had permitted Hornblower to use a portion of the Hotel Facilities for docking, vessel maintenance, food preparation and office space, and entered into a new agreement to permit Hornblower to use and occupy four specific portions of the Existing Improvements referred to therein as the Berth Area, the Charter Yacht Facility, the Office Area (also known as the Tiburon Room) and the San Francisco Room, for a five-year term commencing **[May 30, 2008]** with one five-year option.

20. Pursuant to that certain Assignment and Assumption of Ground Lease effective April 18, 2011 and recorded on April 20, 2011 as instrument number 2011115637 with the Alameda County Recorder's Office, Boykin Berkeley, LLC assigned to Westpost Berkeley LLC ("**Westpost**"), and Westpost assumed from Boykin Berkeley, LLC, all of Boykin Berkeley, LLC's right, title and interest in the 2008 Ground Lease.
 21. Pursuant to that certain Assignment and Assumption of Ground Lease dated February 6, 2014 and recorded on February 10, 2014 as instrument number 2014046461 with the Alameda County Recorder's Office, and that certain Consent and Estoppel Certificate of City, dated February 4, 2014 and recorded on February 10, 2014 as instrument number 2014046460 with the Alameda County Recorder's Office ("**2008 Consent**"), Westpost assigned to Tenant, and Tenant assumed from Westpost, all of Westpost's right, title and interest in the 2008 Ground Lease and Premises. Concurrently, by that certain Grant Deed dated February 6, 2014 and recorded on February 10, 2014 as instrument number 2014046459 with the Alameda County Recorder's Office, Westpost transferred to Tenant all of Westpost's right, title and interest in the Improvements.
- E. Landlord and Tenant intend to enter into this Ground Lease to set forth the terms of the leasing of the Premises as currently agreed upon by Landlord and Tenant. Landlord and Tenant, as Boykin Berkeley, LLC's successor-in-interest, further desire to replace the 2008 Memorandum with that certain Memorandum of Lease dated concurrently herewith substantially in form attached hereto as Exhibit G.
- F. Landlord and Tenant specifically agree that a material consideration of this Ground Lease is Tenant's agreement to continually operate, maintain and improve the Premises and Improvements as first-class major Hotel Facilities, in full compliance with its then applicable Franchise Agreement, with an STR Chain Scale rating of Upscale or better, as provided below.

ARTICLE 1. PROPERTY, LEASE AND TERM

1.1 Overview. Tenant currently owns and operates on the Premises a first-class major DoubleTree by Hilton Hotel, rated Upscale on the STR Chain Scale, pursuant to the 2008 Ground Lease. Tenant and its predecessors have leased the Premises, and owned and operated various hotels and restaurants thereon (see above Recitals), since 1969. Although the stated expiration date under the 2008 Ground Lease is not until December 31, 2058, the parties wish to enter into a modified ground lease for the Premises and Improvements on the terms set forth herein. From and after the Commencement Date, neither party shall have any further rights or obligations under the 2008 Ground Lease other than those obligations which survive expiration or termination thereof and as expressly provide herein.

A. Premises. Landlord owns the Premises pursuant to the State Tideland Grant.

B. Improvements. Pursuant to the 2008 Ground Lease and other leases, Tenant or its predecessors constructed, and pursuant to the 2008 Lease Tenant owns, the Existing Improvements. Tenant will continue to own the Improvements and all other Improvements during the Ground Lease Term. The Existing Improvements include the following:

1. Hotel. A Hotel containing 378 hotel units (“**Hotel**”).
 2. Restaurant. A main restaurant, including dining area, cocktail lounge, and banquet rooms (which include meeting rooms) (collectively, “**Restaurant**”). As of the Effective Date, the Restaurant and attendant lounge have a capacity of approximately 280 persons, and the Hotel itself contains eight state of the art conference rooms and one ballroom totaling at least 16,000 square feet.
 3. Combined Hotel - Restaurant. The Hotel and Restaurant constitute a consolidated Hotel Restaurant facility.
 4. Parking Areas. One paved parking area with suitable landscaping accommodating not less than 295 parking spaces which parking area shall be used for Hotel parking, together with one separate paved parking area containing not less than 190 parking spaces, which parking area shall be used for the Restaurant (collectively, the “**Parking Areas**”).
 5. Floats and Berths. A marginal float not less than 622 feet in length along the waterfront to serve as a pedestrian way along the waterfront of the Premises. Tenant may use said marginal float for the purpose of berthing boats for water transient trade or may, in addition thereto, construct suitable floats and berths perpendicular to said marginal float for berthing boats for water transient trade.
 6. Auxiliary Structure/Charter Yacht Facility. Landlord acknowledges that Tenant has constructed the auxiliary structure pursuant to, and in full compliance with, the Sixth Amendment (the “**Charter Yacht Facility**”).
- C. Occupancy. Tenant currently leases and, except for Hornblower and the Concessionaires (as defined in Subsection 2.4C below) identified on Exhibit E (if any), occupies the entire Premises and Existing Improvements under the 2008 Ground Lease (and, with respect to Hornblower, the Hornblower Sublease). Other than the Hornblower Sublease, there are no subtenancies.
- D. Existing Ground Leasehold Mortgagee and Existing Ground Leasehold Mortgagee. With Landlord’s consent under the 2008 Ground Lease, Tenant is the borrower and Existing Ground Leasehold Mortgagee is the lender under the Existing Ground Leasehold Mortgage. (See Basic Lease Information clause 20 and Exhibit H)
- E. Hotel Facilities Quality and Brand/Chain/Scale Ratings. The current Premises Hotel Facilities are first-class, and the Hotel Facilities’ current Brand/Flag/Chain, DoubleTree by Hilton Hotel, is rated Upscale on the STR Chain Scale. Tenant’s continued operation and maintenance of first-class Hotel Facilities, with an STR Chain Scale rating of “Upscale” or better rating, are both crucial requirements of this Ground Lease. The current STR Chain Scales - North America and Caribbean is attached hereto as Exhibit F. See ARTICLE 3 below.
- F. Incorporation. The Basic Lease Information and Recitals (including defined terms) set forth above and the Exhibits attached hereto are incorporated into and made a part of this Ground Lease.

1.2 Ground Lease. For and in consideration of the payment of Rent (as defined in Section 2.1 below) 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 Ground Lease Term and upon the covenants and conditions set forth herein.

1.3 Ground Lease Term. The “**Ground Lease Term**” of this Ground Lease is set forth in the Basic Lease Information.

**ARTICLE 2.
RENT AND SECURITY**

2.1 Rent. Rent shall be paid as set forth in this ARTICLE 2. This Ground Lease is a net lease, and Minimum Ground Rent, Percentage Rent, Annual Rent, Additional Rent (as defined below) 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. 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.

2.2 Annual Rent. During the Ground Lease Term and commencing on the Commencement Date, Tenant shall pay to Landlord Annual Rent.

2.3 Payment of Annual Rent.

A. Tenant shall pay Minimum Ground Rent to Landlord in monthly installments in advance on or before the first day of each month during the Ground Lease Term. If the Commencement Date is not the first day of a month, Tenant shall pay the prorated portion of Minimum Ground Rent for the first partial month in advance on or before the Commencement Date. Minimum Ground Rent shall be prorated for any partial month.

B. Tenant shall pay Percentage Rent (if due) not later than the last day of the month following the end of each calendar quarter during the Ground Lease Term (i.e., not later than each April 30, July 31, October 31 and January 31) (or, if the Expiration Date is not the last day of a calendar quarter, not later than 30 days following the Expiration Date) on the basis of the Hotel Gross Receipts and Food and Beverage Gross Receipts for the preceding calendar quarter (or lesser period for the last partial quarter, if applicable). Tenant shall be entitled to a credit against the Percentage Rent in an amount equal to the total amount of Minimum Ground Rent paid during the corresponding quarter of the applicable Ground Lease Year.

C. Additionally, (i) if the Commencement Date is after January 1, 2020, Percentage Rent for each calendar quarter commencing on or after January 1, 2020 and ending before or including the Commencement Date, shall be determined as if the Commencement Date were January 1, 2020, and (ii) in addition to the credit (if any) described in the last sentence of Subsection 2.3B above, Tenant shall be entitled to a credit against the Percentage Rent for those quarter(s) in an amount equal to the total amount (if any) of Minimum Ground Rent (as defined in the 2008 Ground Lease) paid during the corresponding quarter of 2020.

2.4 Gross Receipts.

A. Definition of “Hotel Gross Receipts.” “**Hotel Gross Receipts**” means all gross revenue as defined in the Uniform System of Accounts for the Lodging Industry actually received by Tenant or any Tenant affiliate, except as otherwise provided in Subsections 2.4C and

2.4D below, from room and other rentals, including revenues from on-command premium movie rentals, internet service connection fees, telephone or facsimile transmission charges, health club fees (including non-guest membership fees), spa revenues, gift shop revenues, Concessionaires and subtenants sublease rent (other than those subtenants, including, as of the date hereof, Hornblower, whose sublease terms provide for City to receive a percentage of the gross sublease rent other than 5%); sale of goods, wares, merchandise, commodities, products and services, including without limitation electricity from Charging Stations (as defined in Subsection 5.7A below) if operated by Tenant (and not a Concessionaire); charges for attendance at any on-Premises event; and any and all other revenue of whatsoever kind or nature derived from or relating to the operation of the Hotel Facilities, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense, but excluding Food and Beverage Gross Receipts and excluding actual bad debt and credit card charge backs.

B. Definition of "Food and Beverage Gross Receipts." **"Food and Beverage Gross Receipts"** means all gross sales or revenue received by Tenant or any Tenant affiliate derived from food and beverage service as defined in the Uniform System of Accounts for the Lodging Industry relating to the operation of the Hotel Facilities, but excluding Hotel Gross Receipts.

C. Application to Hornblower, other City-Approved Subtenants, and Concessionaires. With respect to Hornblower and any other City-approved subtenant operating auxiliary facilities on the Premises that are unrelated to the hotel business being conducted on the Premises by Tenant whose sublease provides for City to receive a percentage of the gross sublease rent other than 5%, Tenant shall pay, and City shall receive, that portion of the sublease rent as provided for in the City-approved sublease and such payments shall not be included within the definition of Hotel Gross Receipts or Food and Beverage Gross Receipts. With respect to third-party concessionaires or service providers operating auxiliary facilities relating to the operation of the Hotel Facilities, or providing ancillary services relating to the operation of the Hotel Facilities, including without limitation (as applicable) barber and beauty shops, auto rentals, tour or entertainment event ticket sellers, and on-command or other television or movie rentals, audio visual rentals, health clubs, spas and gift shops, or parking lots, including the Charging Stations (but excluding operation of the Hotel Facility and Restaurant) (each, a **"Concessionaire"**), the terms Hotel Gross Receipts and Food and Beverage Gross Receipts shall mean the net amounts, whether received in money, in-kind consideration or otherwise, actually received by Tenant or its affiliates from such Concessionaire and not the gross revenues of such Concessionaire.

D. Exclusions. Each of the defined terms Hotel Gross Receipts and Food and Beverage Gross Receipts expressly excludes state, county and City sales taxes or City transient occupancy taxes; the value of meals furnished to employees of affiliates of Tenant in the course of their employment; employee tips or gratuities; any service charge turned over to employees in lieu of such employees receiving tips or gratuities; any proceeds of sales of worn out, obsolete or surplus trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale, lease or use; any proceeds from financing or refinancing of the Tenant's property, including ground leasehold interest in the Premises; proceeds from any insurance policy other than business interruption insurance proceeds which shall be included in Hotel Gross Receipts to the extent such revenue is not excluded from Hotel Gross Receipts under this Section 2.4; proceeds from the sale, disposition financing or refinancing of any assets of Tenant; and any charges for valet services. No item, to the extent accounted for in Hotel Gross Receipts, shall be included in Food and Beverage Gross Receipts; and no item, to the extent accounted for in Food and Beverage Gross Receipts, shall be included in Hotel Gross Receipts.

2.5 Statement of Each Hotel Gross Receipts and Food and Beverage Gross Receipts; Records of Sales; Right to Audit; Financial Statements.

A. Hotel Gross Receipts and Food and Beverage Gross Receipts Statements.

1. For the purpose of determining Percentage Rent, Tenant shall furnish to Landlord, not later than the last day of the month after the end of each calendar quarter during the Ground Lease Term and each Ground Lease Year (i.e., not later than each April 30, July 31, October 31 and January 31), an unaudited itemized statement of each of Hotel Gross Receipts and Food and Beverage Gross Receipts for such calendar quarter and Ground Lease Year, as applicable, certified by an officer of Tenant and prepared in accordance with the latest edition of the Uniform System of Accounts for the Lodging Industry. In the event the Commencement Date is after January 1, 2020, the first itemized statements shall also include all Hotel Gross Receipts and Food and Beverage Gross Receipts [each as defined in this Ground Lease] for the period from January 1, 2020 to and including the day before the Commencement Date, and the itemized statements for Ground Lease Year 1 shall include all Hotel Gross Receipts and Food and Beverage Gross Receipts (each as defined in this Ground Lease) from January 1, 2020 through December 31, 2020.

2. Within 15 days after the end of each month, Tenant shall also furnish Landlord an unaudited and itemized monthly statement of business transacted during the preceding month showing each of Hotel Gross Receipts and Food and Beverage Gross Receipts. If the Commencement Date is not the first day of a month, the first monthly statement shall also include each of Hotel Gross Receipts and Food and Beverage Gross Receipts for the period from the first day of the month to and including the day before the Commencement Date. Such monthly statements shall not be used for the purpose of determining Percentage Rent.

3. Tenant covenants that it will include in each operating agreement or similar contract (each, a "**Concessionaire Agreement**") with any future Concessionaire, provisions imposing upon such Concessionaire the obligation to provide to Landlord, within 10 business days' following Landlord's request therefor, statements of the rents or other payments by each such Concessionaire to Tenant or its affiliates.

B. Records of Sales and Business Transactions. Tenant shall keep and maintain true and complete records and accounts for each calendar quarter during the Ground Lease Term and for each Ground Lease Year, and for a period of at least five years after the end of each Ground Lease Year, all sales slips, cash register tape readings or other electronic, digital, or hard copy recordation or documentation of cash register sales, sales books, rental books, bank books and statements, deposit slips, paper and electronic books of account, and any and all other documents, records, returns, papers and files of Tenant relating to each of the Hotel Gross Receipts and Food and Beverage Gross Receipts and sales, lease, rental or other business transacted during each calendar quarter during the Ground Lease Term and each Ground Lease Year (collectively, "**Records and Accounts**") and shall make the same available to Landlord or its authorized agent during such period at the Premises or at some other place reasonably acceptable and readily available to Landlord, for examination and auditing purposes, without causing unreasonable disturbance to the operations of the Hotel and its guests.

C. Right to Audit. Tenant shall give Landlord, including the City Auditor, or its or their authorized agents access at the Premises or at some other place reasonably acceptable and readily available to Landlord, including the City Auditor, upon reasonable (but no more than 30 days) prior written notice and during business hours, to such Records and Accounts, including

reasonable access to Tenant's employees, and any subtenant or Concessionaire's employees, for auditing purposes, and Landlord, including City Auditor, shall have the right to audit such Records and Accounts. Such audit right shall include the right to audit such Records and Accounts for calendar year 2019 in accordance with the terms of the 2008 Ground Lease. If Landlord acting through the City Auditor or otherwise should have an audit made for any period and either Hotel Gross Receipts, Food and Beverage Gross Receipts, or business transacted shown by Tenant's statement for such period is found to be understated in an amount greater than or equal to two percent of the amount reported by Tenant ("**Understatement**"), Tenant shall be provided an opportunity to discuss and respond to any findings before an audit report is formally filed. In the event that Landlord acting through the City Auditor or otherwise performs an audit and it is found that there is an Understatement, Tenant shall, within five business days, pay to Landlord the cost of such audit as well as the additional Percentage Rent or other sums payable by Tenant to Landlord, in addition to any delinquency and late charges provided for in this Ground Lease. If Landlord's audit shows no Understatement, the cost of the audit shall be borne by Landlord. Tenant has included in subleases with Hornblower, and covenants it will include in subleases with all future subtenants, provisions imposing upon such subtenant obligations to Landlord, substantially similar to those obligations of Tenant to Landlord as set forth in this Subsection 2.5C.

D. Other Financial Information. Tenant shall also provide to Landlord or City Auditor, as applicable, within 30 days after written request, such other financial information as may be reasonably required by Landlord or City Auditor.

2.6 Minimum Ground Rent Increases.

A. CPI Adjustments. Minimum Ground Rent shall be increased commencing on each January 1 occurring after the Commencement Date during the Ground Lease Term, with the exception of any Minimum Ground Rent Adjustment Dates (each a "**CPI Adjustment Date**") by an amount equal to the product of (i) the Minimum Ground Rent in effect for the 12 month period immediately preceding the applicable CPI Adjustment Date multiplied by (ii) the percentage increase in the Consumer Price Index measured from the measuring month 15 months preceding the CPI Adjustment Date to the measuring month three months preceding the CPI Adjustment Date and every 12 months thereafter (each a "**CPI Adjustment**").

B. Periodic Adjustments. In addition to annual CPI Adjustments, Minimum Ground Rent shall be reset on each Minimum Ground Rent Adjustment Date, to an amount equal to 60% of the average Annual Rent payable by Tenant for the three Ground Lease Years immediately preceding the Minimum Ground Rent Adjustment Date. However, in no event shall Minimum Ground Rent be reduced below the Minimum Ground Rent in effect immediately prior to the Minimum Ground Rent Adjustment Date.

2.7 Percentage Rent Adjustments.

A. General. On each Percentage Rent Adjustment Date during the Ground Lease Term, each specific percentage amount (each, a "**Percentage Rent Multiplier**") which is applied to Hotel Gross Receipts and Food and Beverage Gross Receipts (initially 5% and 2.5%, respectively) as part of the Percentage Rent determination shall be adjusted to the then-applicable "**Fair Market Percentage Rent Multiplier**," determined as provided in this Section 2.7; provided, however, in no event shall either Percentage Rent Multiplier be increased or reduced more than 10% above or below the Percentage Rent Multiplier in effect immediately prior to the applicable Percentage Rent Adjustment Date. By way of example, the Percentage Rent Multipliers in effect for the ten-year period beginning January 1, 2040 shall in no event be lower than 4.5% for Hotel

Gross Receipts or 2.25% for Food and Beverage Gross Receipts, nor higher than 5.5% for Hotel Gross Receipts or 2.75% for Food and Beverage Gross Receipts. The foregoing shall not prevent cumulative increases or decreases of either Percentage Rent Multiplier by more than 10% over multiple Percentage Rent Adjustment Dates.

B. Determination of Fair Market Percentage Rent Multipliers. The Fair Market Percentage Rent Multiplier for each of Hotel Gross Receipts and Food and Beverage Gross Receipts means the Percentage Rent Multiplier that would be applied to Hotel Gross Receipts and Food and Beverage Gross Receipts, respectively, which the land comprising the Premises would bring as of the date of Landlord's Rent Adjustment Notice (defined below), taking into account the permitted uses of the Premises and all other terms, conditions and covenants contained in this Ground Lease, if the Premises were offered for a long-term ground lease on an open and competitive market to a tenant in an arms-length transaction with neither party under abnormal pressure to consummate the transaction.

1. At least nine months prior to each Percentage Rent Adjustment Date, Landlord shall provide Tenant with written notice ("**Landlord's Rent Adjustment Notice**") of Landlord's determination of the Percentage Rent Multipliers for the upcoming 10-year period, which shall be based upon a recent market rent analysis of the Premises (determined in accordance with the standards set forth in Subsection 2.7B above) performed not more than ninety (90) days prior to the date of such Landlord's Rent Adjustment Notice. If Landlord fails to timely provide Tenant with Landlord's Rent Adjustment Notice, Tenant may provide Landlord with written notice specifying that Landlord's failure to provide Landlord's Rent Adjustment Notice within ninety (90) days from Tenant's notice shall be deemed Landlord's determination that the Percentage Rent Multipliers then in effect are equal to the Fair Market Percentage Rent Multipliers. If Landlord provides a Landlord's Rent Adjustment Notice and Tenant disagrees with Landlord's determination, Tenant, within 90-days after receipt of Landlord's Rent Adjustment Notice, may deliver to Landlord written notice of such disagreement, together with Tenant's determination of the Fair Market Percentage Rent Multipliers based upon a recent market rent analysis of the Premises (determined in accordance with the same standards set forth above), and complete copies of any market rent analysis which Tenant has utilized in its determination, together with such other information regarding such comparable properties as Tenant deems relevant or as may be reasonably requested by Landlord, to the extent available to Tenant ("**Disagreement Notice**"). If Tenant fails to deliver to Landlord its Disagreement Notice within such 90-day period, Landlord's determination of the Fair Market Percentage Rent Multipliers shall be conclusive. If Tenant timely delivers to Landlord a written Disagreement Notice together with Tenant's determination of the Fair Market Percentage Rent Multipliers, then Tenant and Landlord shall have 30 days from the date of Tenant's Disagreement Notice in which to agree upon the Fair Market Percentage Rent Multipliers ("**Negotiation Period**"). Landlord and Tenant shall negotiate in good faith during the Negotiation Period. If the parties agree on the Fair Market Percentage Rent Multipliers during the Negotiation Period, they shall promptly execute an amendment to this Ground Lease setting forth the Fair Market Percentage Rent Multipliers so jointly determined, to be effective upon the applicable Percentage Rent Adjustment Date.

2. If the parties do not agree on the Fair Market Percentage Rent Multipliers, the parties shall have ten (10) business days from the end of the Negotiation Period to apply to and receive from the American Arbitration Association a panel of three potential MAI certified real estate appraisers with at least 10 years' full-time hotel and restaurant appraisal experience in the San Francisco Bay Area and who have not previously been retained by either party or their respective affiliates, parents, or subsidiaries. If such a panel is unobtainable within the 10 business day time frame, either party can apply to the presiding judge of the superior court

of Alameda County, California, for a panel of appraisers who meet the qualifications stated in this Subsection 2.7B.2. Upon receipt of the panel of appraisers, the parties shall determine a single appraiser within five business days in the manner provided herein. Each party shall be entitled to object to any individual on the panel. Tenant shall have the right to make objection first and the parties shall take turns making objections until agreement is reached or only one appraiser remains who shall be appointed to determine the Fair Market Percentage Rent Multipliers hereunder.

3. The appraiser so appointed shall be required to determine, in accordance with the standards set forth in Subsection 2.7B above and within 30 days of the appraiser's appointment, which of the Landlord's or Tenant's written determination of Fair Market Percentage Rent Multipliers most closely approximates the then current Fair Market Percentage Rent Multipliers for the Premises. The determination of Fair Market Percentage Rent Multipliers chosen by the appraiser shall become the Fair Market Percentage Rent Multipliers in effect until the next Percentage Rent Adjustment Date. The decision rendered by the appraiser shall be final, and binding on both parties. Each of the parties shall bear one-half of the cost of appointing the appraiser and of paying the appraiser's fee. If the Fair Market Percentage Rent Multipliers have not been determined prior to the applicable Percentage Rent Adjustment Date, Tenant shall pay adjusted Percentage Rent based upon Landlord's determination of the Fair Market Percentage Rent Multipliers, subject to retroactive adjustment between the parties if the determination by the appraiser is different from Landlord's determination.

4. Nothing in this Subsection 2.7B shall prevent the parties from resolving any dispute regarding Fair Market Percentage Rent Multipliers by any other means they may mutually approve.

2.8 Additional Rent. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount that Tenant has failed to pay as required under this Ground Lease following notice and expiration of applicable cure periods, provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than thirty (30) days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section 2.8 shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within ten (10) business days of Tenant's receipt of an invoice from Landlord therefor.

2.9 Late Charge. The late payment of any Minimum Ground Rent or Percentage Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service ("**Delinquency Costs**"). For the second and any subsequent time in any 12 month period that Landlord has not received an installment of Minimum Ground Rent or Percentage 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 Minimum Ground Rent or Percentage Rent payment. Landlord's acceptance of late or partial Minimum Ground Rent, late or partial Percentage 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.

2.10 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 2.10 or have any force or effect.

2.11 Security. In view of the long-term nature of this Ground Lease, no lease security deposit is required.

**ARTICLE 3.
MAINTAINING UPSCALE STR CHAIN SCALE RATING; FRANCHISE MATTERS**

3.1 General. As otherwise provided in this Ground Lease, Tenant's continued operation and maintenance of Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, and in full compliance with Tenant's then-Franchise Agreement, are material obligations of this Ground Lease. Certain specific matters relating to such obligations are set forth in this ARTICLE 3. Tenant's failure to comply with those obligations at all times may be a default justifying termination of this Ground Lease as further set forth in this ARTICLE 3 if such default is not cured within the applicable notice and cure periods provided for under this Ground Lease, subject to rights of Leasehold Mortgagees under ARTICLE 14 below.

3.2 STR Chain Scale Ratings. As indicated in the STR Chain Scales for North America and Caribbean attached as Exhibit F, Upscale is the third highest STR rating level. The higher ratings levels are "Luxury" and "Upper Upscale;" the lower ratings levels are "Upper Midscale," "Midscale" and "Economy."

A. As of the Commencement Date, examples of STR Upscale rated hotel chains include AC Hotels by Marriott, Crowne Plaza, Hyatt House and Wyndham; examples of STR Upper Upscale rated chains (which would be also acceptable under this Ground Lease as of the Commencement Date) include Embassy Suites, Hilton and Hyatt Regency; examples of lower STR rated hotel chains (which would not be acceptable under this Ground Lease as of the Commencement Date) include Doubletree Club, Holiday Inn and Red Lion Hotel (all Upper Midscale), Best Western, La Quinta Inns & Suites and Quality Inn (all Midscale), and America's Best Inn, Days Inn and Motel 6 (all Economy).

B. The parties specifically acknowledge and agree that as of the Commencement Date and based on the current STR Chain Scales, Tenant is authorized to operate on the Premises Hotel Facilities under its current Brand/Flag/Chain, "DoubleTree by Hilton Hotels." Without limiting the specific circumstances which would otherwise violate this ARTICLE 3, the parties specifically acknowledge and agree that (based on the current STR Chain Scales) Tenant is not authorized to operate on the Premises an Upper Midscale, Midscale or Economy hotel, or any hotel which does not have an STR Chain Scale rating.

C. As requirements related to the Upscale rating may change over the Ground Lease Term, Brands/Flags/Chains (including Doubletree by Hilton) may be created, disappear, merge, or move up or down the STR Chain Scale over time, and there are no assurances that the STR Chain Scale will exist (in any form) throughout the entire Ground Lease Term, the parties acknowledge the need to interpret the STR Chain Scale requirements of this Ground Lease in light of their intended purposes, which are to assist in assuring that the Premises and Improvements are used only for first-class major Hotel Facilities and otherwise in full compliance with the then-applicable Franchise Agreement and this Ground Lease.

3.3 Brand/Flag/Chain-Related Defaults and Covenants.

A. Brand/Flag/Chain Related Defaults. In addition to the other items described herein, the following Brand/Flag/Chain-related events or conditions are defaults under this Ground Lease:

1. In the event (1) the STR Chain Scale rating of Tenant's then-Brand/Flag/Chain is reduced to a level or segment below Upscale (e.g., to Upper Midscale, Midscale or Economy), or (2) Tenant's then-Brand/Flag/Chain becomes unrated on the STR Chain Scale (any such event, a "**Brand/Flag/Chain Event**"), and Tenant fails to be operating and maintaining the Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, in full compliance with a new Franchisor's Franchise Agreement, within 60 days after the regularly scheduled expiration date of Tenant's then-Franchise Agreement (without taking into account any options or other rights to extend).

2. In the event any Franchisor terminates Tenant's right to continue operating and maintaining the Hotel Facilities under Tenant's then-Brand/Flag/Chain due to any breach or default under the Franchise Agreement (whether or not any Brand/Flag/Chain Event has occurred or is continuing), and Tenant fails to be operating and maintaining the Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, in full compliance with a new Franchisor's Franchise Agreement, within 60 days after the termination effective date.

3. In the event Tenant's right to continue operating and maintaining the Hotel Facilities under Tenant's then-Brand/Flag/Chain terminates or expires for any reason *other than* breach or default under the Franchise Agreement (including without limitation by expiration of the Franchise Agreement term without a renewal), and Tenant fails to be operating and maintaining the Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, in full compliance with a new Franchisor's Franchise Agreement, within 60 days after the termination or expiration effective date; *provided* that such time period may, in Landlord's sole discretion, be extended until up to one hundred fifty (150) days after the termination or expiration effective date, upon Tenant's demonstration to Landlord's reasonable satisfaction that (a) no Brand/Flag/Chain Event has occurred or is continuing, or (b) Tenant is (i) otherwise operating and maintaining the Hotel Facilities on the Premises in full compliance with this Ground Lease and to standards customarily followed by major first-class Hotel Facilities whose Brand/Flag/Chain has an Upscale or better STR Chain Scale Rating, and (ii) actively negotiating a Franchise Agreement with a Brand/Flag/Chain with an Upscale or better STR Chain Scale Rating.

B. Brand/Flag/Chain Related Covenants. If a Brand/Flag/Chain Event occurs as described in Section 3.3A.1 above, then beginning on the date that the Brand/Flag/Chain Event occurs and continuing until the date on which Tenant enters into a new Franchise Agreement with a compliant Brand/Flag/Chain having an STR Chain Scale rating of Upscale or better ("**Brand/Flag Non-Compliance Period**"), Tenant covenants and agrees as follows:

1. In addition to complying with the Maintenance Standards (see Exhibit I), Tenant covenants and agrees during the Brand/Flag Non-Compliance Period to (i) periodically upgrade, modify, modernize and refresh the Improvements as well as the personal property and fixtures used in operating the Improvements; and (ii) periodically review and, as applicable, add, modify or supplement the amenities and services provided to guests on a frequency, and to a standard, not less than the custom and practice generally followed by

comparable major first-class hotels located within the Oakland/Berkeley/Hayward Area with an Upscale STR Chain Scale rating.

2. Tenant further covenants and agrees to terminate its then-existing Franchise Agreement with the non-compliant Brand/Flag/Chain as soon as permissible pursuant to the terms of such existing Franchise Agreement without incurring a termination penalty so that Tenant may enter into a new Franchise Agreement with a compliant Brand/Flag/Chain having an STR Chain Scale rating of Upscale or better at the earliest commercially feasible time. Without limiting the generality of the foregoing, Tenant agrees to exercise any and all available termination rights that Tenant may have under its then-existing Franchise Agreement, including by timely sending notice of default and demand to cure to the non-compliant Brand/Flag/Chain franchisor at any time such Brand/Flag/Chain is failing to meet one or more of its contractual obligations, agreements or covenants under the then existing Franchise Agreement. Tenant further agrees to refrain from exercising any option or right to extend the term of such then existing Franchise Agreement.

3.4 Identification of Brand/Flag/Chain and Franchisor; Franchisor Notices and Information.

A. Information Regarding Brand/Flag/Chain and Franchisor. Tenant's (i) current Brand/Flag/Chain for the Premises and Improvements and (ii) current Franchisor and current Franchisor's notice address, are as set forth in the Basic Lease Information clause 21. Tenant shall promptly notify Landlord in writing of any changes to such matters following Tenant's becoming aware of such changes.

B. Franchisor Notices and Information. Tenant shall use diligent good faith efforts to obtain from Franchisors in connection with all Franchise Agreements executed on or after the Commencement Date comfort letters on the Franchisor's standard form containing the Franchisor's agreement to provide Landlord, at the address(es) set forth in the Basic Lease Information (or other address(es) as Landlord may notify Franchisor in writing from time to time), concurrently with their being provided to Tenant and (if applicable) any Ground Leasehold Mortgagee, copies of (i) all notices of default, and (ii) all other notices (if any) which the Franchisor agrees to send to the then-Ground Leasehold Mortgagee from time to time (if any) (together, "**Franchisor Notices**"). Tenant shall, within 30 days after the Effective Date, use commercially reasonable efforts to cause the Current Franchisor to include those provisions in a comfort letter issued to Landlord.

3.5 Definitions. As used in this ARTICLE 3:

A. "**Brand/Flag/Chain**" means the brand, flag or chain name and system under which Tenant operates the Hotel Facilities.

B. "**Franchisor**" means a company which licenses or otherwise provides rights to operate a hotel under a Brand/Flag/Chain, and any successor.

C. "**Franchise Agreement**" includes all license and/or brand agreements between Tenant and any Franchisor (including Franchisor's affiliates if applicable), from time to time.

3.6 Changes in or Discontinuance of STR Chain Scale Ratings. If the STR Chain Scale ratings are discontinued, or if the ratings segments in the STR Chain Scale (or successor)

change or become substantially different than the current six levels identified in Section 3.2 above and Exhibit E, Landlord and Tenant shall mutually select a successor in each party's reasonable discretion. If the parties cannot agree on such successor within thirty (30) days following commencement of negotiations, then the matter shall be resolved by arbitration before a neutral third party expert. Within five (5) business days following expiration of such thirty (30) day period, the parties shall confer in person or by telephone to agree upon such mutually-acceptable neutral third party to resolve the dispute ("**Expert**"). If the parties are unable to agree upon an Expert, either party may submit the matter to the Chairman of the International Society of Hospitality Consultants or similar organization if such organization no longer exists, who shall designate as the Expert a person who (a) has at least ten (10) years experience in the hospitality industry, (b) is in good standing with the International Society of Hospitality Consultants, (c) has not had any direct relationship with either party in the preceding five (5) year period, (d) has demonstrated knowledge of the hotel market where the Hotel is located, and (e) has demonstrated knowledge of the operation and marketing of upscale full service hotels. During the pendency of the arbitration pursuant to this Section 3.6, the parties shall share equally the fees and expenses of the Expert. In rendering its decision, the Expert shall designate the party whose position is substantially upheld, which prevailing party shall recover from the other party its share of the fees and expenses paid to the Expert by such prevailing party.

Notwithstanding the foregoing, Landlord and Tenant hereby acknowledge and agree that Smith Travel Research (STR) is, as of the date hereof, under contract to be acquired by CoStar Group and that, if such acquisition is consummated, CoStar Group shall automatically be an approved successor to STR in determining chain scale ratings for the hotel industry.

ARTICLE 4. 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 Improvements or the Premises (including without limiting the Charging Stations), which become payable during the Ground Lease Term or relate to periods which include the Ground Lease Term. On demand by Landlord to be made no more than twice in any calendar year, Tenant shall within ten (10) days following receipt of such demand, 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. The Original Ground Lease created a possessory property interest in Tenant as of the Inception Date. 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 Improvements 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 Ground Lease 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 Improvements 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 Effective Date, such taxes or assessments based thereon, including: (i) 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 Improvements or as against Landlord’s leasing of the Premises, (ii) any Impositions in substitution or in lieu, partially or totally, of any Impositions assessed upon real property prior to any such alteration, (iii) any Impositions allocable to or measured by the area of the Improvements 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 Concessionaire or subtenant of the Premises or Improvements or any portion thereof, (iv) 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 Improvements and/or Premises or any portion thereof, or (v) 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, capital levy taxes, capital stock taxes, excess profits taxes or franchise 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 Improvements 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 shall provide, or cause the applicable Taxing Authority (including without limitation the Alameda County Assessor) to provide, Tenant with written notice of each such assessment not later than 60 days before such assessment is due and payable.

4.5 Tenant’s Real Property Taxes 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 Ground Lease Term at its inception and expiration or earlier termination in accordance with this Ground Lease.

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 Improvements for the Permitted Use and for no other purpose.

5.2 Continuous Use Obligations. Tenant shall, during such hours and on all such days as comparable Hotel Restaurant facilities are customarily open for business, continuously use and operate the Improvements and Premises solely as major first-class Hotel Facilities, with an Upscale or better STR Chain Scale rating. Tenant shall at all times carry a full and complete stock of merchandise, food and beverages offered for sale with a quality and at competitive prices consistent with those of similar major first-class Hotel Facilities with an Upscale or better STR Chain Scale ratings in compliance with all Ground Lease requirements, and for no other

purpose. In connection with Tenant's use and operation of the Improvements, Tenant shall comply with all of the following:

A. Tenant shall maintain adequate personnel for the efficient service of customers.

B. Tenant shall employ its commercially reasonable 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.

C. Except for (i) emergencies or holidays on which most comparable hotels or restaurants the City of Berkeley are also closed, (ii) closures due to condemnation or (iii) closures for Alterations that are completed within one hundred twenty (120) days or such longer period as Landlord may agree in its sole discretion, Tenant shall cause both the Hotel and the Restaurant to be open for full business seven days per week, 365 days of the year.

D. The foregoing requirements are also subject to reasonable closures following a casualty; *provided*, however, that (i) repair or reconstruction work is begun no more than 210 days after the casualty or such longer period as Landlord may agree in its sole discretion, and (ii) once the work of repair or reconstruction is commenced, Tenant uses its commercially reasonable efforts to diligently and continuously pursue and complete such repair or reconstruction work. All Alterations or construction shall be performed only as set forth in ARTICLE 7 below, shall be commenced and diligently pursued to completion in a timeframe and manner that minimizes to the maximum extent reasonably possible any negative impact on Landlord's receipt of Percentage Rent.

E. The time periods identified in Subsection 5.2D above shall be subject to extension by reason of: (i) governmental preemption in connection with a national emergency; (ii) any rule, order or regulation of any government agency or any department or subdivision thereof, whether in connection with a drought, energy shortage or other like event or otherwise; (iii) casualty, war, public emergency, or other acts of God; (iv) any other matter included within the definition of "force majeure" set forth in Section 16.4 below; or (v) except as otherwise provided below, any other cause whatsoever beyond Tenant's reasonable control (collectively for purposes of this Subsection 5.2E only, "**force majeure**"). An extension of time for any such cause shall be for the period of the force majeure delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause. Tenant expressly agrees that (w) adverse changes in economic conditions, either of Tenant specifically or the economy generally, (x) changes in hotel or restaurant market conditions or demand, or (y) Tenant's inability to obtain financing or other lack of funding for repairs or Alterations, shall not constitute grounds of force majeure delay pursuant to this Subsection 5.2E.

F. With the exception of using the Premises for the Permitted Use or uses incidental thereto, 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 5.12 below) or the means of ingress and egress thereto ("**Substantial Interference**"). Tenant shall use every reasonable effort to eliminate Substantial Interference, including taking prompt legal action if appropriate. If Tenant fails to bring a 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 Improvements 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 Improvements, 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 Improvements in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Improvements (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, events or plaza areas), and will keep all mechanical apparatus free of unreasonable vibration and noise which may be transmitted beyond the interior of the Improvements;

B. Permit undue accumulations of garbage, trash, rubbish or any other refuse outside of the Hotel Facilities;

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

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

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

F. Cause or permit the Premises or Improvements to become uninsured or cause the Premises or Improvements to become uninsurable or otherwise make it impossible to obtain any insurance required by this Ground Lease at commercially reasonable rates;

G. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Improvements or intentionally cause or knowingly permit any material damage 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. Fail to comply with any Law, ordinance or regulation applicable to the Premises or Improvements in accordance with the terms of this Ground Lease.

5.4 Reserved.

5.5 Maintenance Activities; Annual Reports.

A. In addition to compliance with ARTICLE 3 above, Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Improvements, and all improvements and landscaping within the Premises (including all buildings, sidewalks, pedestrian lighting, signage, landscaping, parking lots, bicycle and walking paths, architectural elements identifying the Improvements or Premises, and any and all other improvements on the Premises and associated open space and common areas) in first-class condition and repair, subject only to normal wear and tear, in full compliance with the Franchise Agreement, the Maintenance Standards (see Exhibit I), and as otherwise specified in this ARTICLE 5. Tenant's compliance with these maintenance obligations shall be judged by a comparative standard with the custom and practice generally followed by comparable major first-class/STR Chain Scale rated Upscale Hotel Restaurant facilities located within the Oakland/Berkeley/Hayward Area. To accomplish such activities, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such 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 and other work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations.

B. Within 30 days following Landlord's request from time to time, but not more frequently than once in any Ground Lease Year and only upon Landlord's reasonable determination that Tenant is not properly maintaining the Premises and Improvements in accordance with the terms of this Section 5.5, Tenant shall provide Landlord with a reasonably detailed report describing the previous year's maintenance and other activities under this Section 5.5, including such details as Landlord may reasonably request.

5.6 Maintenance Standards. Throughout the Term of this Ground Lease, Tenant shall comply with the Maintenance Standards set forth in Exhibit I attached hereto and incorporated herein.

5.7 Specific Energy Matters.

A. EV Charging Stations. Within two years of the Commencement Date, Tenant shall install (or cause to be installed) at least 10 EV (electric vehicle) Level 2 (or better in Tenant's sole discretion) charging station-ports on the existing Premises parking lot (together with all related equipment, hardware, software, signage and supporting equipment and structures, the "**Charging Stations**"). All Charging Station design, construction and installation activities shall be subject to all applicable provisions of this Ground Lease, including without limitation ARTICLE 7 below. Thereafter, Tenant shall operate and maintain the Charging Stations in a clean, safe, and orderly condition, in good working order and repair, and in compliance with all provisions of this Ground Lease, applicable Laws and good industry practices, to at least the same standards as are generally observed by reputable EV charging station operators in the Oakland/Berkeley/Hayward Area (but not less than reasonable standards, the "**Operations Standard**").

1. Tenant shall, from time to time, consider adding additional Charging Stations if and to the extent justified by demand trends.

2. Tenant shall make reasonable efforts under the circumstances to keep all parking spaces with Charging Stations available at all times for the charging of electric vehicles, including enforcement and removal of vehicles if necessary. Tenant shall make charging stations available to the public.

3. If the parking areas serving the Charging Stations experience damage or excessive wear and tear (compared to the remainder of the Premises parking areas), Tenant shall keep such parking areas in good order and repair, including repaving, reslurrying and restriping as necessary (which may be more frequently than required for other parking areas).

4. Tenant may charge EV customers reasonable prices for all electricity provided, and shall replace or upgrade the Charging Stations with higher quality Charging Stations at least as frequently as is consistent with the Operations Standard.

5. Tenant may have some or all of its obligations under this Subsection 5.7A performed by a Concessionaire, provided that Tenant shall require any such Concessionaire to comply with the terms of this Section 5.7 and all other Concessionaire obligations under this Ground Lease.

B. Renewable and Carbon-Free Electricity for the Premises. For all electric loads occurring at the Berkeley Marina, Tenant shall only purchase renewable energy from load serving entities which offer 100% renewable energy, so long as it is available for purchase from regular electricity delivery providers serving other Berkeley Marina commercial customers (such as PG&E and East Bay Community Energy (“**EBCE**”) as of the Effective Date). As of the Effective Date, the EBCE “Renewable 100” service level satisfies this requirement. Further information is available at <https://ebce.org/>. Notwithstanding the foregoing, Tenant (and others operating on or at the Premises) shall not be required to use or purchase electricity which costs more than 110% of the least expensive electricity which, from time to time, is available for purchase from regular electricity delivery providers serving other Berkeley Marina commercial customers.

5.8 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 Improvements 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 Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Improvements or any portion thereof as a source of adverse environmental impacts or effects; provided, however, that Tenant shall not be required to make any Alterations, additions or other improvements to bring the Premises or Improvements into compliance with such Laws if the Improvements were constructed in compliance with all applicable Laws at the time such Improvements were constructed and then current Laws do not require such Improvements to be brought into compliance with any Laws or modifications to existing Laws enacted after construction of such Improvements.

5.9 Reserved.

5.10 Landlord Access Rights. Landlord reserves to itself and the right (but not the obligation) to grant to others in the future nonexclusive utility easements under, through and across the Premises, in locations that will not unreasonably interfere with Tenant’s access to or use or further development of the Premises or Improvements, for the purposes of constructing, installing, maintaining, replacing or adding to (all such activities “**work**”) underground utility

facilities, including but not limited to water mains, sanitary sewer mains, storm drain mains, gas mains, telephone, cable and electrical distribution facilities, and fire alarm circuits. Landlord may (or permit others to) construct, install, maintain, replace or add to any utility system serving the Improvements or Premises as Landlord determines to be reasonably necessary or desirable in the course of any such work performed by or under the authorization of Landlord, provided that such actions will not unreasonably interfere with Tenant's access to or use of the Premises or Improvements. Any interference to Tenant's use of the Improvements 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 performed in compliance with the terms of this Section 5.10 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. In the event work pursuant to this Subsection causes any damage to the Premises, or any portion thereof, or to the Improvements, or other facilities located upon the Premises, including without limitation pavement, curbs and sidewalks, the same shall be promptly repaired by Landlord at its expense, if not so repaired by the party performing the work. Landlord shall hold harmless and indemnify Tenant from all claims, causes of action, liabilities, losses, damages, suits, fines, costs or expenses (including reasonable attorneys' fees and expenses and consultant fees and expenses) arising out of the grant or use of such utility easements, except to the extent arising from or relating to Tenant's negligence or willful misconduct. In addition to the above utility related reserved rights, Landlord reserves to itself and the general public the right of vehicular and pedestrian ingress and egress to and from and access over and across the driveway and drive aisle area depicted in Exhibit D attached hereto and incorporated herein for the purposes of ensuring access between Marina Boulevard and the City owned parking area located directly adjacent to the Hotel parking lot.

5.11 Conference Facilities. Landlord shall have the right to use the "Conference Facilities" (as defined below) for purposes of hosting Landlord's in-house training programs, and/or accommodating other community events, as follows and in a manner consistent with the State Tidelands Grant, public trust uses, and applicable Laws:

A. Event Days. Tenant shall accommodate up to nine event days per Ground Lease Year, upon reasonable prior written notice by Landlord as set forth below.

B. Location. No more than four event days may be in the Hotel's approximately 4,700 square foot main ballroom ("**Main Ballroom**"). Tenant shall accommodate programs and events for up to a maximum of 60 people which are not held in the Main Ballroom in one or more of the Hotel's nine executive meeting rooms ("**Executive Meeting Room(s)**"). The Main Ballroom and the Executive Meeting Rooms are collectively referred to herein as the "**Conference Facilities.**"

C. Facility Reservation. Landlord shall provide Tenant with written request(s) to use Conference Facilities, which requests shall identify the component(s) of the Conference Facilities (e.g., the Main Ballroom and/or number of Executive Meeting Room(s)) needed and dates desired ("**Reservation Request(s)**"). Landlord shall provide all Reservation Requests not more than 45-days in advance of the requested date(s). Subject to availability, Tenant shall make the Conference Facilities available to Landlord as specified in the applicable Reservation Request. If the specified Conference Facilities are not available on the requested date(s), Tenant shall so notify Landlord in writing within five business days of the Reservation Request as well as propose and reserve for Landlord at least two alternative dates as close as possible to the requested date(s) ("**Response**"). Tenant may determine whether to honor any Reservation Request received more than 45-days in advance in its reasonable discretion.

D. No Cost to Landlord. Landlord shall accept or reject the proposed alternative date(s) within five (5) business days of Tenant's Response. Landlord's failure to respond within such 5-business day period shall be deemed rejection of Tenant's Response. Landlord's use of the Conference Facilities shall be at no cost or expense (including set up fees) to Landlord; provided, however, that Landlord will pay for any food and beverage service requested by Landlord. Tenant shall not be entitled to any abatement or reduction of Rent related to Landlord's use of the Conference Facilities.

5.12 Use of Berkeley Waterfront Property; Public Trust.

A. For purposes of this Ground Lease, "**Berkeley Waterfront**" means the Premises and all other lands subject to the State Tidelands Grant (also referred to as "**State Grant Lands**").

B. Tenant agrees that except as otherwise provided in this Ground Lease or in that certain Capital Contribution Agreement of even date herewith between Landlord and Tenant, 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.

C. 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 does not entitle Landlord to effect changes that would materially and adversely affect access to, use of, or lines of sight to the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning the Berkeley Waterfront, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same so long as Landlord provides written notice to Tenant of any such new rules and regulations and such rules and regulations are uniformly applied to users and/or owners of similar commercial properties in the Berkeley Marina.

D. Landlord at all times shall have the sole and exclusive management and control of the Berkeley Waterfront other than the Premises, 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.

E. 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 or Tenant's principals, officers, employees or representatives (together, "**Tenant Parties**"), any invitee or licensee on or about the Premises (including without limitation Hotel or Restaurant guests), or others, except to the extent caused by the active negligence or willful misconduct of Landlord, its agents, servants, contractors or employees. Tenant is solely responsible for the security of the Premises and Improvements, and for the safety of those using the Premises and Improvements 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. 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.

5.13 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 the State Tidelands Grant, subject to the conditions, restrictions, limitations, rights, powers, duties, reversionary rights and other rights created or reserved in the State Tidelands Grant. Tenant agrees that, notwithstanding anything in this Ground Lease to the contrary, Tenant shall use the Improvements and Premises consistently with and in a manner that shall not result in a violation of the State Tidelands Grant or of provisions of the Berkeley City Charter, the California Constitution or other applicable Laws. Landlord will administer this Ground Lease in compliance with the State Tidelands Grant.

B. Tenant acknowledges that the State of California reserved from Landlord's rights in and to State Grant Lands all deposits of minerals, including oil and gas, and the right to prospect for, mine and remove said deposits from the State Grant Lands. In no event shall Landlord be liable to Tenant for any claims arising from any such prospecting, mining or removal, nor shall any such activities constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Ground Lease.

5.14 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 Improvements 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 Improvements. 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 or other governmental approval relating to development or operation of the Premises, Improvements 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, Improvements 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 Improvements to be used and occupied in accordance with all Laws.

5.15 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.

5.16 Covenants Regarding Improvements. Tenant acknowledges and agrees that the Improvements will be maintained as follows:Hotel. Tenant has and shall continue to provide

and install at the Hotel all furniture, fixtures and accessories necessary for the operation of a major first-class Hotel with an Upscale or better STR Chain Scale rating.

B. Restaurant. Tenant has and shall continue to provide and install in the Restaurant all furniture, fixtures, and accessories necessary for the operation of a first-class restaurant and cocktail lounge appropriate for a major first-class hotel and sufficient for the Hotel to maintain an Upscale or better STR Chain Scale rating.

C. Height Limitation Exception. The height of the Hotel shall not exceed four stories or 43-1/2 feet, whichever is lower. The height of the Restaurant shall not exceed three stories or 35 feet, whichever is lower. Notwithstanding the foregoing, a portion of the Restaurant may be constructed to a height not exceeding 60 feet, subject to the approval of Landlord. As of the Effective Date, the heights of the Hotel and the Restaurant are in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease.

D. Parking Areas. As of the Effective Date, the Parking Areas are in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease. See Subsection 5.7A above regarding certain required Parking Area improvements, including electric vehicle charging stations.

E. Floats and Berths. The marginal float and other suitable floats and berths have been constructed in the same manner as the public floats in the Berkeley Marina, and shall be maintained, updated and upgraded from time to time as reasonably appropriate or necessary. As of the Effective Date, a shoreline walkway and three berths at the Hotel for boat tie-ups are in place and the marginal float is in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease.

F. Landscaping. Such landscaping as may be reasonably required to provide an attractive development consistent with major first-class Hotel Facilities with an Upscale or better STR Chain Scale rating and the standards for the Berkeley Marina. As of the Effective Date, Tenant has landscaped the Premises and will continue to maintain, update and upgrade such landscaping from time to time as reasonably appropriate or necessary. As of the Effective Date, the landscaping is in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease.

G. Auxiliary Structure/Charter Yacht Facility. Landlord acknowledges that the Charter Yacht Facility is being used exclusively for food preparation, administrative and minor vessel maintenance activities by Tenant's charter yacht subtenant, Hornblower, and Tenant acknowledges that such use cannot be changed without Landlord's prior written consent, in its sole discretion. The Hornblower Sublease provides, and any further Tenant sublease of the Charter Yacht Facility to Hornblower or any successor charter yacht operator shall also provide, that Hornblower or its successor must use the Charter Yacht Facility exclusively for food preparation, administrative and minor vessel maintenance activities performed aboard the charter yacht vessels as of the Effective Date.

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 Improvements, 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 Improvements; (iii) the development potential of the Premises or Improvements, 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 Improvements or any other public or private restrictions on their use; (v) any easements, covenants, conditions, rights, or restrictions, whether of record or otherwise, binding on the Premises or Improvements (including, without limitation, the State Tidelands Grant and the conditions, restrictions, limitations, rights, powers and other matters referenced in Section 5.13A above), (vi) the adequacy, condition, repair status, or remaining useful life of the Improvements' electrical, plumbing, HVAC, utility, mechanical or safety systems ("**Improvements Systems**"), (vii) the adequacy, condition, repair status, or remaining useful life of the Improvements' roof, walls, foundation or other structural components, any other structures within the Premises, or the Premises parking lot, (viii) the compliance of the Premises or Improvements with Hazardous Materials Laws, covenants, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity, (ix) the presence or removal of Hazardous Materials (as defined in Section 6.2 below) or wastes on, under or about the Premises or Improvements; or (x) the compliance of the Premises or Improvements under any other Laws, including without limitation the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) ("**ADA**"), any amendment thereto or regulations promulgated thereunder, or any other federal, state or local disability or access laws (together, "**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 Improvements, repave or perform any improvements on any parking lot within the Premises, construct or install any improvements or Alterations (as defined in Section 7.1 below), repair or replace any Improvements Systems, or otherwise alter or improve the Premises, Improvements, or any portion thereof. By entering onto the Premises or Improvements, Tenant represents and confirms that it is familiar with the existing legal and physical condition of the Premises and Improvements, 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 Improvements on the basis of investigation and prior occupancy by Tenant and its predecessors, including without limitations the entities identified in the Recitals above and will act only upon information obtained by it directly from such investigation and occupancy and from materials or records from independent third parties. Tenant assumes the risk that adverse legal, physical and environmental conditions may not have been revealed by its own investigation or occupancy, 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, employees, or representatives ("**Landlord 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, Improvements or other improvements thereon, upon which Tenant has relied directly or indirectly for any purpose.

6.2 Hazardous Materials.General Compliance.

1. 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, any fraction, product or by-product thereof, and “hazardous materials” as defined in California Health & Safety Code section 25260(d). Neither Tenant nor Tenant 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 Improvements, except for such hazardous materials as may be customarily used in hotel properties such as the Premises, provided they are properly stored in compliance with Laws. 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 Improvements to be removed from the Premises and Improvements and transported for disposal in accordance with applicable Hazardous Materials Laws.

2. Upon reasonable advance notice and without unreasonably interfering with the operations or unreasonably disturbing the guests of the Hotel, Landlord shall have the right to enter the Premises from time to time to conduct tests (including minimally invasive tests if Landlord has a reasonable basis for determining that the Premises have been contaminated by Hazardous Materials), inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall promptly 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 in connection with any such release or discharge of Hazardous Material, (iii) the initiation of any enforcement, clean-up, removal or other governmental or regulatory action, or (iv) any claim made by any person against Landlord, Tenant, the Premises, or the Improvements or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. If a Hazardous Materials release that cannot be controlled occurs on the Premises, Tenant shall immediately notify the City of Berkeley Police Department and the City of Berkeley's Emergency and Toxics Management Office. 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 from all federal, state, county, municipal or governmental authorities having jurisdiction relating in any way to the Premises or Improvements 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 or a Landlord Party's active 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 reasonable 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 Hotel Improvements, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises or the Improvements, caused or alleged to have been caused by Tenant or Tenant Parties' use, storage, handling, treatment, generation,

presence, discharge or release of Hazardous Materials in violation of Tenant's obligations under this Ground Lease, the Base Lease, or the 2008 Ground Lease, whether such claims, causes of action or liabilities are first asserted during the Ground Lease 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 Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials.

**ARTICLE 7.
CONSTRUCTION AND LIENS**

7.1 Alterations on Premises. Any construction, reconstruction, alterations, additions, or improvements or remodeling, in, on, or about the Improvements or the Premises undertaken by or on behalf of Tenant from and after the Commencement Date (including without limitation the Charging Stations, "**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 Improvements, Premises, Berkeley Marina and any other buildings and improvements thereon to create a uniform general plan for the entire Berkeley Marina, as revised from time to time. 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, by licensed designers and 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. If Landlord fails to approve or disapprove such plans and specifications within such 30-day period, Tenant may send a second notice clearly indicating that Landlord's failure to approve or disapprove such plans and specifications within 10 business days following Landlord's receipt of the second notice shall be deemed Landlord's approval of the plans and specifications.

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 alterations or remodeling of the Improvements that do not materially and substantially affect the exterior appearance of the Improvements, do not materially and substantially affect the exterior structure of the Improvements and do not alter the preexisting location of the Improvements on the Premises ("**Minor Alterations**"). Notwithstanding the foregoing, and regardless of the cost thereof, Landlord's prior consent is required for any Alteration involving exterior utility work.

7.2 Construction Standards. Unless expressly provided otherwise in this ARTICLE 7, 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 worker's compensation and such other employee, liability and property insurance as is customary for similar construction projects, and Tenant's designers and other consultants 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 subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, cable 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 and other Alterations costing \$1,000,000 or less, all contracts with any architect, other design professional or any general contractor for Alterations work shall provide for the assignment thereof to Landlord if this Ground Lease is terminated due to Tenant's default, 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. 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 if applicable to the Alterations shall be paid to each worker by Tenant. In the event Tenant fails to meet its obligations under this Section 7.2F, Landlord's remedy shall be to enforce its indemnification rights under Section 10.2 below and/or seek specific performance.

G. Landlord's Rights. Nothing herein shall limit any Landlord right under this Ground Lease, including without limitation those under Sections 5.10 and 5.13 above.

H. Completion. Upon completion of any Alterations for which as-built plans are prepared, Tenant shall deliver to Landlord two sets of such 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.

7.3 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 Landlord's interests in the Premises or Improvements. While as a public entity Landlord's interest in the Premises or Improvements is not subject to lien, Landlord shall have the right at all reasonable times to post, and keep posted, on the Improvements and Landlord's interests in the Premises any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations (other than Minor Alterations) to be done on or about the Improvements or Premises to enable Landlord to post such notices. In addition, for any Alterations costing in excess of \$3,000,000, 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, each in the amount of not less than 100% of the construction costs of the Alterations, before commencing such 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.

7.4 Liens and Stop Notices. Tenant shall keep Landlord's interest in the Premises and Improvements 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 Landlord's interest in the Premises or Improvements, Tenant shall within 30 days of notice of such recording or service:

- A. Pay and discharge the same;
- B. Effect 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 Improvements and the Premises; or
- C. Otherwise obtain or effect the release thereof.

7.5 Notice. Should any claims of lien be filed against Landlord's interest in the Premises or Improvements 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 Improvements During Ground Lease Term. During the Ground Lease Term, the Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Improvements 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 Improvements constitute real property.

8.2 Ownership of Improvements at Expiration or Termination. Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Improvements and any Alterations 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. At the expiration or sooner termination of the Ground Lease Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). 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 8.3.

A. Tenant may, from time to time during the Ground Lease Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Improvements. 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 Ground Lease 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**

9.1 General. 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 Improvements, 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 and consultants' fees and costs, arising out of or connected with the provision and payment of the Utilities.

9.2 Site. Water, power, gas, telephone and sanitary sewer facilities are located on and near the Premises in the areas shown on that certain drawing entitled "Map of Berkeley Marina, Plan No. 4047" on file in the office of the City Manager of Landlord. Tenant shall arrange for and make all necessary connections thereto at Tenant's sole cost and expense and in the manner approved by said City Manager. Tenant shall not construct any building or other structure upon such areas and said areas shall be used only for vehicular traffic, parking or such other uses as may be authorized by said City Manager in writing. Landlord acknowledges that no buildings or other structures have been built in such areas.

9.3 Tenant Waivers. Except as expressly set forth in this Ground Lease, Landlord shall not be liable for, and Tenant shall not be entitled to, any abatement or reduction of Rent, by reason of any interruption in or lack of availability of any Utility service. To the extent Landlord is a provider of any Utility, Tenant hereby waives the provisions of California Civil Code section 1932(1) or any other applicable existing or future Law permitting the termination of this Ground Lease due to the interruption or failure of any services to be provided under this Ground Lease.

**ARTICLE 10.
INSURANCE AND INDEMNITY**

10.1 General Insurance Requirements.

A. During the entire Ground Lease Term, Tenant shall provide the following forms and amounts of insurance with respect to the Improvements 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 Improvements and the Premises against loss or damage in an amount equal to not less than 100% of the replacement cost of the Improvements, including all Alterations and fixtures, with such commercially reasonable deductible as may be approved by Landlord in its reasonable discretion. 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 18 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 or Improvements and all areas appurtenant thereto. Such insurance shall be written on an "occurrence" policy form providing single limit coverage in an initial amount of not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in not less than an initial amount of \$5,000,000. Tenant shall add Landlord and the 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 Improvements.

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.

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 and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

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 reasonable attorneys' fees, arising out of or connected with: (i) the performance or nonperformance by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Improvements, the Premises, any further improvements thereon including any Alterations, or any portion thereof, by Tenant, Tenant Parties, any invitee or licensee on or about the Premises (including without limitation any Hotel or Restaurant guests), or otherwise, other than those attributable to the active negligence or willful misconduct of Landlord or Landlord Parties; and (iii) the presence, 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, which occurs at any time from and after the Inception Date. The indemnity obligation in clause (iii) above includes without limitation any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; penalties, fines, remediation costs, investigation costs, and any amount assessed by any other governmental agency; 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; provided, however, Tenant shall have no further indemnity obligations to Landlord under this Section 10.2 with respect to any claim(s) which have not been tendered to Tenant within two (2) years following the date of such expiration or termination.

**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 Improvements 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 Improvements, shall (except as otherwise provided in Subsections 11.1B 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. Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Improvements 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 Improvements, so damaged or destroyed. Subject to the rights of any Ground Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be deposited with a builder's control company, title company, or bank selected by the mutual agreement of the parties ("**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. Improvements Uninsured Damage. Notwithstanding the provisions of Subsection 11.1A above, if, during the Ground Lease Term, (i) (a) the Improvements are totally destroyed or rendered unusable or if the remaining portion of the Improvements are 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 or actually carried under this Ground Lease, and (b) the cost of restoration exceeds 50% of the then replacement value of the Improvements as reasonably determined by Tenant and approved by Landlord, or (ii) (a) the Improvements are totally destroyed or rendered unusable or if the remaining portion of the Improvements are rendered unsuitable (as defined herein) for Tenant's continued use and (b) if, following restoration of the Premises, Tenant's business in the Improvements could not be operated at an economically feasible level because of changes to Laws governing the restoration, construction and/or operation of the Hotel, Tenant may elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Tenant's determination of the restoration cost, replacement value and/or changes to Laws governing the restoration, construction and/or operation of the Hotel. The Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's business in the Improvements could not be operated at an economically feasible level. If Tenant elects to terminate this Ground Lease pursuant to clause (i) above, 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 the budgeted cost of the restoration as reflected in estimates prepared by licensed general contractors reasonably acceptable to Landlord (with such amount to be adjusted based on the actual costs of construction as restoration progresses) and all available proceeds, including replacement cost and code upgrade coverage, under the insurance policies required to be carried by Tenant under this Ground Lease or actually carried under this Ground Lease, in which case Tenant shall restore the Improvements. Promptly following Landlord's election to contribute, Landlord shall deposit the amount of its contribution with the Insurance Trustee. 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 11.1B, 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 the Insurance Trustee. To the extent Landlord in its sole and absolute discretion elects to contribute to the restoration costs as provided in Subsection 11.1B 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 Improvements 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 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 11.1C 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 11.1C.

11.2 Right to Terminate Upon Destruction Near the End of the Ground Lease Term. If, during the last six (6) years of the Ground Lease Term, the Improvements are totally or partially destroyed, and if the cost of restoration exceeds 20% of the replacement cost of the Improvements 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 the Improvements Documents (as defined in Section 16.23 below) beyond all applicable notice and cure periods and has cured any prior default(s) in connection with its termination of the 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 11.2E 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 Improvements 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 Improvements, 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 Improvements 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 Improvements.

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

11.5 Procedures for Repair and Restoration. In the event of any material 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. If applicable, 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 Improvements 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 above, the reconstruction or repair of any part of the Improvements damaged or destroyed, after Landlord has approved Tenant's plans, drawings, specifications, construction schedule and permits for such reconstruction or repair. Landlord's approval of such plans, drawings, specifications, schedule and issuance of such permits shall not be unreasonably withheld, conditioned or delayed. Landlord shall approve or disapprove all plans and specifications within 30 days of receipt of complete plans and specifications. If Landlord fails to approve or disapprove such plans and specifications within such 30-day period, Tenant may send a second notice clearly indicating that Landlord's failure to approve or disapprove such plans and specifications within 10 business days following Landlord's receipt of the second notice shall be deemed Landlord's approval of the plans and specifications. Nothing herein shall be deemed to impose any time requirements on the City in connection with City's performance of its regulatory functions, for example City Building Department plan check and review of Tenant's construction drawings and issuance of building permits.

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 Ground Lease Term there is any Condemnation of all or any part of the Premises, the Improvements 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 Improvements is totally taken by Condemnation, this Ground Lease shall terminate on the Date of Taking.

12.4 Effect of Partial Condemnation. If a portion of the Improvements 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 Improvements is rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s business in the Improvements 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.

12.5 Restoration of Improvements. 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 Condemnation award allocable to the Improvements (but not any portion allocable to the Premises) as is necessary to restore or to add on to the Improvements so that the area and approximate layout of the Improvements 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 Improvements, 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 Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 60 days of written notice from the Landlord to Tenant, subject to potential further extension for force majeure delays, 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 (but excluding the Improvements) shall belong to Landlord. Subject to the provisions of Section 12.5 above, and subject to the rights of any Ground Lease Mortgagee, if all or any portion of the Improvements on the Premises is taken in connection with a condemnation, the award for the Improvements shall be allocated as follows: (i) Landlord shall be entitled to receive the present value of its residual interest in the Improvements as of the expiration of the Term and (ii) 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; (b) the value of Tenant's interest in the Improvements for the remainder of the Term of this Ground Lease; and (c) 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.
ASSIGNMENT AND SUBLETTING**

13.1 Assignment; Release from Liability.

A. Except as otherwise expressly provided in this Article 13, Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Improvements or any part thereof (collectively an "**assignment**") without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The sale or transfer of substantially all of the business assets and business of Tenant or the merger, consolidation or other business combination of Tenant with any other entity or the assignment or transfer of any controlling or managing ownership or beneficial interest in Tenant shall constitute an "assignment" hereunder; provided, however, that any transfer of direct or indirect ownership interests in Tenant shall not constitute an "assignment" hereunder so long as such transfer does not result in a change of control of Tenant. Tenant agrees that it shall not be unreasonable for Landlord to condition its approval upon, among other things, (i) the proposed assignee having a financial net worth, according to a current financial statement prepared by a certified public accountant, which is sufficient to meet the obligations of Tenant under this Ground Lease; (ii) the proposed assignee having a reputation for and experience and qualifications in operating and maintaining major first-class Hotel Facilities comparable to the Improvements and with STR Chain Scale Ratings of Upscale or better; and (iii) the proposed assignee having a good 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 Hotel Restaurant facilities with an STR Chain Scale rating of Upscale or better, and has a good business reputation in the Hotel Restaurant industry. 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.

B. Notwithstanding Subsection 13.1A above, Landlord's consent is not required for any assignment to an Affiliate of Tenant (as defined below) or any Mortgagee, 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); (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease; and (iii) the assignee's net worth, as of the assignment date, is not less than that of the then-tenant as of the assignment date. For purposes of this Section 13.1, "**Affiliate**" means an entity which controls, is controlled by or under common control with Tenant as of either (i) the Effective Date or (ii) the date of the most recent assignment permitted under this Ground Lease. For 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.

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. Following an assignment that is permitted under this Ground Lease, the assignor Tenant shall be released from, and the assignee Tenant shall be responsible for, all obligations and other liabilities of Tenant under this Ground Lease accruing from and after the effective date of such assignment.

E. 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 and third-party costs incurred in connection with each such request in an amount not to exceed \$5,000, which amount shall be increased by annual CPI Adjustments.

13.2 Subleases. Tenant shall have the right to sublease up to ten percent (10%) of the of the square footage of the Improvements and up to ten percent (10%) of the square footage of the Premises that is outside the footprint of the Hotel and Restaurant building envelope without Landlord's prior written consent, but subject to the following conditions:

A. Such sublease shall not be valid and such sublessee shall not take possession until an executed counterpart of the sublease has been delivered to Landlord.

B. Any subtenant shall have agreed in writing to comply with all applicable terms and conditions of this Ground Lease with respect to the space or area that is the subject of the sublease.

C. No subletting shall release Tenant of Tenant's obligations under this Ground Lease or alter the liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. In the event of default by subtenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such subtenant.

Any sublease which together with all other then-existing subleases would exceed the percentage thresholds set forth above shall be subject to Landlord's prior written approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, (i) any sublease of the Charter Yacht Facility, including any renewal or extension of the HornBlower Sublease, shall be subject to Landlord's prior written approval not to be unreasonably withheld, conditioned or delayed, and (ii) Tenant shall not be permitted to sublease any Hotel rooms; provided that, the foregoing restriction shall not apply to the ordinary course operation of the Hotel.

13.3 Concessionaires. Notwithstanding Subsections 13.1A and 13.1B above, Tenant may enter into agreements with Concessionaires to perform functions included within the definition of “Concessionaire” in Subsection 2.4C above without Landlord’s consent, subject to the following conditions:

A. Tenant shall require all Concessionaires to comply with applicable obligations under this Ground Lease, including without limitation those contained in Sections 2.4 and 2.5 above, and ARTICLE 16 below;

B. Tenant shall be fully liable and responsible for performance of all Concessionaire obligations under this Ground Lease; and

C. Within 10 business days of Landlord’s written request, Tenant shall provide Landlord with a list of all current Concessionaires.

ARTICLE 14. TENANT DEFAULTS AND LANDLORD 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 ten (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 thirty (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 thirty (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 assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

D. Tenant is in default under any of the other Improvements Documents beyond expiration of any applicable cure period.

14.2 Remedies. Subject to the rights of any Ground Leasehold Mortgagees permitted under ARTICLE 15 below, 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 notice of termination. On the giving of such notice, all of Tenant’s rights in the Premises, Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, Landlord may reenter and take possession of the Premises and Improvements 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 Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Landlord may at Landlord's election eject all persons or eject some and not others, or eject none. Any reletting may be for the remainder of the Ground Lease 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, Improvements 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 reasonable 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 Improvements 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 Ground Lease Term 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 14.3A and 14.3B above, is to be computed by allowing interest at the lesser of (i) ten percent (10%) per annum or (ii) 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 14.3C above, 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.

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 lesser of (i) ten percent (10%) per annum or (ii) 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. The sum, together with interest thereon, shall be Additional Rent.

**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 15, Tenant may mortgage or otherwise encumber Tenant's interest in this Ground Lease to an "Institutional Investor" (as defined below) 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 in the Premises and residual interest in the Improvements shall not be encumbered or subordinated by Landlord or Tenant.

15.2 Notice to Landlord. If Tenant shall mortgage Tenant's interest in this Ground Lease to an Institutional Investor, and if Tenant or 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 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 the Ground Leasehold Mortgage. 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 and is regularly engaged in the business of making secured real estate loans.

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

C. **"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 above 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. Except for expiration of this Ground Lease following the running of the entire Ground Lease Term indicated in Basic Lease provisions clause 8, no amendment, modification, cancellation or termination of this Ground Lease shall be effective as to any Ground Leasehold Mortgagee unless consented to in writing by such Ground Leasehold Mortgagee. Tenant, by execution of this Ground Lease, warrants to Landlord that all required Existing Ground Lease Mortgagee consents have been obtained with respect to this Ground Lease.

15.5 Notice to Ground Leasehold Mortgagee. With respect to any Ground Leasehold Mortgagee, 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 Improvements 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, Additional 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 such non-monetary default.

D. Any notice to be given by Landlord to the Existing Ground Leasehold Mortgagee pursuant to any provision of this ARTICLE 15 shall be deemed properly addressed if sent to the Existing Ground Leasehold Mortgagee at the address(es) set forth in Basic Lease Information clause 20. 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 above 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 above.

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 above, 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 Minimum Ground Rent, Percentage Rent, Additional 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 15.6A 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 Ground Lease Term, or 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 above, upon the acquisition of the entirety of Tenant's interest in this Ground Lease by such Ground Leasehold Mortgagee or its designee (such designee subject to Landlord's approval per the standards set forth in Section 13.1 above) or any other Institutional Investor 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 New Lease. In the event of the termination of this Ground Lease (including without limitation due to the rejection of this Ground Lease in a bankruptcy proceeding in which Tenant is the debtor) before the expiration of the Ground Lease Term, except (i) as the result of damage or destruction as provided in ARTICLE 11 above or (ii) by a taking as provided in ARTICLE 12 above, Landlord shall deliver to Ground Leasehold Mortgagee written notice that this Ground Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Ground Lease but for such termination, and of all other defaults, if any, under this Ground Lease then known to Landlord. The Ground Leasehold Mortgagee shall thereupon have the option to obtain a new lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

A. Upon the written request of the Leasehold Mortgagee, within 60 days after Landlord's notice that this Ground Lease has been terminated, Landlord shall enter into a New Lease of the Premises with the most senior Ground Leasehold Mortgagee giving notice within such period or its designee (such designee subject to Landlord's approval per the standards set forth in Section 13.1 above) (as applicable, "**New Tenant**"); and

B. The New Lease shall be entered into at the reasonable cost of the New Tenant, shall be effective as of the date of termination of this Ground Lease, and shall be for the remainder of the Ground Lease Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, and in substantially the same form as this Ground Lease. Any New Lease shall require the New Tenant to cure or remedy any unfulfilled obligation of Tenant under this Ground Lease which is reasonably susceptible of being cured. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Ground Lease but for such termination, and shall pay all expenses, including reasonable attorneys and consultants' fees and costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

15.9 Ground Leasehold Mortgagee's Right to Sell. If Ground Leasehold Mortgagee or New Tenant (as applicable, "**Successor Tenant**") acquires title to Tenant's interest in this Ground Lease (or New Lease) pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings described in this ARTICLE 15, , such Successor Tenant, upon acquiring Tenant's interest in this Ground Lease (or New Lease), may sell and assign the combined entirety of Tenant's interest in this Ground Lease (or New Lease), only to such persons and organizations as are approved by Landlord per the standards set forth in Section 13.1 above. If Successor Tenant's proposed transferee is approved by Landlord, and such transferee delivers to Landlord its written agreement to be bound by all of the provisions of this Ground Lease (or New lease), then Successor Tenant shall be relieved of all obligations under this Ground Lease (or New Lease) arising or accruing from and after the date of such sale and assignment.

15.10 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 any Improvements or to guarantee such construction or completion; provided that any Ground Leasehold Mortgagee (or designee or any other person) which acquires Tenant's interest in this Ground Lease (or any New Lease) shall have the same obligations relating thereto as the prior Tenant. Nothing in this Ground Lease shall be deemed to or be construed to permit or authorize any such Ground Leasehold Mortgagee to devote the Improvements or the Premises to any uses or to construct any improvements thereon or therein other than those uses and improvements expressly provided for and authorized by this Ground Lease.

15.11 Right of Landlord to Cure Ground Leasehold Mortgage Default. If a Ground Leasehold Mortgage default or breach by Tenant occurs and the Ground Leasehold Mortgagee has not exercised its option to cure the default, Landlord, at its sole option and without any obligation to do so, 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 Improvements or on the Premises after the expiration of the Ground Lease Term 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 Ground Lease 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, reasonable 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 in all material respects all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Ground Lease Term without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord.

16.4 Force Majeure. Except as to Tenant's 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; 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 any Improvements or Alterations, 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.

16.5 City Manager Authority Limitations; Waiver of Terms and Conditions.

A. Any amendment to this Ground Lease which affects or relates to (i) the Ground Lease Term; (ii) the Permitted Use; (iii) minimum Hotel Facilities quality standards; (iv) Rent amounts, Percentage Rent percentages or other monetary payments by Tenant, including Tenant payments pursuant to the Capital Contribution Agreement; (v) Tenant's commitments regarding provision of EV Charging Stations and purchase of renewable energy as provided in Section 5.7, (vi) Landlord's rights to use Conference Facilities as provided in Section 5.11, or (vii) any other material provision of this Ground Lease shall require approval by the Landlord's City

Council. Subject to the foregoing, the City Manager may issue without Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation to Alterations under ARTICLE 7 above, assignments under ARTICLE 13 above, and Ground Lease Mortgagee designees under ARTICLE 15 above.

B. No waiver of any Tenant breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease or the other Improvements Documents shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof or thereof. Landlord's consent or approval to or of any act by Tenant requiring further consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act. Landlord's exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Ground Lease or the other Improvements Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice Landlord in the exercise of any right, power, or remedy hereunder or under the other Improvements Documents, unless in the exercise of any such right, power, or remedy all Tenant obligations to Landlord are paid and discharged in full.

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 Surrender. Upon the expiration or sooner termination of the Ground Lease Term, and notwithstanding anything herein contained to the contrary (other than Section 8.3 above regarding personal property, if and to the extent Landlord exercises its rights thereunder), Tenant shall surrender to Landlord the Improvements, the Premises and any improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

16.8 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.

16.9 Landlord's Right to Enter Premises and Improvements. During the last two years of the Ground Lease Term or at any time during the Ground Lease Term when Tenant is in default, Landlord and its authorized representatives shall have the right to enter the Premises and Improvements to show the Improvements and the Premises to prospective brokers, agents, buyers, tenants or persons interested in a purchase or lease of the Improvements and Premises; provided that, (i) Landlord gives Tenant written notice of such entering at least 48 hours in advance, (ii) Landlord shall not, and shall not permit any prospective brokers, agents, buyers, tenants or other persons to, interfere with Tenant's operation or use of the Premises, and (iii) Landlord shall indemnify Tenant for any bodily injury, death or property damage arising from or in connection with Landlord's entry on the Premises and Improvements.

16.10 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 or for any purpose become a partner of Tenant or a joint venturer with Tenant in any Improvements or in the conduct of Tenant's business or otherwise.

16.11 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 G.

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

16.13 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 Ground Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

16.14 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.

16.15 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" means 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.

16.16 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.

16.17 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.

16.18 Nonliability of Landlord and Tenant Officials and Employees. No officer, elected official, employee or representative 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. No individual partners, members, directors, officers, shareholders, employees or representatives of Tenant shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against the individual partners, members, directors, officers, shareholders, employees or representatives of Tenant with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

16.19 Assignment by Landlord. Subject to compliance with applicable Law (including without limitation the State Tidelands Grant) and following written notice to Tenant of at least thirty (30) days, Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent; provided that Landlord's assignee expressly assumes this Ground Lease and Landlord's obligations hereunder.

16.20 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.

16.21 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.

16.22 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.

16.23 Integration. This Ground Lease, together with all exhibits and attachments hereto, the recorded Memorandum referenced in Section 16.11 above, the Consent Agreement and Estoppel, the City Hornblower Consent and that certain Capital Contribution Agreement of even date herewith between Landlord and Tenant (collectively, "**Improvements Documents**"), 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 or in the Improvements Documents.

16.24 Estoppel Certificates. From time to time, but in no event more than two (2) times in any twelve (12) month period, each party shall execute and deliver to the other party promptly upon 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 the certifying party of any default which has not been cured, except as to defaults specified in such certificate; (iv) that to the certifying party's actual knowledge, the requesting party is not in default under this Lease and the certifying party has no claims, charges, offsets or defenses against the requesting party, 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 the requesting party. Any such certificate may be relied upon by any prospective purchaser, vendee or other party. If Tenant or Landlord fails to execute and deliver any such certificate within thirty (30) days after the requesting party's written request, and fails to cure such default within an additional five (5) business days after further notice from the requesting party indicating that failure to respond with such 5-business day period shall be conclusive as to such matters, such failure, at the requesting party's election, shall be conclusive against the other party that this Lease is in full force and effect, without modification (except as may be represented by the requesting party), that there are no uncured defaults in the requesting party's performance, and that not more than one month's rent has been paid in advance. In the event Tenant requests Landlord to execute a certificate pursuant to this Section 16.24, 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.

16.25 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.

16.26 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.

16.27 City Non-Discrimination Ordinance. Tenant hereby agrees to comply with the provisions of Berkeley Municipal Code ("**B.M.C.**") Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. 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.

B. 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 as reasonably required to monitor this non-discrimination provision.

16.28 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.

16.29 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 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.

16.30 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.

16.31 Required Accessibility Disclosure.

A. Landlord hereby advises Tenant that the Premises and Improvements 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 landlord 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.

16.32 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 Ground Lease Term 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 Amdo, 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 above. 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.

16.33 Berkeley Living Wage Ordinance (LWO).

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (“LWO”) unless otherwise agreed to in a collective bargaining agreement. 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 Ground Lease Term, as defined in the LWO, 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 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 above.

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 following notice and expiration of applicable cure periods shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 14 above.

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 a confirmed underpayment to an employee under the LWO. The foregoing shall not apply to alleged underpayments based on the Tenant's reasonable and good faith application of an expired or in effect collective bargaining agreement. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate (subject to an applicable collective bargaining agreement) 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.

16.34 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 Ground Lease Term, 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 above.

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 above.

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.

16.35 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

16.36 City Auditor Rights. In addition to Landlord's and City Auditor's financial audit rights set forth in Section 2.5C above, the City Auditor's Office, or its designee, may conduct an audit of Tenant's compliance records maintained in connection with the operations and services performed under this Ground Lease, including compliance with Sections 16.27 through 16.35 above. In the event of such audit, Tenant agrees to cooperate with the City Auditor's Office and make such compliance records available to the City Auditor's Office, or to its designee, as reasonably required by the City Auditor's Office. Landlord shall provide Tenant an opportunity to discuss, respond to and contest, as applicable, any findings before a final audit report is filed.

16.38 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 as it exists at the time of such use.

16.39 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.

16.40 Survival. The provisions of Sections 4.3 (Real Property Taxes), 4.4 Assessments, 5.5 (General Maintenance Standards), 5.8 (Governmental Requirements), 6.2 (Hazardous Materials), 7.1 (Alterations on Premises), 7.4 (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.

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:

200 MARINA BOULEVARD, BERKELEY, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

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. _____

Incorporated: Yes ____ No ____

Certified Woman Business Enterprise: Yes ____ No ____

Certified Minority Business Enterprise: Yes ____ No ____

Certified Disadvantaged Business Enterprise: Yes ____ No ____

City Business License No. _____, or
Exempt pursuant to B.M.C. Section ____

EXHIBIT A
SITE MAP

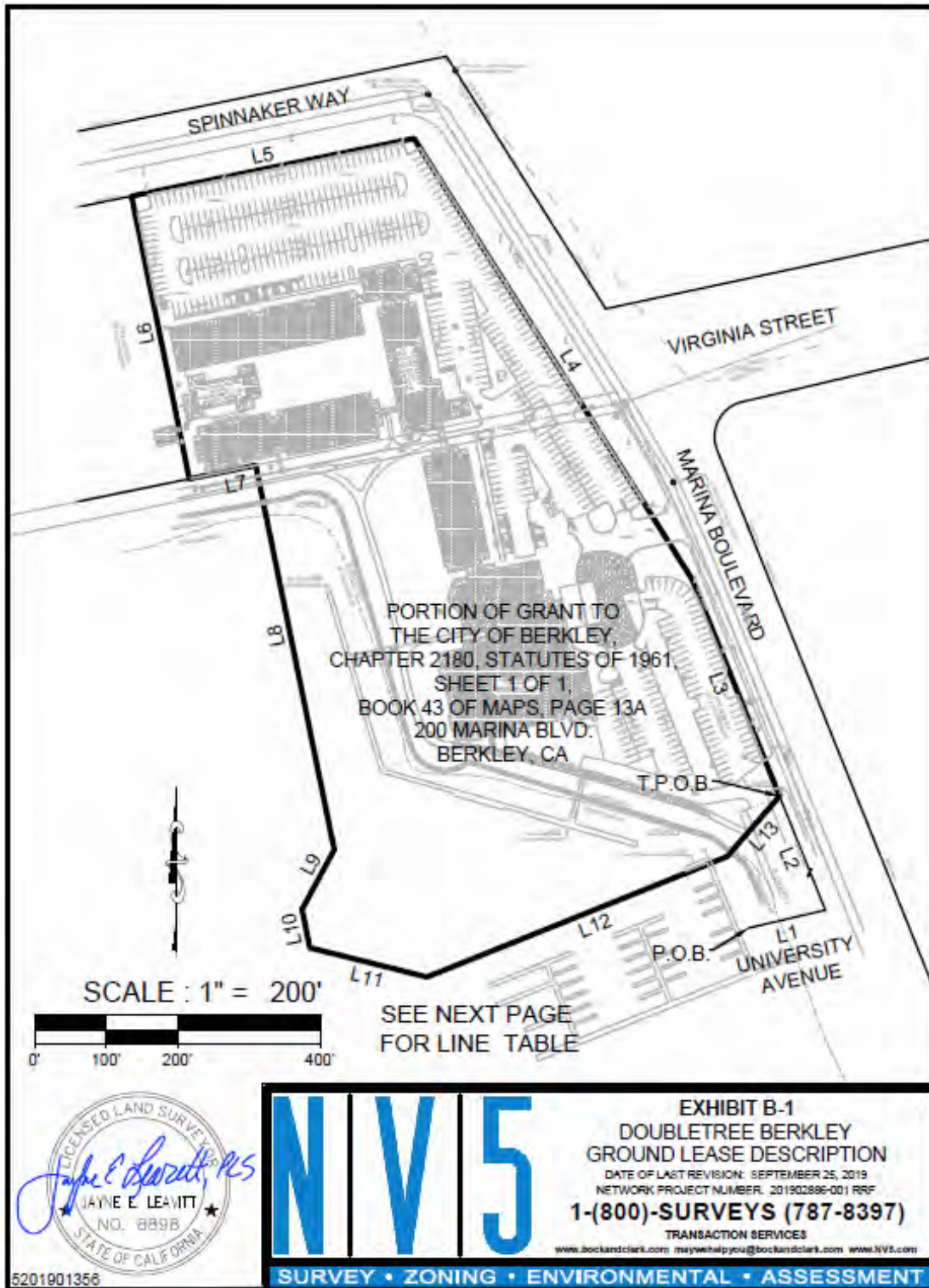


EXHIBIT B1

LEGAL DESCRIPTION OF PREMISES

That parcel of land in the City of Berkeley, County of Alameda, State of California, described as follows:

A PORTION OF THE GRANT TO THE CITY OF BERKELEY AS SAID GRANT IS SHOWN ON "MAP OF THE GRANT TO THE CITY OF BERKELEY, CHAPTER 2180, STATUTES OF 1961, VICINITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA", SHEET 1 OF 1, APRIL 1962, AND RECORDED JULY 24, 1963, IN BOOK 43 OF MAPS, PAGE 13A, ALAMEDA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF UNIVERSITY AVENUE, AS DESCRIBED IN THE DEED TO THE TOWN OF BERKELEY DATED SEPTEMBER 25, 1907, AND RECORDED SEPTEMBER 28, 1907, IN BOOK 1405 OF DEEDS, PAGE 165, ALAMEDA COUNTY RECORDS, WITH THE WESTERLY LINE OF LOT 5 IN SECTION 9 TOWNSHIP 1 SOUTH, RANGE 4 WEST M.D.B. & M. AS SAID LOT IS SHOWN ON "MAP NO. 4 OF SALT MARSH AND TIDE LANDS SITUATED IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA", CERTIFIED

COPIES OF WHICH ARE ON FILE WITH THE STATE LANDS DEPARTMENT OF THE STATE OF CALIFORNIA; THENCE NORTH 76° 47' 36" EAST, 110.00 FEET; THENCE NORTH 21° 53' 29" WEST, 1014.349 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 21° 53' 29" WEST, 327.13 FEET; THENCE NORTH 32° 12' 53" WEST, 731.938 FEET; THENCE SOUTH 78° 28' 12" WEST, 403.731 FEET; THENCE SOUTH 11° 31' 48" EAST, 405.00 FEET; THENCE NORTH 78° 28' 12" EAST, 95.007 FEET; THENCE SOUTH 11° 31' 48" EAST, 550.364 FEET; THENCE SOUTH 28° 22' 11" WEST, 95.301 FEET; THENCE SOUTH 11° 31' 48" EAST, 55.00 FEET; THENCE SOUTH 76° 01' 15" EAST, 169.303 FEET; THENCE NORTH 68° 06' 31" EAST, 452.668 FEET; THENCE NORTH 40° 58' 15" EAST, 112.37 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS, IN SAID LANDS AND TO THE STATE OF CALIFORNIA, OR PERSONS, AUTHORIZED BY THE STATE OF CALIFORNIA, THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE SUCH DEPOSITS FROM SAID LANDS AS EXCEPTED AND RESERVED IN GRANTS OF SAID LANDS TO THE CITY OF BERKELEY BY STATUTES 1961, CHAPTER 2180 AND BY STATUTES 1962, FIRST EXTRA SESSION, CHAPTER 55.

EXCEPTING ALL BUILDINGS AND IMPROVEMENTS SITUATED THEREON.

CONTAINING AN AREA OF 600,263 SQUARE FEET (13.780 ACRES), MORE OR LESS.

EXHIBIT B2

LEGAL DESCRIPTION OF INITIAL PREMISES

That parcel of land in the City of Berkeley, County of Alameda, State of California, described as follows:

A portion of the Grant to the City of Berkeley as said Grant is shown on "Map of the Grant to the City of Berkeley," Chapter 2180, Statutes of 1961, Vicinity of Berkeley, Alameda County, California, Sheet 1 of 1, April 1962, and recorded July 24, 1963, in Book 43 of Maps, page 13A, Alameda County Records, being more particularly described as follows:

Beginning at the point of intersection of the northerly line of University Avenue, as described in the deed to the Town of Berkeley dated September 25, 1907 and recorded September 28, 1907, in Book 1405 of Deeds, page 165, Alameda County Records, with the westerly line of Lot 5 in Section 9 Township 1 South, Range 4 West M.D.B.&M. as said lot is shown on "Map No. 4 of Salt Marsh and Tide Lands situated in the County of Alameda, State of California," certified copies of which are on file with the State Lands Department of the State of California; thence N 76°47'36" E 110.000 feet; thence N 21°53'29" W 1341.479 feet to the true point of beginning; thence N 32°12'53" W 731.938 feet; thence S 78°28'12" W 403.731 feet; thence S 11°31'48" E 405.000 feet; thence N 78°28'12" E 120.007 feet; thence S 11°31'48" E 497.972 feet; thence S 76°01'15" E 399.390 feet; thence N 78°28'12" E 151.498 feet; thence N 21°53'29" W 396.672 feet; thence N 78°28'12" E 101.657 feet to the true point of beginning, containing 11.15 acres more or less.

[Tenant to confirm]

EXHIBIT C

STATE TIDELANDS GRANT

FORTIETH SESSION.

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showing the whole number of votes cast and the number cast in favor of exclusion and the number cast against exclusion; and if it shall appear from such canvass that a majority of votes cast is in favor of exclusion, the clerk or other officer performing the duties of the clerk of such legislative body shall make and certify, under the seal of such municipal corporation, and transmit to the secretary of state and to the board of supervisors of the county in which said city or town is located, a copy of said report so entered upon its minutes, together with a statement showing the date of said election and the time and result of said canvass, which document shall be filed by the secretary of state and the clerk of said board of supervisors. From and after the date of filing of said document in the office of the secretary of state, the exclusion of such territory so proposed to be excluded shall be deemed and shall be complete and thenceforth such excluded territory shall cease to be a part of such municipal corporation, for all intents and purposes; *provided*, that nothing contained in this act shall be held to relieve in any manner whatsoever any part of said territory from any liability for any debt contracted by such municipal corporation prior to such exclusion; and *provided, further*, that such municipal corporation is hereby authorized to levy and collect from any territory so excluded from time to time such sums of money as shall be found due from it on account of its just proportion of liability for any payment on the principal or interest of such debts.

Exclusion deemed complete.

SEC. 2. Nothing in this act shall alter or affect the boundaries of any senatorial or assembly district.

Legislative districts not affected.

SEC. 3. All proper expenses of proceedings for exclusion of uninhabited territory under this act, whether such exclusion shall be made and completed or not, shall be paid by the municipal corporation so excluding or attempting to exclude such territory.

Expenses.

CHAPTER 347.

An act granting to the city of Berkeley the salt marsh, tide and submerged lands of the State of California, including the right to wharf out therefrom to the city of Berkeley, and regulating the management, use and control thereof.

[Approved June 11, 1913. In effect August 10, 1913.]

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

SECTION 1. There is hereby granted to the city of Berkeley, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific

Tide lands granted to Berkeley.

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STATUTES OF CALIFORNIA.

ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit: That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual firm or corporation for any purpose whatever; *provided*, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with the reversion to the said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; *provided*, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands, within the boundaries of the city of Berkeley, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify. Upon obtaining such lease and wharfing out privileges such

Conditions
of grant.

Franchises
for
wharves,
etc.

Persons in
possession
to have
first right.

person, firm or corporation, their heirs or assigns, shall quit-claim to said city any right they or any of them may claim or have to the said lands hereby granted. This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted. The State of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California. No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the State of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

Right to use wharves reserved to state.

No discrimination in rates.

Right to fish reserved.

Sec. 2. The foregoing conveyance is made upon the condition that the city of Berkeley shall, within five years from the approval of this act, exclusive of such time as said city may be restrained from so doing by injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, issue its bonds for harbor improvement purposes in an amount of money of not less than five hundred thousand dollars, and shall, within five years after the approval of this act, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be prosecuted with such diligence that not less than five hundred thousand dollars shall be expended thereon within five years from the approval of this act exclusive of the time in this section hereinbefore mentioned. If said bonds be not issued or said work be not prosecuted and completed as and in the manner herein provided, then the lands by this act conveyed to the city of Berkeley shall revert to the State of California.

Must expend five hundred thousand dollars within five years.

Lands may revert to state.

CHAPTER 348.

An act granting to the city of Alameda the salt marsh, tide and submerged lands of the State of California, including the right to wharf out therefrom to the city of Alameda, and regulating the management, use and control thereof.

[Approved June 11, 1913. In effect August 10, 1913.]

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

SECTION 1. There is hereby granted to the city of Alameda, a municipal corporation of the State of California, and

Tide lands granted to Alameda.

CHAPTER 55

An act to amend Section 1 of Chapter 347 of the Statutes of 1913, relating to a conveyance of tide and submerged lands to the City of Berkeley.

[Approved by Governor April 23, 1962. Filed with Secretary of State April 24, 1962.]

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

SECTION 1. Section 1 of Chapter 347 of the Statutes of 1913 is amended to read:

Section 1. There is hereby granted to the City of Berkeley a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said State by virtue of its sovereignty in and to all salt marsh, tide and submerged lands, whether filled or unfilled, which are included within the present boundaries of the City of Berkeley, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and its successors for purposes in which there is a general statewide interest as follows:

(1) For the establishment, improvement and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of commerce and navigation.

(2) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair and maintenance of commercial and industrial buildings, plants and facilities, as may be specified by the city council, after public hearing.

(3) For the establishment, improvement and conduct of an airport and heliport or aviation facilities, including but not limited to approach, takeoff and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of air commerce and air navigation.

(4) For the construction, reconstruction, repair and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary or convenient for the promotion and accommodation of any of the uses set forth in this Section 1.

(5) For the construction, reconstruction, repair, maintenance and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including but not limited to public golf courses, and for all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses.

(6) For the establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for the construction, reconstruction, repair, maintenance and operation of all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any of such uses, including but not limited to snack bars, cafes, restaurants, motels, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas.

(b) Said city, or its successors shall not, at any time, grant, convey, give or alienate said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said city, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from such leases, franchises and privileges. Such lease or leases, franchises and privileges may be for any and all purposes which shall not interfere with commerce and navigation. Nothing contained in this paragraph

(b) shall be deemed to affect the validity or term of any franchise granted by said city under the Franchise Act of 1937 or said city's charter, and any such franchise shall be effective with respect to said lands.

(c) Said lands shall be improved without expense to the State; provided, however, that nothing contained in this act shall preclude expenditures for the development of said lands for any public purpose not inconsistent with commerce, navigation and fishery, by the State, or any board, agency or commission thereof, when authorized or approved by the city, nor by the city of any funds received for such purpose from the State or any board, agency or commission thereof.

(d) In the management, conduct, operation and control of said lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination

in rates, tolls or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from said lands.

(h) Said lands are granted subject to the express reservation and condition that the State may at any time in the future use said lands or any portion thereof for highway purposes without compensation to the city, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements, betterments or structures have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements, betterments or structures taken or the damages to such interest.

(i) The State Lands Commission shall, at the cost of the city, survey and monument the granted lands and record a description and plat thereof in the office of the County Recorder of Alameda County.

(j) If the lands, or any part thereof, granted to the city by this act are not used for the additional purposes authorized by the amendments of this section made at the 1961 Regular Session and 1962 First Extraordinary Session of the Legislature within 10 years from the effective date of the respective amendments, or if such use is discontinued thereafter, the authorization to use said lands for such additional purposes shall automatically terminate and lapse.

CHAPTER 2180

An act to amend Section 1 of Chapter 347 of the Statutes of 1913, relating to a conveyance of tide and submerged lands to the City of Berkeley.

In effect
September
15 1961

[Approved by Governor July 20, 1961. Filed with
Secretary of State July 21, 1961.]

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

SECTION 1. Section 1 of Chapter 347 of the Statutes of 1913 is amended to read:

Section 1. There is hereby granted to the City of Berkeley, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said State by virtue of its sovereignty in and to all salt marsh, tide and submerged lands, whether filled or unfilled, which are included within the present boundaries of the City of Berkeley, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and its successors for purposes in which there is a general statewide interest as follows:

(1) For the establishment, improvement and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of commerce and navigation.

(2) For the establishment, improvement and conduct of an airport and heliport or aviation facilities, including but not limited to approach, takeoff and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of air commerce and air navigation.

(3) For the construction, reconstruction, repair and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary or convenient for the promotion and accommodation of any of the uses set forth in this Section 1.

(4) For the construction, reconstruction, repair, maintenance and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including but not limited to public golf courses, and for all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses.

(5) For the establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for the construction, reconstruction, repair, maintenance and operation of all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any of such uses, including but not limited to snack bars, cafes, restaurants, motels, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas.

(b) Said city, or its successors shall not, at any time, grant, convey, give or alienate said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said city, or its successors, may grant franchises thereon for limited periods, not exceeding 50 years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, not exceeding 50 years, for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from such leases, franchises and privileges. Such lease or leases, franchises and privileges may be for any and all purposes which shall not interfere with commerce and navigation. Nothing contained in this paragraph (b) shall be deemed to affect the validity or term of any franchise granted by said city under the Franchise Act of 1937 or said city's charter, and any such franchise shall be effective with respect to said lands.

(c) Said lands shall be improved without expense to the State; provided, however, that nothing contained in this act shall preclude expenditures for the development of said lands

for any public purpose not inconsistent with commerce, navigation and fishery, by the State, or any board, agency or commission thereof, when authorized or approved by the city, nor by the city of any funds received for such purpose from the State or any board, agency or commission thereof.

(d) In the management, conduct, operation and control of said lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from said lands.

(h) Said lands are granted subject to the express reservation and condition that the State may at any time in the future use said lands or any portion thereof for highway purposes without compensation to the city, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements, betterments or structures have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements, betterments or structures taken or the damages to such interest.

(i) The State Lands Commission shall, at the cost of the city, survey and monument the granted lands and record a description and plat thereof in the office of the County Recorder of Alameda County.

(j) If the lands, or any part thereof, granted to the city by this act are not used for the additional purposes authorized by the amendment of this section made at the 1961 Regular Session of the Legislature within 10 years from the effective date of said amendment, or if such use is discontinued thereafter, the authorization to use said lands for such additional purposes shall automatically terminate and lapse.

EXHIBIT D

CITY RESERVED RIGHTS – DRIVEWAY DRIVE AISLE AREA

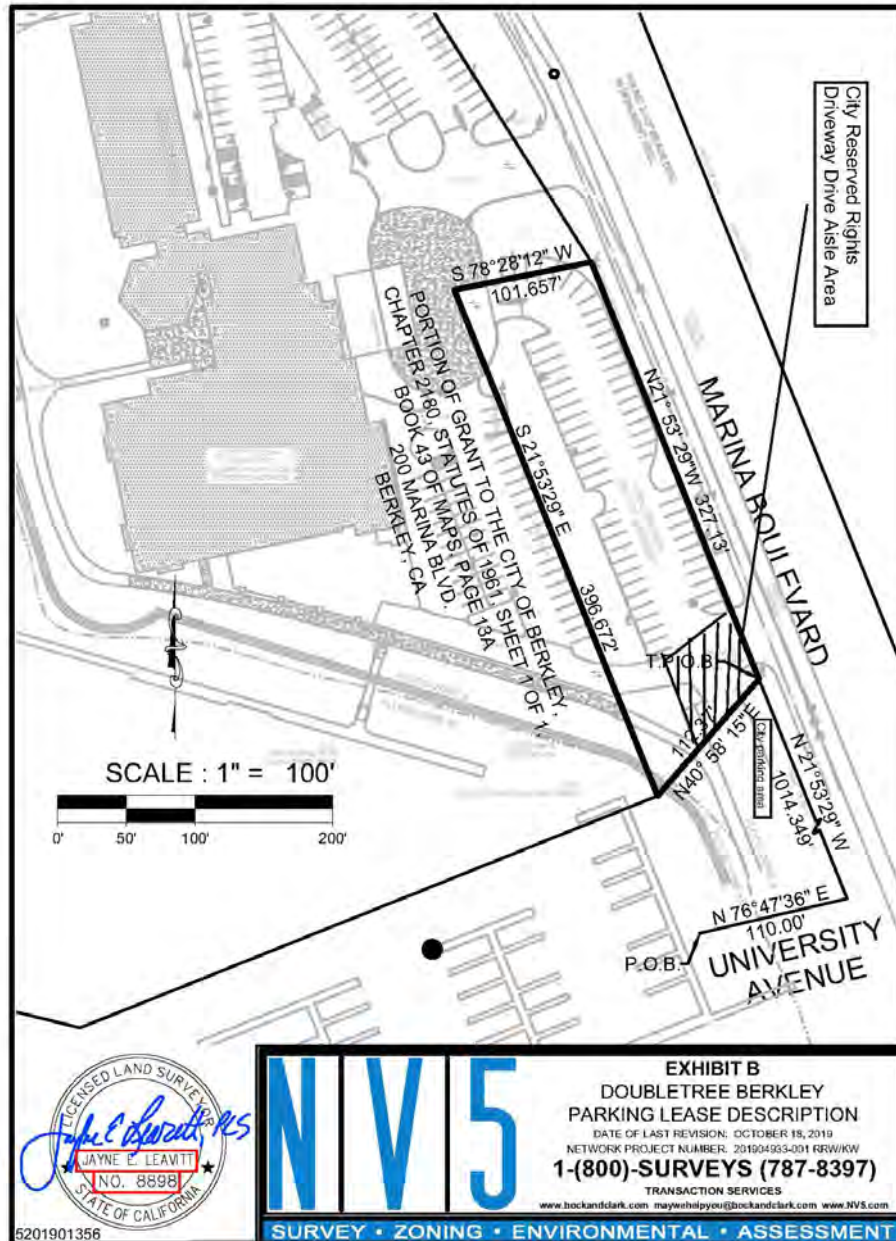


EXHIBIT E
CURRENT CONCESSIONAIRES

[Tenant to provide, if any]

EXHIBIT F

STR CHAIN SCALE -- NORTH AMERICA AND CARIBBEAN



STR Chain Scales - North America and Caribbean

Luxury	Park Hyatt	Hard Rock	Wyndham Grand	Hyatt Place
21c Museum Hotel	Presige Hotels & Resorts	Hilton		Iberostar Hotels & Resorts
AKA	Regent	Hilton Grand Vacations	Upscale	Inside by Melia
Aman	Ritz-Carlton	Hotel Indigo	AC Hotels by Marriott	Jolly
Andaz	RockResorts	Hotel Nikko	Allegro	Larkspur Landing
Banyan Tree	Rosewood	Hyatt	aloft Hotel	Legacy Vacation Club
Belmond Hotels	Royalton	Hyatt Centric	Alt Hotel	Mantra
Capella	Secrets Resorts & Spas	Hyatt Regency	Apa Hotel	Melia
COMO	Shangri-La	Instinct Hotels	Ascend Collection	Miyako
Conrad	Sixty Hotels	Joie De Vivre	Aston Hotel	NH
Destination Hotels	Sofitel	Kimpton	Atton	Nova Hotels
Dorchester Collection	St Regis	Le Meridien	Be Live	Novotel
Doyle Collection	Taj	Live Aqua	Best Western Premier	NYLO Hotel
Dreams Resorts & Spas	The Peninsula	Magnolia	BW Premier Collection	Occidental
Edition	The Unbound Collection	Marriott	Cambria hotel & suites	Palladium Hotel
Elegant	Thompson Hotels	Marriott Conference Center	Canal Inn	Prince Hotel
Fairmont	Trump Hotel Collection	Memories	Citadines	Radisson
Firmdale	Valencia Group	Millennium	citizenM	Residence Inn
Four Seasons	Viceroy	New Otani	Club Med	RIU Hotel
Grande Bahia Principe	W Hotel	NH Collection	Coast Hotels Canada	Room Mate
Grand Hyatt	Waldorf Astoria	Omni	Coast Hotels USA	Sandals
Hyatt Zilara	Zoetry Wellness & Spa Resorts	Outrigger Resorts	Courtyard	Sandman Signature
Hyatt Ziva		Pan Pacific	Crowne Plaza	Sawridge
Iberostar Grand Collection	Upper Upscale	Pestana	Dazzler	Shell Vacations Club
InterContinental	Ace Hotel	Pullman	Decameron	Sonesta Hotel
JW Marriott	Affinia Hotel	Quinta Real	Disney Hotels	Springhill Suites
Kempinski	Allia	Radisson Blu	DoubleTree	Staybridge Suites
Lanham	Autograph Collection	Radisson RED	druid2	Stoney Creek
Loews	Bridgestreet	Red Carnation	Eaton	SuperClubs
Lotte Hotel	Accommodations	Renaissance	element	Tapestry Collection
Luxury Bahia Principe	Carnival Real	Royal Hideaway	Eurostars Hotel	Travel Inn
Luxury Collection	Canopy by Hilton	Sheraton Hotel	EVEN Hotels	Vacation Condos by
Mandarin Oriental	Club Quarters	Silver Cloud	Fiesta Americana	Outrigger
ME	Curio Collection	St. Giles Hotel	Four Points by Sheraton	Westmark
Mokara	Delta Hotel	Starhotels	Graduate Hotel	Wyndham
Montage	Dolce Hotels & Resorts	Sunscape Resorts & Spas	Grand America	Wyndham Vacation Resort
Nobu Hotels	Dream Hotels	Swissotel	Great Wolf Lodge	
NOV Resorts & Spas	Embassy Suites	Time Hotels	HIO	Upper Midscale
One & Only	Fireside Inn & Suites	Tribute Portfolio	Hampshire	Aqua Hotels & Resorts
Palace Resort	Gaylord	Warwick Hotel	Hilton Garden Inn	Ayres
Paradisus		Westin	Homewood Suites	Barcelo
			Hotel RL	
			Hyatt House	

Brands/Chains are slotted by Chain Scale based on the previous year's annual system wide (global) Average Daily Rate and other factors. Rate ranges defining each Chain Scale are determined by STR. If you have questions about the Chain Scales, please email support@str.com (North America) or hotelinfo@str.com (Outside North America). Copyright 2018, STR, Inc. and STR Global, Ltd. trading as STR. Publishing or reproducing this information is strictly prohibited. Last updated 10 February 2018.



STR Chain Scales - North America and Caribbean

Upper Midscale cont.	Quality	Loyalty Inn	Great Western
Best Western Plus	Real Inn	Maeva	GreenTree Inn
Boarders Inn & Suites	Red Lion Hotel	MainStay Suites	Home Inn
Boulders Inn & Suites	Rodd Hotel	Oak Tree Inn	Home-Towne Suites
Canalta Hotels	Shilo Inn	Palace Inn	Hoteles Serena
Centerstone Hotels	Sonestá ES Suites	Quality Inn	Howard Johnson
Chase Suites	TownePlace Suites	Ramada	InTown Suites
City Express	Trademark Hotel	Real de Minas	Jameson Inn
City Express Plus	Collection	Red Lion Inn & Suites	Key West Inn
Clarion	Tryp by Wyndham	Rode Inn	Knights Inn
Cobblestone	Vari der Valk	Sandman	Lite Hotels
Comfort Inn	Wyndham Garden Hotel	Settle Inn	Master Hosts Inns
Comfort Suites	Yotel	Sleep Inn	Masters Inn
Country Inn & Suites		Sol	Microtel Inn & Suites by Wyndham
DoubleTree Club	Midscale	SureStay Plus	Motel 6
Drury Inn	3 Palms	SureStay Signature	National 9
Drury Inn & Suites	A Victory	Collection	One Hotels
Drury Plaza Hotel	AmericInn	Tru by Hilton	Passport Inn
Drury Suites	Aristos Hotel	Uptown Suites	Pear Tree Inn
Exe Hotel	Baymont	Vagabond Inn	Red Carpet Inn
Fairfield Inn	Best Western	Vista	Red Roof Inn
GrandStay Hotels	BlueBay	Wingate by Wyndham	Rodeway Inn
Hampton	Cabot Lodge		Savannah Suites
Hampton	Canadas Best Value Inn	Economy	Scottish Inn
Holiday Inn	Candlewood Suites	Affordable Suites of	Select Inn
Holiday Inn Express	Catalonia	America	Studio 6
Holiday Inn Select	City Express Suites	America's Best Inn	Suburban Extended Stay
Home2 Suites	ClubHouse	Americas Best Value Inn	Sundowner
Hotel Des Gouverneurs	Crystal Inn	AmeriVu Inn & Suites	Tokyo Inn
IFA	Delfin Hotel	Budget Host	Tune Hotel
Inns North	FairBridge Inn	Budget Suites of	Vienna Shab
Isle of Capri	Fiesta	Budgetel	Z
LeKington	Fiesta Inn	City Express Junior	Zest Hotel
Mama Shelter	Gamma by Fiesta inn	Country Hearth Inn	Zleep
Mercure	GuestHouse Inn	Crossland Economy	
Monte Carlo Inn	Hawthorn Suites by	Studios	
MOXY	Wyndham	Days Inn	
My Place	Hoteles Vista	Downtowner Inn	
OHANA	ibis	Econo Lodge	
Oxford Suites	ibis Styles	Extended Stay America	
Park Inn	InnSuites Hotel	E-Z 8	
Phoenix Inn	La Quinta Inns & Suites	Family Inn	
Princess	Lakeview	Good Nite Inn	

Brands/Chains are slotted by Chain Scale based on the previous year's annual/system wide (global) Average Daily Rate and other factors. Rate ranges defining each Chain Scale are determined by STR. If you have questions about the Chain Scales, please email support@str.com (North America) or hotelinfo@str.com (Outside North America). Copyright 2018, STR, Inc. and STR Global, Ltd. trading as STR. Publishing or reproducing this information is strictly prohibited. Last updated 10 February 2018.

EXHIBIT G
MEMORANDUM OF GROUND LEASE

[Form attached]

Recording Requested By
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 200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company, as Tenant, the real property 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 as of January 18, 2008 (the “**2008 Ground Lease**”) between Landlord, as lessor and Boykin Berkeley, LLC, a Delaware limited liability company, as lessee (“**Boykin Berkeley**”). Notice of the 2008 Ground Lease is provided by that certain Memorandum of Lease dated January 10, 2008 and recorded on January 24, 2008 as instrument number 2008017660 with the Alameda County Recorder’s Office (“**2008 Ground Lease Memorandum**”). The 2008 Ground Lease granted to Boykin Berkeley the right to use and occupy the Premises until December 31, 2058.

2. Pursuant to that certain Assignment and Assumption of Ground Lease effective April 18, 2011 and recorded on April 20, 2011 as instrument number 2011115637 with the Alameda County Recorder’s Office, Boykin Berkeley assigned to Westpost Berkeley LLC (“**Westpost**”), and Westpost assumed from Boykin Berkeley, LLC, all of Boykin Berkeley, LLC’s right, title and interest in the 2008 Ground Lease.

3. Pursuant to that certain Assignment and Assumption of Ground Lease dated February 6, 2014 and recorded on February 10, 2014 as instrument number 2014046461 with the Alameda County Recorder’s Office, **[and that certain Consent of City, dated January 30, 2014 and recorded on February 10, 2014 as instrument number 2014046460 with the Alameda County Recorder’s Office (“2008 Consent”)]**, Westpost assigned to Tenant, and Tenant assumed from Westpost, all of Westpost Berkeley’s right, title and interest in the 2008 Ground Lease and the Premises.

4. Landlord and Tenant have now entered into that certain unrecorded Ground Lease dated as of _____, 2019 (the “**Ground Lease**”), pursuant to which Landlord continues to lease the Premises to Tenant. The Ground Lease constitutes a renewal of the 2008 Ground Lease and an extension of the term of the 2008 Ground Lease and grants to Tenant the right to continue to use and occupy the Premises until December 31, 2080. There is no option to extend the term of the Ground Lease.

5. This Memorandum of Ground Lease supersedes and replaces the 2008 Ground Lease Memorandum, as assigned; 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.

TENANT:

200 MARINA BOULEVARD, BERKELEY, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

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 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 _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

That parcel of land in the City of Berkeley, County of Alameda, State of California, described as follows:

A portion of the Grant to the City of Berkeley as said Grant is shown of "Map of the Grant to the City of Berkeley," Chapter 2180, Statutes of 1961, Vicinity of Berkeley, Alameda County, California, Sheet 1 of 1, April 1962, and recorded July 24, 1963, in Book 43 of Maps, page 13A, Alameda County Records, being more particularly described as follows:

Beginning at the point of intersection of the northerly line of University Avenue, as described in the deed to the Town of Berkeley dated September 25, 1907 and recorded September 28, 1907, in the Book 1405 of Deeds, page 165, Alameda County Records, with the westerly line of Lot 5 in Section 9 Township 1 South, Range 4 West M.D.B.&M. as said lot is shown on "Map No. 4 of Salt Marsh and Tide Lands situated in the County of Alameda, State of California," certified copies of which are on file with the State Lands Department of the State of California; thence N 76°47'36" E 110.000 feet; thence N 21°53'29" W 1341.479 feet to the true point of beginning; thence N 32°12'53" W 731.938 feet; thence S 78°28'12" W 403.731 Feet; thence S 11°31'48" E 405.000 feet; thence N 78°28'12" E 95.007 feet; thence S 11°31'48" E 550.364 feet; thence S 28°22'11" W 95.301 feet; thence S 11°31'48" E 55.000 feet; thence S 76°01'15" E 169.303 feet; thence N 68°06'31" E 452.668 feet; thence N 21°53'29" W 396.672 feet; thence N 78°28'12" E 101.657 feet to the true point of beginning, containing 12.949 acres more or less.

EXHIBIT H

EXISTING GROUND LEASEHOLD MORTGAGE

[Tenant to confirm and complete, including (as applicable):]

- That certain _____ Note in the original principal amount of \$_____ from 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company, to Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership, dated _____, 2017.
- That certain ***[Deed of Trust, Assignment of Leases and UCC Financing Statement]***, executed by 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company as trustor in favor of _____ as trustee and Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership as beneficiary, dated _____, 2017 and recorded on August 10, 2017 as instrument number 2017174794 with the Alameda County Recorder's Office, as assigned to UBS AG, a _____ pursuant to that certain ***[Assignment of Deed of Trust]***, dated _____, 2017 and recorded on October 31, 2017 as instrument number 2017240211 with the Alameda County Recorder's Office, as further assigned to ***[Wilmington Trust as trustee]***, a _____ pursuant to that certain ***[Assignment of Deed of Trust]***, dated _____, 2017 and recorded on November 27, 2017 as instrument number 2017259912 with the Alameda County Recorder's Office.
- That certain ***[Assignment of Leases]***, executed by 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company as ***[grantor]*** in favor of Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership as ***[grantee]***, dated _____, 2017 and recorded on August 10, 2017 as instrument number 2017174795 with the Alameda County Recorder's Office.
- That certain ***[UCC-1 Financing Statement]*** identifying 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company as ***[debtor]*** and Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership as ***[secured party]***, recorded on August 10, 2017 as instrument number 2017174796 with the Alameda County Recorder's Office, as assigned to UBS AG, a _____ pursuant to that certain ***[UCC Amendment]***, dated _____, 2017 and recorded on October 31, 2017 as instrument number 2017240213 with the Alameda County Recorder's Office.

EXHIBIT I

MAINTENANCE STANDARDS

Maintenance Standards include, at a minimum, the following:

A. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute therefor as shall be in all respects substantially comparable thereto or better in quality, appearance and durability;

B. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;

C. Maintain such appropriate entrance, exit and directional signs, markers and lights as reasonably required, but at least to the extent customarily maintained by comparable major first-class Hotel Facilities;

D. Clean lighting fixtures and relamp and/or reballast as needed;

E. Repaint exterior of the Improvements as frequently and to at least the condition customarily maintained by comparable major first-class Hotel Facilities;

F. Maintain signs, including relamping and/or reballasting and/or repairing as required;

G. Maintain and keep in a first-class condition and repair all benches, shelters, planters, banners, furniture, trash containers, sculptures and other such exterior fixtures to at least the condition customarily maintained by comparable major first-class Hotel Facilities;

H. Maintain and keep in a sanitary condition public restrooms and other common use facilities;

I. Clean, repair and maintain all common utility systems;

J. Maintain all fountains, water courses and associated structures, drinking fountains, pumps and associated plumbing;

K. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;

L. Maintain all surface and storm lateral drainage systems;

M. Maintain all sanitary sewer lateral connections;

N. Promptly remove any graffiti on or about the Premises or Improvements;

O. Perform landscape maintenance including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grass, and other

plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris, all to at least the condition customarily performed by major first-class Hotel Facilities; and

- P. Perform other maintenance as required by Law or the Ground Lease.

CAPITAL CONTRIBUTION AGREEMENT

(Marina Streets Work)

[Parties to discuss recording this Agreement]

THIS CAPITAL CONTRIBUTION AGREEMENT (this “**Agreement**”) is dated _____, 20____, but effective on the “**Effective Date**” (as defined below), by and between the CITY OF BERKELEY, a public body corporate and politic (“**City**”), and 200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company (“**200 Marina**”).

RECITALS

A. Prior to the Effective Date, City, as Landlord, and 200 Marina, as Tenant (and successor to Boykin Berkeley, LLC), were parties to a Ground Lease, dated January 18, 2008 (“**2008 Ground Lease**”), for an approximately 12.949 acre parcel of land commonly known and referred to as 200 Marina Boulevard on the Berkeley Marina, Berkeley, California (“**Premises**”). The stated expiration date under the 2008 Ground Lease was December 31, 2058.

B. Effective as of the Effective Date, City, as Landlord, and 200 Marina, as Tenant are replacing the 2008 Ground Lease with that certain Ground Lease, dated on or about the date hereof (“**Ground Lease**”). The stated expiration date under the Ground Lease is December 31, 2080.

C. As additional consideration for the City’s agreement, as Landlord, to enter into the Ground Lease which extends the term of the 2008 Ground Lease, 200 Marina, the Tenant, is agreeing to make the \$3,000,000.00 capital improvement contribution required by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, stipulated and agreed, City and 200 Marina hereby agree as follows:

1. Recitals and Exhibits; Capitalized Terms. The foregoing recitals and Exhibits attached hereto, and the defined terms therein, are incorporated by reference into this Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Ground Lease.

2. Effectiveness of Agreement. This Agreement shall be effective on the date the Ground Lease is effective (“**Effective Date**”).

3. Payment of Capital Improvement Contribution. On or before three (3) business following the Effective Date, 200 Marina shall pay the City Three Million and no/100th Dollars (\$3,000,000.00) (“**Capital Improvement Contribution**”) as consideration for City’s agreement to enter into the Ground Lease which extends the term of the 2008 Ground Lease.

4. City Use of Capital Improvement Contribution.

(a) The City will use the Capital Improvement Contribution only for the Marina Streets Work (as defined below), and not for other municipal purposes. The City will diligently continue the Marina Streets Work consistent with this Agreement, and the (i) work scope, (ii) development budget, (iii) sources and uses schedule, (iv) and milestone dates, set forth on Exhibit 1 hereto. The City shall: (x) report to 200 Marina monthly on the project progress; (y) notify 200 Marina of any milestone delay of three months or longer and the plans to get back on schedule; and (z) use diligent efforts to identify and source additional financial resources to bridge budget cost overruns. 200 Marina acknowledges that both the specifics and timing of the Marina Streets Work are subject to budget approvals by the City's City Council and changes to accommodate changed circumstances over time, and therefore the City cannot assure 200 Marina of either the specific components of the Marina Streets Work or the timing thereof.

(b) **"Marina Streets Work"** means the planned improvement work on and around University Avenue, Marina Boulevard and Spinnaker Way at the Berkeley Marina, as described in Exhibit 1 hereto and subject to Subsection 4(a) above.

5. Marina Development and Commercial Leasing Opportunities. During the Ground Lease Term, the City will notify 200 Marina of planned major development and commercial leasing opportunities at the Berkeley Marina, particularly along Spinnaker Way or Marina Boulevard. Nothing herein will require the City to grant any preferences to 200 Marina in any such matters.

6. Entire Agreement. This Agreement (and the Ground Lease) sets forth the entire understanding of the parties with respect to the subject matter hereof. There are no agreements between City and 200 Marina relating to this Agreement other than those set forth in writing and signed by the parties. Neither party hereto has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Agreement.

7. Miscellaneous.

(a) Successors and Assigns. Except pursuant to an assignment described in Section 13.1B of the Ground Lease, 200 Marina shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Agreement without the City's, which shall not unreasonably be withheld, conditioned or delayed. The provisions contained herein shall bind and inure to the benefit of the heirs, representatives, and permitted successors and assigns of the parties hereto.

(b) Force Majeure. Ground Lease Section **[16.4]** is incorporated herein into this Agreement by this reference.

(c) 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 if done so as provided in the Ground Lease.

(d) Disclaimer of Partnership. The relationship of the parties hereto is that of payor and municipality, and it is expressly understood and agreed that the City does not in any way nor for any purpose become a partner of 200 Marina or a joint venturer with 200 Marina in any improvements or in the performance of the Marina Street Improvements or otherwise.

(e) Interpretation. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this

Agreement. 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.

(f) Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, 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.

(g) Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, 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 Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement 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 Agreement, and without duress or coercion, whether economic or otherwise.

(h) Nonliability of the City’s Officials and Employees. No officer, elected official, employee or representative of the City shall be personally liable to 200 Marina, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to 200 Marina or its successors, or on any obligations under the terms of this Agreement. 200 Marina hereby waives and releases any claim it may have against the members, officials or employees of the City with respect to any default or breach by the City or for any amount which may become due to 200 Marina or its successors, or on any obligations under the terms of this Agreement.

(i) Applicable Laws. 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 Agreement.

IN WITNESS WHEREOF, the City and 200 Marina have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

[Signature Page Follows]

10-22-2019

200 MARINA:

200 MARINA BOULEVARD, BERKELEY, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

Date: _____

CITY:

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

EXHIBIT 1

MARINA STREETS WORK

This project report will be updated monthly and posted to the City's website at <https://www.cityofberkeley.info/MeasureT1Updates.aspx>.



Office of the City Manager

19

CONSENT CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Grant Application: the Surrendered and Abandoned Vessel Exchange (SAVE) grant program of the California Division of Boating & Waterways

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to 1) Apply for and accept a grant in the amount of \$42,000 from the California Division of Boating & Waterways (“DBW”) Surrendered and Abandoned Vessel Exchange (SAVE) grant program for the removal and disposal of anticipated abandoned vessels located at the Berkeley Marina; 2) Execute any amendments thereto; and 3) Authorize a local match contribution of \$4,200.

FISCAL IMPACTS OF RECOMMENDATION

The cost to remove and dispose of abandoned and derelict vessels at the Berkeley Marina through FY2021 is estimated at \$46,200. The Parks, Recreation, and Waterfront Department seeks authorization to submit a grant application to the Division of Boating and Waterways SAVE grant program in the amount of \$42,000 for this work, and will allocate a required minimum 10% local match, equivalent to \$4,200. The local match will be appropriated as part of the Second Amendment to the FY2021 Annual Appropriations Ordinance in the Marina Fund, account code 608-52-544-592-0000-000-472-612990. If awarded, the grant will be deposited in the Boating and Waterways Fund (Fund 607).

CURRENT SITUATION AND ITS EFFECTS

Each year, approximately eight (8) 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. 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 make in removing derelict vessels via the 2019 SAVE Grant.

BACKGROUND

Responsibility for derelict and abandoned vessels, unfortunately, often falls on public agencies. In 2020, the Berkeley Marina was awarded a SAVE grant for \$130,000 and has contracted with Lind Marine to remove approximately 20 abandoned vessels. For the past 20 years, the Division of Boating and Waterways has provided grant funding assistance to public agencies throughout California, including the City of Berkeley, 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.

ENVIRONMENTAL SUSTAINABILITY

Derelict, abandoned, and sunken vessels pose a navigational and environmental hazard to the waters of the Bay (e.g., they can leak oil fuel, oil coolant, paints and solvents, sanitary waste, etc.) Removal and proper disposal of these vessels contributes to the improvement to the health of the Bay waters.

RATIONALE FOR RECOMMENDATION

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. The swift removal of derelict vessels from our Marina, and preventing the accumulation of such vessels on our docks will improve the attractiveness of the Berkeley Marina to existing and prospective slip holders.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 981-6737

Sean Crothers, Waterfront Supervisor, 981-6744

Attachments:

1. Resolution

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

GRANT APPLICATION: SURRENDERED AND ABANDONED VESSEL EXCHANGE
(SAVE) GRANT PROGRAM OF THE STATE DIVISION OF BOATING AND
WATERWAYS

WHEREAS, each year, approximately eight (8) 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, the cost to remove and dispose of eight (8) abandoned and derelict vessels at the Berkeley Marina in FY2021 is estimated at \$46,200. The Parks, Recreation and Waterfront Department will apply for \$42,000 from the DBW SAVE grant program to remove these vessels, and must provide a minimum match of 10% (equal to \$4,200). These funds will be included in the Second Amendment to the FY2021 Annual Appropriations Ordinance from the Marina Fund 608-52-544-592-0000-000-472-612990. If awarded, the grant will be deposited in the Boating and Waterways Fund (Fund 607).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to 1) submit a grant application to the California Division of Boating and Waterways 2020 SAVE grant program for \$42,000; 2) accept any grants received; 3) execute any resulting grant agreements and any amendments thereto; and 4) authorize the implementation of the projects supported by the grants and appropriation of funding for related expenses, including \$4,200 in local match from the Marina Fund, subject to securing the grant. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

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: Friends of Marin Circle – the Balustrade Replacement Project

RECOMMENDATION

Adopt a Resolution accepting a donation from the Friends of Marin Circle in the amount of \$7,500 for replacement of damaged balustrades at the Marin Circle Fountain Walk.

FISCAL IMPACTS OF RECOMMENDATION

The Friends of Marin Circle Fountain wish to make a donation to the City in the amount of \$7,500 to help the City's project to replace several damaged balustrades at the Marin Circle Fountain Walk in FY2020. The funds will be deposited and expensed from the Parks Tax (Fund 138) to repair the balustrades. The appropriation of this donation will from the Parks Tax (Fund 138) and be included in the Third Amendment to the FY 2020 Annual Appropriations Ordinance in May 2020.

CURRENT SITUATION AND ITS EFFECTS

The Marin Circle Fountain Walk contains a series of decorative concrete railings called balustrades. Over time, the balustrades become damaged by vehicles as well as age, and the City has done several replacements. In FY2020, the City will implement the Balustrade Replacement Project to replace a series of damaged balustrades. The Friends of Marin Circle wish to donate \$7,500 towards the project.

BACKGROUND

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

There are no negative environmental impacts associated with this action.

CONTACT PERSON

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

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: FRIENDS OF MARIN CIRCLE – THE BALUSTRADE REPLACEMENT PROJECT

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 Marin Circle Fountain Walk contains a series of decorative concrete railings called balustrades; and

WHEREAS, over time, the balustrades become damaged by vehicles as well as age, and the City has done several replacements; and

WHEREAS, in FY2020, the City will implement the Balustrade Replacement Project to replace a series of damaged balustrades; and

WHEREAS, the Friends of Marin Circle wish to donate \$7,500 towards the project, and the appropriation of this donation will be from the Parks Tax (Fund 138) and included in the Third Amendment to the FY 2020 Annual Appropriations Ordinance in May 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a donation of \$7,500 from the Friends of Marin Circle for the City's Balustrade Replacement Project is hereby accepted.



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
 Subject: Waiver of Annual Marina Berth Fees for Non-Profits

RECOMMENDATION

Adopt a Resolution:

1. Affirming the determination by City staff and the Parks and Waterfront Commission that four non-profit organizations at the Berkeley Marina (Berkeley Racing Canoe Club (“dragon boats”), Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation) are in full compliance with all aspects of Resolution No. 66,544-N.S.; and
2. Approving the annual waiver of berth fees for the four groups for 2020.

FISCAL IMPACT

The table below provides the current value of the free berths at the Berkeley Marina for four non-profit organizations: Berkeley Racing Canoe Club (“dragon boats”), Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation. The total annual value of the current allotment of slips amounts to \$40,863. The Parks and Waterfront Commission and City staff affirm that the value of community service provided by these organizations in the amount of \$354,500 far exceeds the value of the berths they occupy at the Berkeley Marina.

Marina Berth Fee Waivers - Non-profit organizations Calendar Year 2020

Organization / (Berth Slip Location)	Annual Berth Fees Waived	Annual Value of Community Service
Berkeley Racing Canoe Club (“dragon boats”) / Slip M001/002 inside ties (106')	\$11,256	\$37,500
Cal Sailing Club / Slips J360; J362; J364; J366; J368; J398 (25' ea)	\$18,000	\$80,000
Pegasus Project / Slip K46 (54')	\$11,606	\$105,000
The Blue Water Foundation / Slip K	\$8,322	\$132,000
Totals	\$40,863	\$354,500

CURRENT SITUATION AND ITS EFFECTS

Council Resolution No. 66,544-N.S. contains the criteria by which non-profit organizations at the Berkeley Marina receive a waiver of the annual berth fee. The Resolution requires that the Parks and Waterfront Commission review the applications of non-profit organizations in order to affirm compliance with the Resolution, and that each group appears before the Parks and Waterfront Commission on an annual basis to report on its past year's activities, and provide financial statements. At a regular meeting on March 11, 2020, the Parks and Waterfront Commission made the following conclusions:

1. The Parks and Waterfront Commission reasserted that all four organizations have met with the Waterfront Manager, and have stated their commitment to continue to meet the condition of providing community service (see the Commission's motion in the BACKGROUND section below).
2. Waterfront staff has reviewed the non-discrimination policies for each organization and has also reviewed the staff report and finds that these organizations comply with the conditions of the Resolution regarding the promotion of cultural and ethnic diversity. Specifically, staff determined that the organizations comply with the non-discrimination criteria included in the Resolution as described as follows: "membership policy and practices; recruitment strategy; outreach to under-represented minorities; and Mission Statement." All three organizations have written policies that are consistently enforced that prohibit discrimination based on a person's race, color, religion, ethnicity, national origin, age, sex, sexual orientation, marital status, political affiliation, disability or medical condition. Accordingly, the Parks and Waterfront Commission finds that the Berkeley Racing Canoe Center ("Dragon Boats"), Cal Sailing Club, and The Pegasus Project are in specific compliance with the Resolution and recommends that the three organizations be provided waivers of berthing fees for an additional year.

Review and Determination by City staff

The Waterfront Manager has reviewed the required annual reports and met with staff and members of the four non-profit organizations throughout the year. In addition, the four non-profit organizations have submitted annual reports detailing their activities. The Waterfront Manager has confirmed that the four non-profit organizations, The Berkeley Racing Canoe Club, Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation fully comply with the criteria in the Resolution.

BACKGROUND

On March 4, 1997, Council adopted a resolution (since amended, currently Reso. No. 66,544-N.S.) that provides a policy for the free use of berths at the Berkeley Marina by non-profit organizations providing community services that meet specific criteria. The Berkeley Racing Canoe Club has received a waiver of the Marina Berth Fee since 2004 (Resolution No. 62,619-N.S.) The Cal Sailing Club has received a waiver of the Marina Berth Fee since 1999 (Resolution No. 59,986-N.S.) The Pegasus Project (initially of the Nautilus Institute) has received a waiver of the Marina Berth Fee since 2002 (Resolution No. 59,623-N.S.) The Blue Water Foundation is making their first request for an annual waiver of berth fees for calendar year 2020.

At its regular meeting of March 11, 2020, the Parks and Waterfront Commission took the following action: reviewed and affirmed compliance with Resolution No. 66,544, and recommended Council approval of the annual fee waivers for 2020 for the following three non-

profits: a) Cal Sailing Club, b) the Pegasus Project, and c) the Blue Water foundation: (M/S/C: Kamen/Skjerping/U): Ayes: Cox; Diehm; Kamen; McGrath; Raghavan; Skjerping; Wozniak; Noes: None; Abstain: None: Absent: Kawczynska; Landosi; and for the Berkeley Canoe and Racing club (“dragon boats”) (M/S/C: McGrath/Skjerping/U): Ayes: Cox; Diehm; McGrath; Raghavan; Skjerping; Wozniak; Noes: None; Recused: Kamen: None: Absent: Kawczynska; Landosi.

The annual application, the Annual application for waivers of berth fees 2020, the Annual Reports for 2019, and the By-laws for the four non-profits are available in the Parks and Waterfront Commission Agenda Packet for the regular meeting of March 11, 2020, at the following link for Item 9:

https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Commissions/PWC%20Agenda%20-%2002-13-2019.pdf

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE

The four non-profit organizations, The Berkeley Racing Canoe Club, Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation, have provided community service to the Bay Area (in the amount of \$354,500) that exceeds the value of the berths they occupy at the Berkeley Marina (in the amount of \$40,863).

CONTACT

Alexandra Endress, Waterfront Manager, 981-6737

Attachments:

1. Resolution

RESOLUTION NO. –N.S.

AFFIRMING THE DETERMINATION BY CITY STAFF AND THE PARKS AND WATERFRONT COMMISSION THAT FOUR NON-PROFIT ORGANIZATIONS AT THE BERKELEY MARINA (BERKELEY RACING CANOE CENTER (“dragon boats”), CAL SAILING CLUB, THE PEGASUS PROJECT, AND THE BLUE WATER FOUNDATION) ARE IN FULL COMPLIANCE WITH ALL ASPECTS OF RESOLUTION NO. 66,544-N.S.; AND APPROVING THE ANNUAL WAIVER OF BERTH FEES FOR THE FOUR GROUPS FOR CALENDAR YEAR 2020

WHEREAS, in 2020, the four non-profit organizations (Berkeley Racing Canoe Center (“Dragon Boats”), Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation) submitted annual reports detailing their activities; and the Waterfront Manager has reviewed the required annual reports and met with staff and members of the four non-profit organizations throughout the year; and has confirmed that the four non-profit organizations fully comply with the criteria of Resolution No. 66,544-N.S. (“the Resolution”); and

WHEREAS, the four non-profit organizations, The Berkeley Racing Canoe Center, Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation have provided community service to the Bay Area (\$354,500) that exceeds the value of the berths they occupy at the Berkeley Marina (\$40,863); and

WHEREAS, at its regular meeting on March 11, 2020, the Parks and Waterfront Commission reviewed the detailed analysis that determined that the four organizations have met and have stated their commitment to continue to meet, the condition of providing community service; and

WHEREAS, in addition, the Parks and Waterfront Commission reviewed the non-discrimination policies for the four organizations and also reviewed the staff reports and finds that these organizations fully comply with all the conditions of the Resolution, including the promotion of cultural and ethnic diversity; and

WHEREAS, specifically, staff determined that the organizations comply with the nondiscrimination criteria included in the Resolution as described as follows: “membership policy and practices; recruitment strategy; outreach to under-represented minorities; and Mission Statement.” The organizations have written policies that are consistently enforced that prohibit discrimination based on a person's race, color, religion, ethnicity, national origin, age, sex, sexual orientation, marital status, political affiliation, disability or medical condition; and

WHEREAS, the Parks and Waterfront Commission finds that the four organizations are in specific compliance with the Resolution and recommends that the four organizations be provided with a fee waiver for 2020; and

WHEREAS, at its regular meeting of March 11, 2020, the Parks and Waterfront Commission took the following action: reviewed and affirmed compliance with Resolution No. 66,544, and recommended Council approval of the annual fee waivers for 2020 for the following three non-profits: a) Cal Sailing Club, b) the Pegasus Project, and c) the Blue Water foundation: (M/S/C: Kamen/Skjerping/U): Ayes: Cox; Diehm; Kamen; McGrath; Raghavan; Skjerping; Wozniak; Noes: None; Abstain: None: Absent: Kawczynska; Landosi; and for the Berkeley Canoe and Racing Club (“dragon boats”) (M/S/C: McGrath/Skjerping/U): Ayes: Cox; Diehm; McGrath;

Raghavan; Skjerping; Wozniak; Noes: None; Recused: Kamen: None: Absent: Kawczynska; Landosi.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the applications from the Berkeley Racing Canoe Center (“Dragon Boats”), Cal Sailing Club, The Pegasus Project, and the Blue Water Foundation for an annual waiver of Marina Berth fees covering 2020 are approved.



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Contract: Robert E. Boyer Construction, Inc. for Berkeley Tuolumne Camp Construction Project

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the Berkeley Tuolumne Camp Project, Specification No. 20-111361-C; and
2. Rejecting the bid protests of Walsh Construction, the second lowest bidder and F&H Construction, the third lowest bidder against Robert E. Boyer Construction;
3. Accepting the bid of Robert E. Boyer Construction, Inc. as the lowest responsive and responsible bidder for the amount of \$35,290,583; and
4. 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 Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project in an amount not to exceed \$38,819,641 which includes the base bid and a 10% contingency.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the contract have been budgeted for in the adopted FY20-21 Budget.

The source of funding is as follows:

Insurance Proceeds.....	\$36,769,641
City of Berkeley.....	\$2,000,000
Friends of Berkeley Tuolumne Camp.....	\$50,000

No other funding is required, and no other Project will be delayed due to this expenditure. The Project budget will be included in the third amendment to FY20 Annual Appropriations Ordinance and budgeted in the Camps Fund budget code 125-52-543-583-0000-000-461-612990.

The City allocated \$3.3 Million of Catastrophic Reserve funds for this Project on April 4, 2017 (Resolution No. 67,889-N.S). City staff projects that the Project will be completed with a total of only \$2.7 Million of City funds, \$0.6 Million underbudget. The City is in the

process of pursuing cost recovery of up to \$2.1 Million of City funds through its FEMA Public Assistance Grant.

CURRENT SITUATION AND ITS EFFECTS

In August 2013, the California Rim Fire destroyed the Berkeley Tuolumne Camp (BTC), a residential family camp located within the Stanislaus National Forest. The closure of BTC has significantly impacted the Department of Parks, Recreation and Waterfront 'Camps Fund', which historically depended on the successful programming at BTC to support the funding of camps programs within the City, as well as capital needs. Due to insurance coverage of business interruption losses and to successful re-organization of Camps programming, the Camps fund is projected to stay positive through FY22, however it has been unable to contribute to capital funding since the Rim Fire (historically \$250,000 per year).

Since the Rim Fire, the City has worked in partnership with the U.S. Forest Service to complete the design, environmental analyses and documentation and to secure permits for the reconstruction of Berkeley Tuolumne Camp. BTC was covered by the City's insurance policy and insurance is the primary source of funding for the reconstruction. The Project is also funded by a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) and by City funds allocated on April 4, 2017 (Resolution No. 67,889-N.S)

BACKGROUND

Berkeley Tuolumne Camp, established in 1922, is a 30-acre property operated under a Special Use Permit with the US Forest Service (USFS). The camp has served primarily as a family camp, but also offered teen leadership programs, adult hiking camps, and private group rental opportunities. Prior to the fire, BTC had the capacity to host approximately 280 campers, 60 staff members, and 10 counselors-in-training at one time and served over 4,000 campers each year. The major facilities at the Camp included a Dining Hall; a Recreation Hall, 77 small single-story wood-frame camper tent cabins; staff cabins; maintenance and storage structures; a bridge across the river; parking and loading areas, and electric, water supply, and wastewater utilities.

In August of 2013, the Rim Fire destroyed Berkeley Tuolumne Camp (BTC) and in December was declared a federal disaster. Most structures at BTC were destroyed by the fire. Since the fire, the City has been working closely with the USFS to complete an updated master plan in order to rebuild Camp. On June 11, 2019, USFS completed its environmental review and finding of no significant impact for the Berkeley Tuolumne Camp Project. On January 22, 2019, the City adopted the notice of determination of no significant impacts for the Project. On September 30, 2019, the USFS executed a Special Use Permit authorizing the City to reconstruct Berkeley Tuolumne Camp and to operate the Camp for a term of 30-years. The City has also received permits for the Project from the California Department of Fish and Wildlife, California Regional Water Quality Control Board, and the United States Army Corps of Engineers.

The property was covered by the City's insurance policy, and insurance proceeds will be the primary source of reconstruction funds. The City has also been awarded a Public Assistance Grant from the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (CalOES) to partially fund reconstruction. City staff have been working closely with Insurance and FEMA/CalOES staff to determine Project funding and cost recovery. On February 25, 2020, FEMA approved the City's request for a consolidated improved Project and authorized a Public Assistance Grant amount of \$45 Million, less insurance proceeds. City staff anticipates that insurance proceeds will exceed \$45 Million and is in the process of requesting FEMA update the grant value to more accurately reflect actual Project costs.

The total cost estimate for the Berkeley Tuolumne Camp Rebuild Project is \$55 Million. This is a decrease of \$5 Million from previous cost estimates due to value-engineering. Of the total \$55 Million Project budget, a total of \$2.7 Million of City funds is required. The remainder of the Project budget is projected to be covered by insurance, FEMA and state grant funding. Of the \$2.0 Million of City funds authorized by this recommendation, up to \$1.9 Million may be recovered from FEMA funding.

On January 24, 2020 the City issued a request for bids for the reconstruction of Berkeley Tuolumne Camp (Spec No. 20-11362-C). The City received four bids. Protests was filed by Walsh Construction Company alleging non-responsiveness in the bid submitted by Robert E. Boyer and by F&H Construction alleging material defects in the bids both by Robert E. Boyer and by Walsh Construction Company. All parties in the protests were given the opportunity to respond to the protest filed against their bid, and to provide additional information regarding their allegations. After a careful evaluation of all material submitted in writing through the protest process, City staff recommends that all protest issues are denied, and Robert E. Boyer Construction, Inc. be determined to be the lowest responsible bidder. A copy of the protest evaluation and recommendation is attached as Attachment 2.

The City received a letter from the Foundation for Fair Contracting on March 19, 2020 alleging that Robert E. Boyer would be unable to fulfill its obligations to comply with rules and regulations governing the payment of prevailing wages. Consistent with California Labor Code, the payment of prevailing wages for this public work project is required, and all bidders including Robert E. Boyer were required to certify compliance with this requirement in bid forms. Per contract documents and state law, Robert E. Boyer shall be required to comply with California Labor Code for this Project, including but not limited to Section 1773 requiring the payment of prevailing wages on public projects.

The Living Wage Ordinance does not apply to this Project since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. This Project is not subject to the Community Workforce Agreement due to its location on federal land (CWA 2.4.4) and because FEMA funding prohibits the use of local preferences for construction procurement (2 CFR§200.319).

ENVIRONMENTAL SUSTAINABILITY

The City approved the Project CEQA documents on January 22, 2019. The United States Forest Service issued its final NEPA documents on June 11, 2019.

This Project will implement Best Management Practices (BMPs) to encourage biodiversity, preserve resources, and maintain riparian and other natural habitats while mitigating hazardous conditions.

RATIONALE FOR RECOMMENDATION

Four bids were submitted for the project and Robert E. Boyer Construction, Inc. is the lowest responsible bidder for the Project.

ALTERNATIVE ACTIONS CONSIDERED

The City does not have the expertise required to complete the tasks covered by this contract. Therefore, no alternative actions were considered.

CONTACT PERSON

Scott Ferris, Director, PRW, 981-6700
Liza McNulty, Project Manager, PRW, 981-6437

Attachments:

- 1: Resolution
- 2: Bid Protest Evaluation

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

CONTRACT: ROBERT E. BOYER CONSTRUCTION, INC. FOR BERKELEY
TUOLUMNE CAMP CONSTRUCTION PROJECT

WHEREAS, the City operated the Berkeley Tuolumne Camp, a residential family camp, since 1922 on United States Forest Service land pursuant to a special use permit; and

WHEREAS, in August 2013, the Berkeley Tuolumne Camp was destroyed by the California Rim Fire; and

WHEREAS, on January 22, 2019 the City of Berkeley adopted the Mitigated Negative Declaration and Mitigation and Monitoring and Reporting Plan for the Berkeley Tuolumne Camp Permit (46690) Project; and

WHEREAS, on June 11, 2019, the U.S. Forest Service completed its environmental review and finding of no significant impact for the Berkeley Tuolumne Camp Project; and

WHEREAS, on September 30, 2019, the U.S. Forest Service executed a 30-year Special Use Permit for the reconstruction and operation of Berkeley Tuolumne Camp; and

WHEREAS, an invitation for bids was duly advertised and four bids were opened on March 12, 2020 and Robert E. Boyer Construction, Inc. was the apparent low bidder; and

WHEREAS, after careful consideration of the allegations raised through bid protests the City concludes that the bid Robert E. Boyer Construction Inc. is the lowest responsive and responsible bidder; and

WHEREAS, funds for the contract have been budgeted for in the adopted FY20-21 Budget and will be included in the third amendment to FY20 Annual Appropriations Ordinance and budgeted in the Camps Fund (budget code 125-52-543-583-0000-000-461-612990);

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 20-111361-C for the Berkeley Tuolumne Camp Cabin Repairs are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley rejects the bid protests of the Robert E. Boyer Construction Inc. bid by Walsh Construction and F&H Construction.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley accepts the bid of the lowest responsive and responsible bidder, Robert E. Boyer Construction Inc.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extension, and/or change orders until completion of the Project in accordance with the approved plans and

specifications with Robert E. Boyer Construction, Inc. for the Berkeley Tuolumne Camp Project in an amount not to exceed \$38,819,641 which includes the base bid and a 10% contingency. A record signature copy of said agreements and any amendments to be on file in the Office of the City Clerk.



Parks, Recreation &
Waterfront Department

Attachment 2

DELIVERED VIA EMAIL

March 31, 2020

Re: Berkeley Tuolumne Camp Construction Project
Specification No. 20-11361-C

Dear: Mr. Cramer, Walsh Construction,
Mr. Seibly, F&H Construction, and
Mr. Boyer, Robert E. Boyer Construction:

On January 24, 2020, the City released for bid the Berkeley Tuolumne Camp Construction project ("Project"). The Project involves the reconstruction of Berkeley Tuolumne Camp buildings, site infrastructure and utilities on United States Forest Service land in Tuolumne County, California. The Published Engineer's Estimate for the Project was \$30,000,000.

On March 12, 2020, bids were opened for the Project. There were a total of 4 bids received. The bidders in order were:

- | | |
|---|-----------------|
| 1. Robert E. Boyer Construction Inc. ("Boyer") | \$35,290,583.00 |
| 2. Walsh Construction ("Walsh") | \$41,816,965.00 |
| 3. F&H Construction ("F&H") | \$49,142,000.00 |
| 4. Roebbelen Quality Construction ("Roebbelen") | \$51,840,000.00 |

The Bid Protests

On March 19, 2020, the City received a bid protest from Walsh which contended that the bid from Boyer was non-responsive because Boyer "failed to complete document 4314 Bidder Registration form identifying its All-Risk insurance carrier, failed to submit a Certificate of Insurance and Boyer's safety documents reflect apparent irregularities." Walsh alleges that the failure of Boyer to identify an "All-Risk carrier and provide either a certification of insurance or a letter evidencing coverage are material irregularities, and consequential defects in the bid involving price which cannot and should not be waived by the City."

By letter also dated March 19, 2020, the City received a bid protest from F&H which protested Boyer's bid by adopting "the points made by Walsh in its protest of the Boyer

bid.¹ F&H also protested Walsh's bid, contending that Walsh's bid was non-responsive due to violations of Public Contract code section 4101(b) and 4106 for, among other things, listing more than one subcontractor for the same portion of the work.

On March 23, 2020, Boyer provided a written response to Walsh's protest, contending that (1) it complied with the instructions to bidders and bid forms in that it did not leave the registration form blank, and that Document 00 4314 directs bidders to comply with Document 00 4513, which does not require insurance letters or documentation unless requested by the City after bid opening; and (2) its failure to properly complete the "Safety Experience" was an inconsequential defect. Boyer further contended that pursuant to Article 4.01(E) of the Bid Documents, Walsh is not eligible to submit a bid protest because Walsh is a non-responsive bidder.

On March 25, 2020, Walsh responded to Boyer's argument, contending that Document 2113 required proof of insurance be submitted on "the date on which the proposals were due" and since Boyer failed to do so, its bid was non-responsive.

I. REQUIREMENTS OF THE BID DOCUMENTS PERTINENT TO THE ISSUES RAISED IN THE PROTEST AGAINST BOYER

- a. Document 01 2000, Measurement and Payment, Item 1.05, A, defines the scope of the contract sum as follows: "The Contract Sum for performance of the Work under Contract Documents, or under any Bid Item, shall include full compensations for all work required under the contract documents, including without limitations all labor...and all terms, conditions requirements and limitations set forth in the Contract Documents."
- b. Document 00 2113, Instructions to Bidders, Article 5.01, Paragraph B, requires the Contractor to provide proof of insurance by 5:00 pm of the 10th calendar day following the notice of intent to award. Article 5.02, Paragraph E states that the insurance certificates and endorsement requirements are contained in Document 00 7316.
- c. Document 00 4113, Bid Form, requires the bidder to accept the terms and conditions of the Contract Documents, and state that they will provide proof of insurance within 10 days after receipt of City's Notice of Intent to Award.
- d. Document 00 4314, Bidder Registration Form, provides "In order to register to undertake work for City of Berkeley, Bidder must (1) Fill out this registration form completely; do not leave blanks and (2) Provide certificates of insurance or a letter

¹ Because F&H's protest against Boyer is based solely upon Walsh's protest, any findings made regarding Walsh's Boyer protest are equally applicable to the protest from F&H against Boyer.

evidencing coverage complying with Document 00 4513 (Statement of Qualifications)”.

- e. Document 00 4315, Statement of Qualifications for Construction Projects, Section 2.03 and 2.03(D) provides, respectively: “Additional Submittals: After bid opening, Contractor will be required to supply the City with the following submittals upon request” and “Insurer Letter re: Capability to Provide the Required Insurance. Bidder shall provide a letter from an insurance underwriter, having a financial rating reasonably acceptable to City, confirming that the insurer will provide Bidder the required coverages and amounts specified in the Contract Documents.”
- f. Document 00 7316, "Supplementary Conditions – Insurance".
 - i. Article 1.01 states: "At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance...".
 - ii. Article 1.07 states, "Contractor shall pay all insurance premiums, including any charges for waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sum due Contractor under Contract Documents."
- g. Addendum No. 2 provided, among other things, that the deductible for All-Risk Course of Construction insurance was increased to \$250,000 from \$10,000. Addendum 2 further provided “Contractor will be required to provide financial documentation demonstrating sufficient liquid reserves to cover the amount between \$10,000 and actual deductible.”

II. DISCUSSION

The central issue in this bid protest is whether the alleged failure by Boyer to identify an All-Risk Insurance carrier along with a Certificate of Insurance at the time the bids were opened is a material defect.² Walsh's argument that Boyer's bid is non-responsive relies on its conclusion that bidders must submit evidence at the time of bid opening that it had the requisite insurance. Walsh argues on page 2 of its March 25 letter that:

“Specifically, Document 7316, Section 1.01 clearly requires: At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City of Berkeley (“City”) satisfactory proof that Contractor has taken out for the

² This bid protest analysis will be focused exclusively on the protest against Boyer, the apparent lowest responsive and responsible bidder since the responsiveness of bids from other bidders are moot if the City determines that Boyer's bid is responsive. Accordingly, the City takes no position on the merits, or lack thereof, of F&H's protest against Walsh's bid nor does the City need to reach Boyer's procedural argument that Walsh, as a non-responsive bidder, lacks standing to protest.

entire period covered by the Contract the following classes of insurance.... The date specified in Document 2113 is the date on which proposals were due, which was amended to March 12, 2020.”

Walsh further argues that, Boyer's failure to submit proof of insurance at bid opening “gave Boyer significant price advantage as Boyer did presumably failed to include the cost of insurance...”

As explained in the next section, the bid documents did not require submission of proof of insurance until after a Notice of Intent to Award is issued or if requested by the City.

II.A Proof of Insurance must be Provided within 10 Days of Notice of Intent to Award or if Requested by the City

Below are excerpts from sections in the Bid Documents regarding insurance, with the pertinent sections underlined for emphasis:

- a. Document 00 2113, Instructions to Bidders, Article 5.01, Paragraph B, requires the Contractor to provide proof of insurance by 5:00 pm of the 10th calendar day following the notice of intent to award. Article 5.02, Paragraph E states that the insurance certificates and endorsement requirements are contained in Document 00 7316.
- b. Document 00 4113, Bid Form, requires the bidder to accept the terms and conditions of the Contract Documents, and state that they will provide proof of insurance within 10 days after receipt of City's Notice of Intent to Award.
- c. Document 00 4314, Bidder Registration Form, provides "In order to register to undertake work for City of Berkeley, Bidder must (1) Fill out this registration form completely; do not leave blanks. and (2) Provide certificates of insurance or a letter evidencing coverage complying with Document 00 4513 (Statement of Qualifications)".
- d. Document 00 4513, Statement of Qualifications for Construction Projects, Section 2.03 and 2.03(D) provides, respectively: “Additional Submittals: After bid opening, Contractor will be required to supply the City with the following submittals upon request” and “Insurer Letter re: Capability to Provide the Required Insurance. Bidder shall provide a letter from an insurance underwriter, having a financial rating reasonably acceptable to City, confirming that the insurer will provide Bidder the required coverages and amounts specified in the Contract Documents.”
- e. Document 00 7316, "Supplementary Conditions – Insurance".
 - i. Article 1.01 states: "At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance...".

- ii. Article 1.07 states, "Contractor shall pay all insurance premiums, including any charges for waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sum due Contractor under Contract Documents."
- f. Addendum No. 2 provided, among other things, that the deductible for All-Risk Course of Construction insurance was increased to \$250,000 from \$10,000. Addendum 2 further provided "Contractor will be required to provide financial documentation demonstrating sufficient liquid reserves to cover the amount between \$10,000 and actual deductible."

By reviewing the excerpts above in their totality, the indisputable conclusion is that proof of All-Risk Insurance was not required by the bid documents to be presented at bid opening. In short, virtually every single mention of insurance certificates or evidence of coverage in the bid documents call for insurance submittals either on the 10th day following notice of intent to award (see 2113, Article 5), or at the City's request after bid opening (see 4513, , 2.03-D). Accordingly, since the bid documents did not require submission of insurance at the time of bid opening, it follows that the failure of Boyer to do so does not render its bid non-responsive.

Next, the City will address the consequences of Boyer listing "TBD" in Document 4314.

II.B Boyer's Listing "TBD" in Document 00 4314, if Defective, is Immaterial

Document 00 4314 provided, in pertinent part:

"In order to register to undertake work for City of Berkeley, Bidder must:

- 1) Fill out this registration form completely; do not leave blanks.
- 2) Provide certificates of insurance or a letter evidencing coverage complying with Document 00 4513 (Statement of Qualifications)."

It is undisputed that Boyer did not leave any "blanks" although for the question regarding All-Risk insurance, Boyer stated "TBD". The issue is whether doing so is a defect and, if so, whether it is waiveable. As explained in section II.A, the bid documents expressly called for submission of proof of insurance either at the City's request or within 10 days of receiving a Notice of Award³. Indeed, even Document 00 4513, specifically cited in Document 00 4314, calls for submission of insurance documents *after bid opening at the request of the*

³ The reason why the City requires a bidder to submit insurance after bid opening is because it would be patently unfair to require bidders to bind such insurance before they even have notice of whether the project would be awarded to them.

City. Thus, even the language in Document 00 4314 itself makes clear that any substantive submission of insurance documents is to be done after bid opening.

While caselaw provides the City with discretion to waive inconsequential defects in a bid, we cannot do so when the defect may affect the amount of the bid. (See Ghilotti Construction v. City of Richmond (1996) 45 Cal.App.4th 897, 904 (“... a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential”).) Here, the submission of insurance documents was not required until after bid opening. Regardless of whether bidders complete Document 4314 with the name of a specific carrier or “TBD”, doing either does not affect the amount of the bid. Walsh speculates, without any factual basis, that failure to list an All-Risk carrier provided Boyer with an unfair advantage in that the premium for such insurance was not included in Boyer's bid. Such concern is misplaced as Document 01 2000 makes clear that all bids must include all costs, which includes insurance. In pertinent part, Document 01 2000 provides:

"The Contract Sum for performance of the Work under Contract Documents, or under any Bid Item, shall include full compensations for all work required under the contract documents, including without limitations all labor...and all terms, conditions requirements and limitations set forth in the Contract Documents."

Moreover, nothing in Document 00 4314 requires that the bidder use the insurance providers identified in this form, or that insurance is in place *at the time of the bid*.

In cases where courts have determined that a defect was not waivable such as in MCM Construction, Inc. v. City and County of San Francisco (1998), 66 Cal.App.4th 359 and Valley Crest Landscape, Inc. v. City Council (1996) 4 Cal.App.4th 1432, those defects were in the nature of typographical or arithmetical errors that would have provided the respective low bidders the right to withdraw their bids pursuant to Public Contract Code section 5103. Here, stating “TBD” in Document 00 4314 does not impact in any manner the amount of Boyer's bid nor does doing so provide Boyer with the ability to withdraw its bid based on section 5103. Accordingly, if stating “TBD” is a defect, it is an inconsequential one which the City may waive because it did not provide Boyer with any competitive advantage. (See MCM Construction, Inc. v. City and County of San Francisco at 375 (“...waiver of an irregularity in a bid should only be allowed if it would not give the bidder an unfair advantage by allowing the bidder to withdraw its bid without forfeiting its bid bond.”)⁴.

⁴ An additional concept that guides the City's decision to waive Boyer's inconsequential defect is that the City must act in the public interest rather than in the private interest of a disappointed bidder. “The provisions of

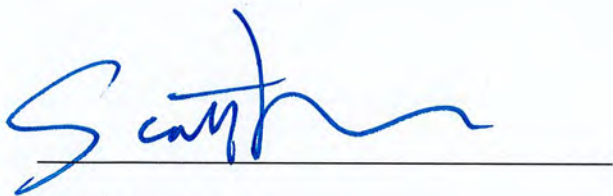
II.C Boyer's Clerical Error in its Safety Section is Immaterial

As explained in section II.B, if a variance could not have affected the price or provide the bidder with a competitive advantage, it is waivable. Here, since Boyer's clerical error regarding its safety experience was immaterial, it is waivable.

III. CONCLUSION

For the reasons explained above, the City deems the lowest responsive and responsible bidder for the Project to be Boyer. This determination is final. The award of this Project to Boyer by the City Council will be made on April 14, 2020. Please call Liza McNulty at (510) 981-6437 should you have any questions.

Very truly yours,



Scott Ferris

Director of Parks, Recreation and Waterfront

statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest." (Ghilotti, 45 Cal.App.4th 897, 909, citing Domar Electric, Inc. v. City of Los Angeles (1994) 9 Cal.4th 161, 176.) Waiver of Boyer's inconsequential defect is especially appropriate here where the defect goes to an item which did not affect the determination of the low bidder.



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Public Works Department

Subject: Funding for the East Bay Communities and East Bay Municipal Utility District Joint Exercise of Powers Agreement and Defendants' Side Agreement for the Control of Wet Weather Overflows and Bypasses and Consent Decree Compliance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to make payments to the Administrative Agency and Financial Agent (East Bay Municipal Utility District) for administering duties in accordance with the terms and conditions of the Joint Exercise of Powers Agreement and the Defendants' Side Agreement to control the wet weather overflows and bypasses for the 5-year period from FY 2020 through FY 2024 in an amount not to exceed \$1,000,000.

FISCAL IMPACTS OF RECOMMENDATION

Staff projects Berkeley's 5-year total cost will be approximately \$1,129,301 from FY 2020 through FY 2024 as shown in Attachment 2. A portion of the cost for FY 2020 will be offset by using funding previously contributed by Berkeley in the amount of \$129,301. The total funding required to pay the remainder of FY 2020 costs (amounting to \$109,569) plus future costs through FY 2024 is \$1,000,000. The remainder cost for FY 2020 (\$109,569) is available in the FY 2020 Sewer Fund (611-54-623-679-0000-000-472-612990). Funding for the future years will be subject to appropriation in future fiscal year budgets.

CURRENT SITUATION AND ITS EFFECTS

The current Joint Power's Authority (JPA) and Defendants' Side Agreement (DSA) were executed on August 6, 2019 as authorized by City Council Resolution No. 69,056-N.S. to meet the requirements of the September 2014 Consent Decree (CD) filed by the Federal Government and the State of California. The JPA members include the Cities of Alameda, Albany, Berkeley, Emeryville, and Piedmont, Stege Sanitary District, and East Bay Municipal Utility District (EBMUD). The JPA members selected EBMUD to continue in the role of the Administrative Agency and Financial Agent for the JPA. EBMUD led the effort to develop the implementation program, work plan and budget, on an annual basis for approval by the JPA members. The program includes professional field services for smoke testing, cleaning and inspection of larger diameter pipes, root control foaming, Fats, Oil, & Grease (FOG)

control as determined by City staff. The costs for studies and projects of general and special benefit were apportioned to the JPA members in accordance with the terms and conditions of the current JPA and DSA.

The work needed to meet the requirements of the CD for FY 2020 will exhaust the \$129,301 remaining from prior authorizations and in the fund balance with EBMUD. The \$1,000,000 will fully fund the additional \$109,569 required for FY 2020 and a total of \$890,431 for work from FY 2021 through FY 2024.

Authorizing the City Manager to make payments in accordance with the JPA supports the City's Strategic Plan goal of providing state-of-the-art, well-maintained infrastructure, amenities, and the goal of advancing environmental justice, and protecting the environment.

BACKGROUND

The current JPA and DSA (authorized by City Council by Resolution 69,056—N.S.) replaces and supersedes previous agreements dating back to 1979. The current JPA facilitates the implementation of programs needed to meet the requirements of the CD. The CD requires significant work by the City over a twenty-two (22) year period with the purpose of eliminating the use of EBMUD's wet weather facilities for discharges during design storm events, includes penalties for failure to complete work and failure to meet flow reductions, and processes for potential revisions to future work if flow reductions are not achieved as planned. The JPA members are linked through their use of the wet weather facilities during high flow periods, as well as through their joint use of the EBMUD treatment plant. The work and the effectiveness of work in an individual JPA member's system affects the results of the entire system, so there is a definite interrelationship that necessitates the need for good communications and joint efforts afforded through the current JPA.

ENVIRONMENTAL SUSTAINABILITY

Funding the current JPA and DSA has a direct benefit to protect the water quality of the San Francisco Bay by reducing wastewater discharges and overflows.

RATIONALE FOR RECOMMENDATION

The most cost effective and reasonable approach to comply with the CD is to work collaboratively with the other member agencies.

ALTERNATIVE ACTIONS CONSIDERED

No other alternative actions were considered as the agreements are required to comply with the Consent Decree.

CONTACT PERSON

Phillip L. Harrington, Director, Public Works (510) 981-6303

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396

Nisha Patel, Manager of Engineering, Public Works (510) 981-6406

Daniel Akagi, Supervising Civil Engineer, Public Works (510) 981-6394

Tiffany Pham, Associate Civil Engineer, Public Works (510) 981-6427

Attachments:

1: Resolution

2: Planned Expenditures from FY 2020 through FY 2024

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

FUNDING FOR THE EAST BAY COMMUNITIES AND EBMUD JOINT EXERCISE OF POWERS AGREEMENT AND DEFENDANTS' SIDE AGREEMENT FOR THE CONTROL OF WET WEATHER OVERFLOWS AND BYPASSES

WHEREAS, on September 22, 2014, the City of Berkeley agreed to a Consent Decree filed by the Federal Government and the State of California to perform certain sanitary sewer capital improvements and maintenance work to control the use of East Bay Municipal Utility District's (EBMUD) wet weather facilities; and

WHEREAS, on July 23, 2019, the new Joint Exercise of Powers Agreement For Control of Wet Weather Overflows and Bypasses (JPA) and the Defendants' Side Agreement (DSA) were authorized by the City Council (Resolution No. 69,056—N.S.); and

WHEREAS, on August 6, 2019, the City Manager executed the JPA and the DSA allowing the City of Berkeley to join the City of Piedmont, City of Emeryville, City of Alameda, City of Albany and the Stege Sanitary District and EBMUD as a member of the JPA and DSA; and

WHEREAS, the City of Berkeley desires to participate in the JPA and DSA from FY 2020 through FY 2024; and

WHEREAS, the City will use \$129,301 remaining from prior authorizations to pay for the work required by the Consent Decree; and

WHEREAS, after the City depletes the remaining \$129,301 previously authorized, the estimated cost for required work from FY 2020 through FY 2024 is \$1,000,000; and

WHEREAS, \$109,569 is available in the Sewer Fund (611-54-623-679-0000-000-472-612990) to fully pay for the cost of FY 2020 work and the \$890,431 for FY 2021 through FY 2024 is subject to appropriation in future fiscal year budgets in the Sewer Fund (611-54-623-679-0000-000-472-612990).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to make payments to the Administrative Agency and Financial Agent in accordance with the terms and conditions of the JPA and the DSA for services provided from FY 2020 through FY 2024 in an amount not to exceed \$1,000,000.

ATTACHMENT 2

Planned Expenditures From FY 2020 Through FY 2024

Item No.	Program Descriptions	Proposed Budget					Total
		FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	
1a	Smoke Testing	\$85,000	\$130,000	\$130,000	\$130,000		
1b	Sewer Cleaning and Inspection (Large Diameter Pipe)	\$50,000		\$50,000		\$40,000	
1c	Root Foaming	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	
2	Management and Facilitation Services	\$2,857	\$2,857	\$2,857	\$2,857	\$2,857	
3	Contingency (10% of Items 1 and 2)	\$16,786	\$16,286	\$21,286	\$16,286	\$7,286	
4	Fog Control Program	\$50,108	\$50,346	\$50,346	\$50,346	\$50,345	
5	Program Costs	\$4,119	\$4,119	\$4,119	\$4,119	\$4,119	
	Total	\$238,870	\$233,608	\$288,608	\$233,608	\$134,607	\$1,129,301
	Previous Contribution by Berkeley	\$129,301					
	Required Funding by Fiscal Year	\$109,569	\$233,608	\$288,608	\$233,608	\$134,607	\$1,000,000



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Phillip L. Harrington, Director, Department of Public Works
Subject: Summary Vacation of Sewer Easement at 2009 Addison Street

RECOMMENDATION

Adopt a Resolution to summarily vacate a sewer easement at 2009 Addison Street.

FISCAL IMPACTS OF RECOMMENDATION

There is no cost to the City to vacate the easement. The property owner, Berkeley Repertory Theatre (BRT), has prepared the Termination of Easement document to be recorded at the County Recorder's office.

CURRENT SITUATION AND ITS EFFECTS

BRT has applied for permits to construct a seven-story mixed-use building for artists housing at this site. The site was originally occupied by a single-story wood frame building at its western half and an open area for truck loading and unloading at its eastern half. The wood frame building has been demolished in preparation for the construction of the proposed building. A four feet wide sewer easement exists in the eastern half. The proposed new building will occupy the entire site including over the sewer easement. For the development to proceed this easement must be relocated or vacated. The City has no need for this easement as it has been superseded by relocation and no public facilities exist within the easement.

BACKGROUND

On May 14, 1917 Mrs. M. H. Jacobs, property owner of the parcel now owned by BRT, granted the City of Berkeley the right and privilege to construct, repair, replace, maintain and use, a sewer over across and under a four feet wide strip of land as recorded in Book 2457 of Deeds, page 308, Alameda County Official Records and described and depicted in Exhibit A of the Termination of Easement document.

Section 8333 of the State Streets and Highways Code grants authority to the legislative body of a local agency to summarily vacate a public service easement if the easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located with the easement.

Public Works has determined that this easement is not necessary and no public facilities exist within the easement. The conditions of Section 8333 have been met and Public Works recommends the vacation of this sewer easement.

ENVIRONMENTAL SUSTAINABILITY

Vacating the easement allows BRT to replace the existing building with a LEED-certified Gold building. LEED (Leadership in Energy and Environmental Design) is an internationally recognized green building certification system that encourages and rewards sustainable building design. In addition this building also meets CALGreen, California's green building standards code to improve public health, safety, and general welfare through enhanced building design and construction.

RATIONALE FOR RECOMMENDATION

The vacation of this easement benefits both BRT and the City. BRT can develop this site for housing artists and theater professionals, and the City does not continue to incur unnecessary liability for an easement that is not used or needed.

ALTERNATIVE ACTIONS CONSIDERED

No other alternative course of action is recommended. If the easement is not vacated the development project cannot proceed as planned.

CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396
Nisha Patel, Manager of Engineering, Public Works (510) 981-6406
Vincent Chen, Associate Civil Engineer, Public Works (510) 981-6409

Attachments:

- 1: Resolution
2. Termination of Easement
3. 1917 Easement Indenture 2457 O.R. 308

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

SUMMARY VACATION OF SEWER EASEMENT AT 2009 ADDISON STREET

WHEREAS, Chapter 4 of the Public Streets, Highways and Service Easements Vacation Law, commencing with Streets and Highways Code section 8330, provides for summary vacation of streets and public service easements; and

WHEREAS the sewer easement was granted May 31, 1917 to the City of Berkeley and recorded in Alameda County Official Records, Book 2457 of Deeds, page 308; and

WHEREAS, Section 8333 of the Streets and Highways Code grants authority to the legislative body of a local agency to summarily vacate a public service easement if the easement has been superseded by relocation, or determined to be excess by the easement holder, and no other public facilities are located within the easement; and

WHEREAS, the Public Works Department has determined the sewer easement at 2009 Addison Street is not needed and no public facilities exists within the easement; and

WHEREAS the City Council intends to summarily vacate the sewer easement as more particularly described and depicted herein in Exhibit "A" of the attached Termination of Easement document.

NOW, THEREFORE, the City Council of the City of Berkeley hereby RESOLVES as follows:

1. This vacation is made under the authority of California Streets and Highways Code Chapter 4 of Part 3 of Division 9, commencing at Section 8330 et seq.
2. The Council of the City of Berkeley does hereby summarily vacate the sewer easement at 2009 Addison Street, as described and depicted in Exhibit "A" of the Termination of Easement document.
3. The City Clerk is hereby authorized and directed to cause a certified copy of this Resolution and Termination of Easement to be recorded in the Office of the Recorder for Alameda County, California.
4. The sewer easement will no longer constitute a public service easement from and after the date of recordation of this Resolution and the Termination of Easement.

RECORDING REQUESTED BY

City of Berkeley

(Exempt from Recording Fees pursuant to Government Code Section 27383)

AND WHEN RECORDED MAIL THIS DEED AND UNLESS OTHERWISE SHOWN BELOW, MAIL TO:

City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attn: City Clerk

APN: 057-2025-023-00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TERMINATION OF EASEMENT/QUITCLAIM
(Sewer Easement)**

This Termination of Easement (“**Easement Termination**”) is entered into at Berkeley, California by and between City of Berkeley, a California charter law city, hereinafter referred to as the “**City**”; and The Berkeley Repertory Theatre, a California nonprofit corporation, also known as Berkeley Repertory Theatre, hereinafter referred to as the “**Owner**”.

RECITALS:

WHEREAS, Owner is the current owner of real property located in the County of Alameda, State of California, commonly known as 2009 Addison Street, Berkeley, Alameda County Assessor Parcel Number 057-2025-023-00 and legally described as Parcel A, as shown on that certain Parcel Map 7429, filed March 23, 2001, in Book 256 of Parcel Maps at pages 23 and 23, Alameda County Official Records ; and

WHEREAS, Owner is the successor in interest to the former owner of the property, Mrs. M. H. Jacobs; and

WHEREAS, the City holds an easement for sewer purposes over a portion of the property described and depicted in **Exhibit A** hereto granted by the former owner pursuant to that certain Indenture recorded May 31, 1917 in Book 2457 of Deeds, page 308, Alameda County Official Records (the “**Indenture**”), the easement was granted by the former owner; and

WHEREAS, there is no sewer line located in the area of the easement; and

WHEREAS, the City and Owner intend by this Termination of Easement/Quitclaim to terminate the sewer easement described in the Indenture.

NOW THEREFORE, FOR VALUABLE CONSIDERATION RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND IN CONSIDERATION OF THE TERMS, COVENANTS BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Termination of Easement. The easement for sewer purposes over a portion of the property, described in that certain Indenture recorded May 31, 2017 in Book 2457 of Deeds, page 308, Alameda County Official Records is hereby terminated. Owner is released from any and all obligations to allow the City to utilize the easement area as an area for a sewer.

2. Counterparts. This Termination of Easement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same document.

3. Recitals. The facts stated in the recitals of this Termination of Easement form the basis of this Termination of Easement and shall be considered a part of this agreement and are incorporated herein by reference.

4. Governing Law. This Termination of Easement shall be construed in accordance with and governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Termination of Easement on the dates specified below their respective signatures.

OWNER:

THE BERKELEY REPERTORY THEATRE
a California nonprofit corporation

By: _____
Name: _____
Title: _____

Date: _____

CITY OF BERKELEY

By: _____
Name: _____
Title: _____

Date: _____

Approved as to Form

City Attorney

Date:

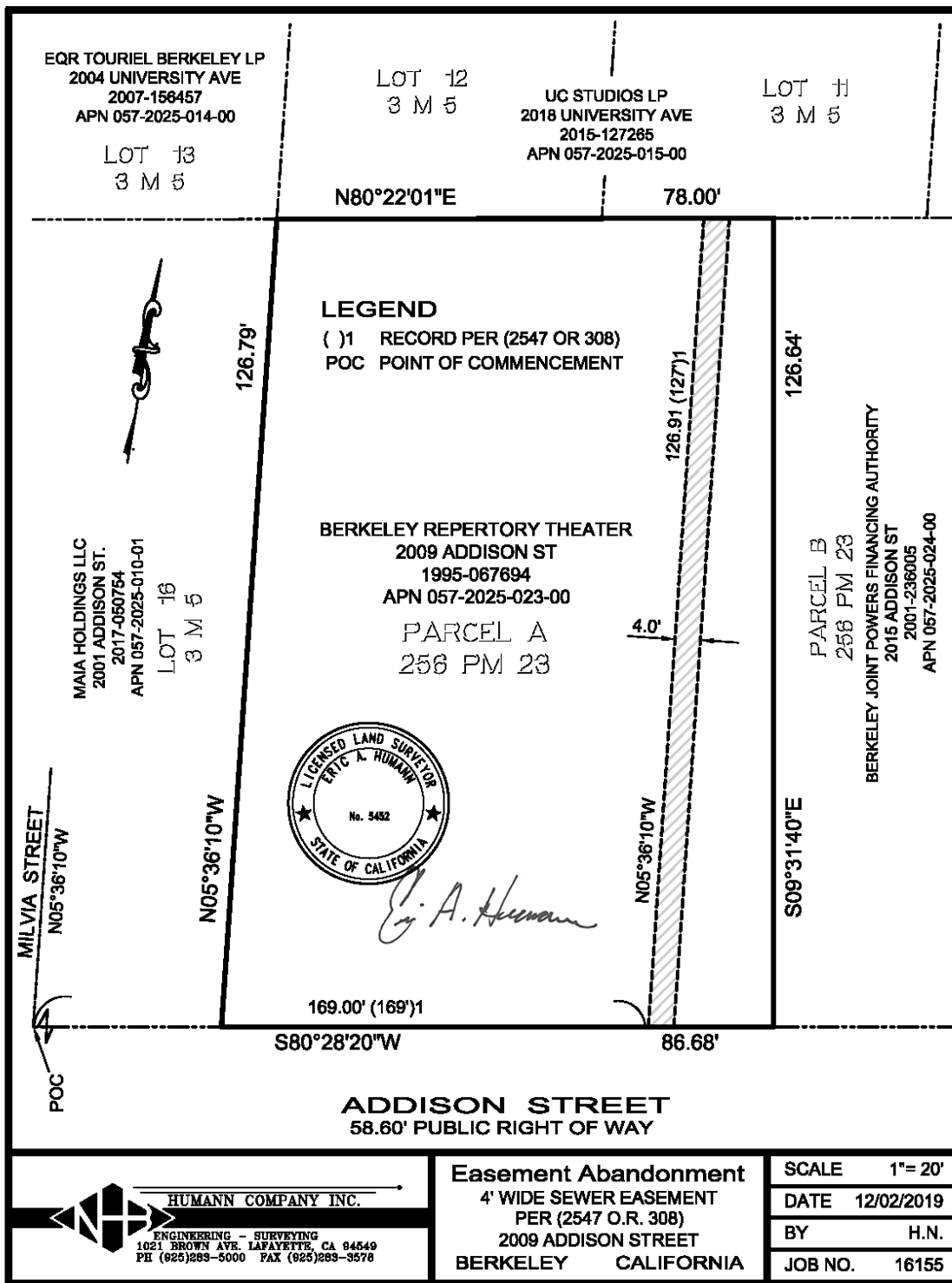
Exhibit A

LEGAL DESCRIPTION OF SEWER EASEMENT AREA

A strip of land four (4)-feet wide, the western line of which is described as follows:

COMMENCING at a point on the northern line of Addison Street distant thereon one hundred sixty nine (169) feet easterly from the eastern line of Milvia Street in the City of Berkeley, and running thence northerly parallel with the eastern line of Milvia Street one hundred twenty seven (127) feet more or less to the northern line of Lot 16, block 1 in Berkeley, Land and Town Improvement, Association, Tract A as shown upon map thereof, filed in the office of the County Recorder of Alameda County.

PLAT OF EASEMENT AREA



HUMANN COMPANY INC.
 ENGINEERING - SURVEYING
 1021 BROWN AVE. LAFAYETTE, CA 94549
 PH (925)283-5000 FAX (925)283-3578

Easement Abandonment
 4' WIDE SEWER EASEMENT
 PER (2547 O.R. 308)
 2009 ADDISON STREET
 BERKELEY CALIFORNIA

SCALE	1"= 20'
DATE	12/02/2019
BY	H.N.
JOB NO.	16155

CERTIFICATE OF ACKNOWLEDGEMENT

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
County of Alameda

On _____, 201_ 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 of Notary Public

(Notary Seal)

CERTIFICATE OF ACKNOWLEDGEMENT

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
County of Alameda

On _____, 201_ 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 of Notary Public

(Notary Seal)

Bk

308

M. H. JACOBS
TO
CITY OF BERKELEY
A CORP.

THIS INDENTURE, Made between MRS M. H. JACOBS of the City of Berkeley, County of Alameda, State of California, the party of the first part, and the City of Berkeley, a Municipal corporation, organized and existing under the laws of the State of California, the party of the second part.

WITNESSETH: That the party of the first part for and in consideration of the sum of Ten (10.00) Dollars in gold coin of the United States of America to be paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, unto said party of the second part, its successors and assigns, the right and privilege to construct, repair, replace, maintain and use, and sewer over across and under the following described property to-wit:

A strip of land, four (4) feet wide, the western line of which is described as follows:

COMMENCING at a point on the northern line of Addison Street distant thereon one hundred sixty nine (169) feet easterly from the eastern line of Milvia Street in the City of Berkeley, and running thence northerly parallel with the eastern line of Milvia Street one hundred twenty seven (127) feet more or less to the northern line of Lot 18, block 1 in Berkeley, Land and Town Improvement, Association, Tract A as shown upon map thereof, filed in the office of the County Recorder of Alameda County.

TOGETHER with a right of way along the above described route with the right of ingress thereto and egress therefrom, for all purposes reasonably connected with the full and complete enjoyment of the rights hereby granted.

IN WITNESS WHEREOF the said party of the first part have executed these presents this 14th day of May 1917.

Approved as to form
Frank D. Stringham
City Attorney

M. H. JACOBS (SEAL)

STATE OF CALIFORNIA
COUNTY OF ALAMEDA,

SS. On this 14th day of May in the year one thousand nine hundred and seventeen before me A. R. AHLGREN a Notary Public in and for the County of Alameda State of California residing therein duly commissioned and sworn, personally appeared MRS M. H. JACOBS known to me to be the person described in and whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. R. AHLGREN Notary Public
(Notarial Seal) In and for said County of Alameda, State of California.

Recorded at request of ALAMEDA COUNTY TITLE CO. MAY 31 1917 at 5 min. past 10 A. M.
R- 20385 7 D.H.

J. M. Bacon
COUNTY RECORDER.

R. I. S. H. L. S. E. P.
A. L. HARRIS TR
TO
C. JONES

WHEREAS the indebtedness secured to be paid under the Deed of Trust executed by LIONEL PERCY JONES AND CATHERINE JONES his wife of the City of Oakland, County of Alameda, State of California to J. F. CARLSTON AND ARTHUR L. HARRIS as Trustees dated July 17th 1916 and recorded in the County Recorder's office of the County of Alameda State of California, on the 18th day of July 1916, in liber 2472 of Deeds page 149 is fully paid, WHEREAS J. F. CARLSTON is at present out of the State of California,

NOW THEREFORE, I, ARTHUR L. HARRIS Trustee do hereby remise, release and convey unto said CATHERINE JONES her heirs and assigns, all the estate and interest derived to us by or through said Deed of Trust in the lot of land situated in the said



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Phillip L. Harrington, Director, Department of Public Works
Subject: Contract: CF Contracting, Inc. for Sacramento Complete Streets Improvements Project

RECOMMENDATION

Adopt a Resolution:

1. Approving plans and specifications for the Sacramento Complete Streets Improvements Project, (“Project”), Specification No. 20-11379-C;
2. Accepting the bid of CF Contracting, Inc., the lowest responsive and responsible bidder; and
3. Authorizing the City Manager to execute a contract with CF Contracting, Inc. and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$2,475,200, which includes a contingency of ten percent.

FISCAL IMPACTS OF RECOMMENDATION

The Sacramento Complete Streets Improvements Project construction budget is \$2,475,200. Funding will be recommended for appropriation through the third amendment to the FY 2020 appropriations ordinance in the following funding sources:

- \$1,248,678 from the Caltrans Active Transportation Program (ATP), Caltrans Grant Fund 344 (344-54-622-668-0000-000-431-665110-);
- \$675,893 from the Alameda County Transportation Commission (Alameda CTC) direct local distribution, Measure BB Bicycle and Pedestrian Fund 135, (135-54-622-668-0000-000-431-665110-);
- \$550,629 from the Alameda CTC direct local distribution, Measure B Local Streets and Roads Fund 130 (130-54-622-668-0000-000-431-665110-); and

Low Bid by CF Contracting, Inc.	\$2,250,275
10% Contingency	\$224,925
<u>Total Not-To-Exceed Construction Cost</u>	<u>\$2,475,200</u>

CURRENT SITUATION AND ITS EFFECTS

On March 10, 2020, five bids were opened for the Project, with bids ranging from \$2,250,175 to \$3,097,478. The determination of the lowest responsible bidder was based

on the total bid price, as indicated in the bid documents. The low bidder was CF Contracting, Inc., with a bid of \$2,250,175, or \$97,825 below the engineer's estimate of \$2.348 million. Staff have identified additional funding to cover the total bid price of the low bidder, plus a 10% contingency, as indicated above. Staff have verified that CF Contracting, Inc. is the lowest responsive and responsible bidder, in accordance with the Public Contract Code.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. CF Contracting, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated construction cost exceeds \$500,000. As a result, the successful bidder and all subcontractors will be required to sign an agreement to be bound by the terms of the Community Work Force Agreement.

BACKGROUND

The purpose of the Sacramento Complete Streets Improvements Project is to improve pedestrian and bicyclist safety at the following intersections of Sacramento Street: Virginia Street, Delaware Street, University Avenue, and Addison Street.

This Project addresses two City Council referrals for intersection safety improvements that are high-priority projects in the Pedestrian Master Plan – Sacramento Street at Addison Street (High Priority Project #4) and Sacramento Street at Virginia Street (High Priority Project #24). The improvements at Virginia Street and Delaware Street also address Tier 1 priority projects from the Bicycle Plan. The Sacramento Complete Streets Improvements Project advances the City's Strategic Goals to (a) provide state-of-the art, well-maintained infrastructure, amenities, and facilities and (b) create a resilient, safe, connected, and prepared city.

In general, the work of this Project includes construction of new sidewalk extensions with directional curb ramps that meet the standards of the Americans with Disabilities Act (ADA); new pavement markings, including crosswalk, vehicular lane, and bike lane markings; a new traffic signal at the Virginia Street intersection; and dedicated left turn traffic signal phases at the University Avenue intersection to eliminate conflicts between pedestrians and left turning vehicles.

For bicyclists that are comfortable sharing the roadway with a low volume of motor vehicles, the proposed new traffic signal at the Virginia Street intersection will improve safety for bicyclists along the Virginia Street bicycle boulevard and will encourage more bicycle riders to use this route.

There will also be safety-related improvements for bicyclists that prefer to ride on a separated pathway, away from motor vehicles. City staff have been working closely with Bay Area Rapid Transit (BART) on the latter's proposed bicycle and motor vehicle ingress and egress modifications at the North Berkeley BART station. BART's project will provide

a needed link between two segments of the Ohlone Greenway pathway that are separated by this BART station, via dedicated bike lanes that will route bicyclists through the BART station grounds. BART's construction project is expected to begin several months after the start of construction on the Sacramento Complete Streets Improvements Project.

On May 31, 2016, City Council authorized the City Manager to apply for grant funding for this Project, which culminated in a grant by Caltrans for \$185,000 in ATP funds. The grant funding agreement between the City and Caltrans was established on January 2, 2019, and City staff commenced engineering design work shortly thereafter.

City staff hosted community meetings on January 28 and April 16, 2019 to solicit public input on the Project. The Project design was subsequently refined, and on May 15, 2019, staff presented the Project to a subcommittee of the Transportation Commission for comment. The Project design was refined based on comments received, and on June 20, 2019, staff presented the Project to the Transportation Commission. The Commission was supportive of the Project, and provided additional comments, which staff used to finalize the design documents.

Construction of the Project is anticipated to be complete by the end of calendar year 2020.

ENVIRONMENTAL SUSTAINABILITY

This Project is designed to improve pedestrian and bicycle traffic safety, with the ultimate expectation of increased numbers of Berkeley residents and visitors who walk and cycle, which is the second goal of the Transportation and Land Use section of the Berkeley Climate Action Plan. The Climate Action Plan also set a goal of reducing transportation emissions 33% below 2000 levels by 2020 and 80% below 2000 levels by 2050, and states further that public transit, walking, and cycling must become the primary means of fulfilling the City's mobility needs in order to meet these goals.

RATIONALE FOR RECOMMENDATION

As indicated above, the project elements are intended to increase pedestrian and bicyclist safety. This Project includes two high-priority projects in the Pedestrian Master Plan and two Tier 1 projects from the Bicycle Plan.

Completion of Project construction requires contracted services, as the City does not possess the in-house staff or equipment resources needed.

ALTERNATIVE ACTIONS CONSIDERED

None. The City does not have adequate in-house resources to complete the project.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works Department (510) 981-7061
Kenneth Jung, Associate Civil Engineer, Public Works Department (510) 981-7028

Attachments:

Contract: CF Contracting, Inc.
for Sacramento Complete Streets Improvements Project

CONSENT CALENDAR
April 14, 2020

- 1: Resolution
- 2: Site Map
- 3: Abstract of Bids

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

CONTRACT: CF CONTRACTING, INC. FOR
SACRAMENTO COMPLETE STREETS IMPROVEMENTS PROJECT

WHEREAS, completion of the Sacramento Complete Streets Improvements Project will provide pedestrian and bicycle safety improvements at four intersections along Sacramento Street: Virginia Street, Delaware Street, University Avenue, and Addison Street; and

WHEREAS, two high-priority projects from the City's Pedestrian Master Plan are included in this Project;

WHEREAS, two Tier 1 projects from the City's Bicycle Plan are included in this Project;

WHEREAS, the City has received State of California Active Transportation Program (ATP) funds for the work of this Project; and

WHEREAS, the City has neither the staff nor the equipment needed to undertake the construction of this Project; and

WHEREAS, on February 14, 2020, the City released an Invitation for Bids (Specification No. 20-11379-C) for the work of this Project; and

WHEREAS, CF Contracting, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS, funds are available in the FY 2020 budget in the Caltrans Grant Fund (Fund 344), the Measure BB Bicycle and Pedestrian Fund (Fund 135), the Measure B Local Streets and Roads Fund (Fund 130), , and the Capital Improvement Fund (Fund 501); and

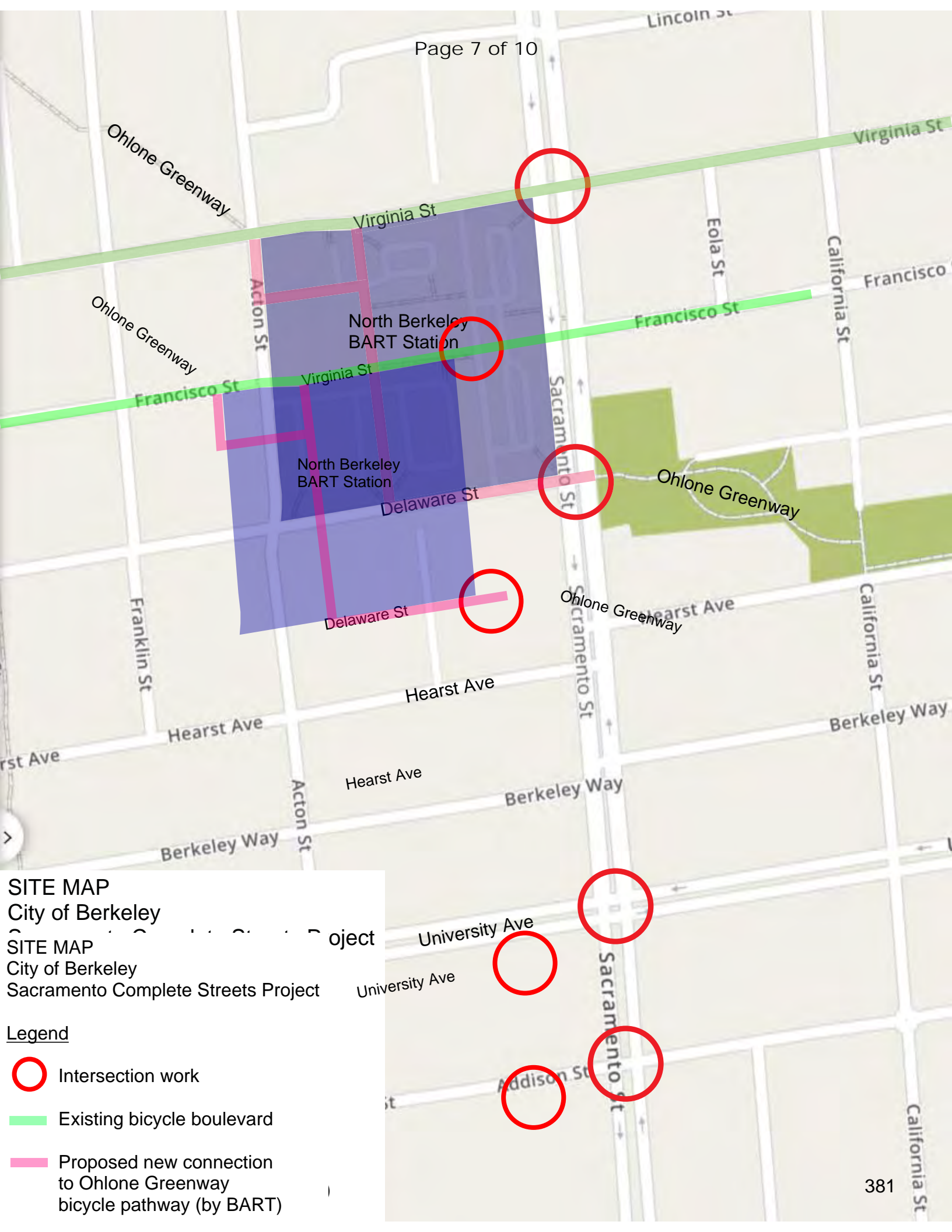
WHEREAS, no other funding is required, and no other project will be delayed due to this expenditure.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 20-11379-C for the Sacramento Complete Streets Improvements Project are approved.

BE IT FUTHER RESOLVED that the Council of the City of Berkeley accepts the bid of CF Contracting, Inc. as the lowest responsive and responsible bidder.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions, and/or change orders until completion of the project in accordance with the approved plans and specifications with CF Contracting, Inc. in an amount not to exceed \$2,475,200, which includes a ten

percent construction contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.



SITE MAP
 City of Berkeley
 Sacramento Complete Streets Project

Legend

- Intersection work
- Existing bicycle boulevard
- Proposed new connection to Ohlone Greenway bicycle pathway (by BART)

ATTACHMENT 3
CITY OF BERKELEY
ABSTRACT OF BIDS

For: e Streets Improvements Project

Spec. No. 20-11379-C

Bid Opening: March 10, 2020, 2:00 PM

Item No.	Est. Qty	Unit	Description	CF Contracting, Inc. San Francisco, CA		Sposeto Engineering, Inc. Livermore, CA		Ghilotti Construction Company, Inc. Santa Rosa, CA		Gruendl Inc. DBA Ray's Electric Oakland, CA		Gallagher & Burk, Inc. Oakland, CA	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	1	LS	Construction Phasing & Traffic Control	\$ 250,000.00	\$ 250,000.00	\$ 198,000.00	\$ 198,000.00	\$ 114,450.00	\$ 114,450.00	\$ 225,000.00	\$ 225,000.00	\$ 580,000.00	\$ 580,000.00
2	1	LS	Construction Area Signs	\$ 10,000.00	\$ 10,000.00	\$ 7,500.00	\$ 7,500.00	\$ 10,000.00	\$ 10,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00
3	1	LS	Water Pollution Control	\$ 5,000.00	\$ 5,000.00	\$ 9,000.00	\$ 9,000.00	\$ 10,000.00	\$ 10,000.00	\$ 15,000.00	\$ 15,000.00	\$ 10,000.00	\$ 10,000.00
4	1	LS	Construction Staking	\$ 20,000.00	\$ 20,000.00	\$ 10,500.00	\$ 10,500.00	\$ 8,000.00	\$ 8,000.00	\$ 10,000.00	\$ 10,000.00	\$ 15,000.00	\$ 15,000.00
5	1	LS	Mobilization	\$ 100,000.00	\$ 100,000.00	\$ 98,000.00	\$ 98,000.00	\$ 235,000.00	\$ 235,000.00	\$ 96,000.00	\$ 96,000.00	\$ 280,000.00	\$ 280,000.00
6.1A	1,520	SF	Remove Asphalt Concrete & Base (Bus Bulbout on University, NE Corner)	\$ 4.80	\$ 7,296.00	\$ 11.00	\$ 16,720.00	\$ 14.00	\$ 21,280.00	\$ 16.00	\$ 24,320.00	\$ 13.00	\$ 19,760.00
6.1B	14,120	SF	Remove Asphalt Concrete & Base (All Other Locations)	\$ 4.80	\$ 67,776.00	\$ 11.00	\$ 155,320.00	\$ 14.00	\$ 197,680.00	\$ 14.00	\$ 197,680.00	\$ 13.00	\$ 183,560.00
6.2A	2,720	SF	Remove Concrete & Base (Bus Bulbout on University, NE Corner)	\$ 4.80	\$ 13,056.00	\$ 15.90	\$ 43,248.00	\$ 14.00	\$ 38,080.00	\$ 16.00	\$ 43,520.00	\$ 13.00	\$ 35,360.00
6.2B	12,780	SF	Remove Concrete & Base (All Other Locations)	\$ 4.80	\$ 61,344.00	\$ 14.90	\$ 190,422.00	\$ 14.00	\$ 178,920.00	\$ 14.00	\$ 178,920.00	\$ 13.00	\$ 166,140.00
6.3A	1	EA	Relocate Roadside Sign (Bus Bulbout on University, NE Corner)	\$ 500.00	\$ 500.00	\$ 270.00	\$ 270.00	\$ 200.00	\$ 200.00	\$ 400.00	\$ 400.00	\$ 350.00	\$ 350.00
6.3B	21	EA	Relocate Roadside Sign (All Other Locations)	\$ 500.00	\$ 10,500.00	\$ 270.00	\$ 5,670.00	\$ 200.00	\$ 4,200.00	\$ 400.00	\$ 8,400.00	\$ 350.00	\$ 7,350.00
6.4	1	LS	City Monument Referencing	\$ 5,200.00	\$ 5,200.00	\$ 5,600.00	\$ 5,600.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 4,000.00	\$ 4,000.00
7	1	LS	Clearing & Grubbing	\$ 25,000.00	\$ 25,000.00	\$ 45,000.00	\$ 45,000.00	\$ 5,000.00	\$ 5,000.00	\$ 20,000.00	\$ 20,000.00	\$ 135,000.00	\$ 135,000.00
8	3	EA	Remove Catch Basin	\$ 450.00	\$ 1,350.00	\$ 2,800.00	\$ 8,400.00	\$ 1,500.00	\$ 4,500.00	\$ 4,500.00	\$ 13,500.00	\$ 5,000.00	\$ 15,000.00
9	73	EA	Adjust Utility Box to Grade	\$ 250.00	\$ 18,250.00	\$ 185.00	\$ 13,505.00	\$ 500.00	\$ 36,500.00	\$ 700.00	\$ 51,100.00	\$ 1,500.00	\$ 109,500.00
10	7	EA	Adjust Maintenance Hole to Grade	\$ 350.00	\$ 2,450.00	\$ 2,000.00	\$ 14,000.00	\$ 1,000.00	\$ 7,000.00	\$ 1,570.00	\$ 10,990.00	\$ 1,500.00	\$ 10,500.00
11	1	EA	Adjust Gas Vent to Grade	\$ 250.00	\$ 250.00	\$ 2,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00	\$ 3,500.00	\$ 3,500.00	\$ 3,000.00	\$ 3,000.00
12	3	EA	Utility Relocation	\$ 5,000.00	\$ 15,000.00	\$ 1,400.00	\$ 4,200.00	\$ 4,500.00	\$ 13,500.00	\$ 10,000.00	\$ 30,000.00	\$ 5,000.00	\$ 15,000.00
13	2,010	LF	Remove Traffic Stripes	\$ 2.60	\$ 5,226.00	\$ 0.70	\$ 1,407.00	\$ 0.50	\$ 1,005.00	\$ 2.00	\$ 4,020.00	\$ 2.00	\$ 4,020.00
14	2,015	SF	Remove Pavement Markings	\$ 2.60	\$ 5,239.00	\$ 3.30	\$ 6,649.50	\$ 2.50	\$ 5,037.50	\$ 2.00	\$ 4,030.00	\$ 2.00	\$ 4,030.00
15A	1,200	SF	Concrete Sidewalk (Bus Bulbout on University, NE Corner)	\$ 20.00	\$ 24,000.00	\$ 14.70	\$ 17,640.00	\$ 21.00	\$ 25,200.00	\$ 21.00	\$ 25,200.00	\$ 22.00	\$ 26,400.00
15B	8,680	SF	Concrete Sidewalk (All Other Locations)	\$ 15.00	\$ 130,200.00	\$ 14.90	\$ 129,332.00	\$ 21.00	\$ 182,280.00	\$ 16.00	\$ 138,880.00	\$ 22.00	\$ 190,960.00
16.1A	19	LF	Concrete Curb and Gutter, 24-inch (Bus Bulbout on University, NE Corner)	\$ 80.00	\$ 1,520.00	\$ 73.00	\$ 1,387.00	\$ 70.00	\$ 1,330.00	\$ 75.00	\$ 1,425.00	\$ 85.00	\$ 1,615.00
16.1B	251	LF	Concrete Curb and Gutter, 24-inch (All Other Locations)	\$ 80.00	\$ 20,080.00	\$ 72.00	\$ 18,072.00	\$ 70.00	\$ 17,570.00	\$ 69.00	\$ 17,319.00	\$ 85.00	\$ 21,335.00
16.2	205	LF	Concrete Curb and Gutter, 12-inch	\$ 53.00	\$ 10,865.00	\$ 62.00	\$ 12,710.00	\$ 70.00	\$ 14,350.00	\$ 63.00	\$ 12,915.00	\$ 60.00	\$ 12,300.00
16.3	215	LF	Concrete Curb	\$ 43.00	\$ 9,245.00	\$ 56.00	\$ 12,040.00	\$ 70.00	\$ 15,050.00	\$ 58.00	\$ 12,470.00	\$ 60.00	\$ 12,900.00
17	185	SF	Concrete Island Median with Rolled Curb	\$ 70.00	\$ 12,950.00	\$ 36.00	\$ 6,660.00	\$ 70.00	\$ 12,950.00	\$ 50.00	\$ 9,250.00	\$ 30.00	\$ 5,550.00
18	360	SF	Concrete Driveway Approach (Bus Bulbout on University, NE Corner)	\$ 19.00	\$ 6,840.00	\$ 20.40	\$ 7,344.00	\$ 45.00	\$ 16,200.00	\$ 24.00	\$ 8,640.00	\$ 30.00	\$ 10,800.00
19A	2	EA	Concrete Curb Ramp (Bus Bulbout on University, NE Corner)	\$ 4,000.00	\$ 8,000.00	\$ 3,600.00	\$ 7,200.00	\$ 4,000.00	\$ 8,000.00	\$ 5,000.00	\$ 10,000.00	\$ 4,200.00	\$ 8,400.00
19B	25	EA	Concrete Curb Ramp (All Other Locations)	\$ 3,500.00	\$ 87,500.00	\$ 3,880.00	\$ 97,000.00	\$ 4,000.00	\$ 100,000.00	\$ 5,500.00	\$ 137,500.00	\$ 4,200.00	\$ 105,000.00

ATTACHMENT 3
CITY OF BERKELEY
ABSTRACT OF BIDS

For: e Streets Improvements Project

Spec. No. 20-11379-C

Bid Opening: March 10, 2020, 2:00 PM

Item No.	Est. Qty	Unit	Description	CF Contracting, Inc. San Francisco, CA		Sposeto Engineering, Inc. Livermore, CA		Ghilotti Construction Company, Inc. Santa Rosa, CA		Gruendl Inc. DBA Ray's Electric Oakland, CA		Gallagher & Burk, Inc. Oakland, CA	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
20A	1,500	SF	Portland Cement Concrete (PCC) Bus-Stop Pad (Bus Bulbout on University, NE Corner)	\$ 35.00	\$ 52,500.00	\$ 27.60	\$ 41,400.00	\$ 35.00	\$ 52,500.00	\$ 28.00	\$ 42,000.00	\$ 30.00	\$ 45,000.00
20B	2,820	SF	Portland Cement Concrete (PCC) Bus-Stop Pad (All Other Locations)	\$ 35.00	\$ 98,700.00	\$ 27.60	\$ 77,832.00	\$ 35.00	\$ 98,700.00	\$ 25.00	\$ 70,500.00	\$ 30.00	\$ 84,600.00
21	1	EA	Concrete Collar	\$ 400.00	\$ 400.00	\$ 2,100.00	\$ 2,100.00	\$ 1,500.00	\$ 1,500.00	\$ 1,250.00	\$ 1,250.00	\$ 4,000.00	\$ 4,000.00
22	8,500	SF	Asphaltic Concrete Grinding/Milling	\$ 3.00	\$ 25,500.00	\$ 2.20	\$ 18,700.00	\$ 1.80	\$ 15,300.00	\$ 2.50	\$ 21,250.00	\$ 2.00	\$ 17,000.00
23A	50	TN	Hot Mix Asphalt, Type A (Bus Bulbout on University, NE Corner)	\$ 500.00	\$ 25,000.00	\$ 290.00	\$ 14,500.00	\$ 300.00	\$ 15,000.00	\$ 250.00	\$ 12,500.00	\$ 400.00	\$ 20,000.00
23B	420	TN	Hot Mix Asphalt, Type A (All Other Locations)	\$ 380.00	\$ 159,600.00	\$ 314.00	\$ 131,880.00	\$ 300.00	\$ 126,000.00	\$ 315.00	\$ 132,300.00	\$ 350.00	\$ 147,000.00
24A	44	TN	Aggregate Base (Bus Bulbout on University, NE Corner)	\$ 135.00	\$ 5,940.00	\$ 136.00	\$ 5,984.00	\$ 220.00	\$ 9,680.00	\$ 45.00	\$ 1,980.00	\$ 350.00	\$ 15,400.00
24B	456	TN	Aggregate Base (All Other Locations)	\$ 135.00	\$ 61,560.00	\$ 139.00	\$ 63,384.00	\$ 220.00	\$ 100,320.00	\$ 45.00	\$ 20,520.00	\$ 300.00	\$ 136,800.00
25.1	4	EA	Catch Basin	\$ 6,800.00	\$ 27,200.00	\$ 5,200.00	\$ 20,800.00	\$ 4,500.00	\$ 18,000.00	\$ 7,500.00	\$ 30,000.00	\$ 7,000.00	\$ 28,000.00
25.2	1	EA	Modified Catch Basin	\$ 2,500.00	\$ 2,500.00	\$ 2,900.00	\$ 2,900.00	\$ 4,000.00	\$ 4,000.00	\$ 12,000.00	\$ 12,000.00	\$ 4,000.00	\$ 4,000.00
25.3	1	EA	Storm Drain Maintenance Hole	\$ 25,000.00	\$ 25,000.00	\$ 7,200.00	\$ 7,200.00	\$ 10,000.00	\$ 10,000.00	\$ 3,000.00	\$ 3,000.00	\$ 10,000.00	\$ 10,000.00
26.1	85	LF	Storm Drain Pipe (15" RCP)	\$ 650.00	\$ 55,250.00	\$ 310.00	\$ 26,350.00	\$ 380.00	\$ 32,300.00	\$ 400.00	\$ 34,000.00	\$ 410.00	\$ 34,850.00
26.2	12	LF	Storm Drain Pipe (12" RCP)	\$ 1,000.00	\$ 12,000.00	\$ 260.00	\$ 3,120.00	\$ 500.00	\$ 6,000.00	\$ 400.00	\$ 4,800.00	\$ 450.00	\$ 5,400.00
27	4	EA	Bollard	\$ 2,320.00	\$ 9,280.00	\$ 2,700.00	\$ 10,800.00	\$ 1,000.00	\$ 4,000.00	\$ 1,785.00	\$ 7,140.00	\$ 1,800.00	\$ 7,200.00
28	388	LF	Stop Bar	\$ 6.00	\$ 2,328.00	\$ 6.00	\$ 2,328.00	\$ 4.00	\$ 1,552.00	\$ 4.00	\$ 1,552.00	\$ 4.00	\$ 1,552.00
28.1	3,360	SF	Triple Four Crosswalk	\$ 6.00	\$ 20,160.00	\$ 6.60	\$ 22,176.00	\$ 5.00	\$ 16,800.00	\$ 4.00	\$ 13,440.00	\$ 4.00	\$ 13,440.00
28.2	451	LF	Double 6" Yellow Line (Detail 21)	\$ 6.00	\$ 2,706.00	\$ 3.30	\$ 1,488.30	\$ 2.50	\$ 1,127.50	\$ 4.00	\$ 1,804.00	\$ 4.00	\$ 1,804.00
28.3	165	LF	Double 6" Yellow Line (Detail 22)	\$ 6.00	\$ 990.00	\$ 3.30	\$ 544.50	\$ 2.50	\$ 412.50	\$ 4.40	\$ 726.00	\$ 4.00	\$ 660.00
28.4	303	LF	6" Yellow Line (Detail 25)	\$ 3.00	\$ 909.00	\$ 1.65	\$ 499.95	\$ 1.25	\$ 378.75	\$ 2.10	\$ 636.30	\$ 2.00	\$ 606.00
28.5	303	LF	6" White Stripe (Bike Buffer)	\$ 3.00	\$ 909.00	\$ 3.30	\$ 999.90	\$ 2.50	\$ 757.50	\$ 2.20	\$ 666.60	\$ 2.00	\$ 606.00
28.6	120	LF	8" White Line (Detail 38A)	\$ 4.00	\$ 480.00	\$ 2.65	\$ 318.00	\$ 2.00	\$ 240.00	\$ 3.00	\$ 360.00	\$ 3.00	\$ 360.00
28.7	206	LF	Lane Lines (Detail 9)	\$ 3.00	\$ 618.00	\$ 2.65	\$ 545.90	\$ 2.00	\$ 412.00	\$ 2.20	\$ 453.20	\$ 2.00	\$ 412.00
28.8	45	SF	Yield line	\$ 6.00	\$ 270.00	\$ 6.60	\$ 297.00	\$ 5.00	\$ 225.00	\$ 4.40	\$ 198.00	\$ 4.00	\$ 180.00
28.9	165	LF	6" Yellow Stripe (Median Buffer)	\$ 3.00	\$ 495.00	\$ 2.65	\$ 437.25	\$ 2.00	\$ 330.00	\$ 2.20	\$ 363.00	\$ 2.00	\$ 330.00
28.10	791	SF	6" Bike Lane Line (Detail 39)	\$ 3.00	\$ 2,373.00	\$ 2.00	\$ 1,582.00	\$ 1.50	\$ 1,186.50	\$ 2.00	\$ 1,582.00	\$ 2.00	\$ 1,582.00
28.11	252	SF	Type III Arrow (Large Turn Arrow)	\$ 6.00	\$ 1,512.00	\$ 6.60	\$ 1,663.20	\$ 5.00	\$ 1,260.00	\$ 4.40	\$ 1,108.80	\$ 4.00	\$ 1,008.00
28.12	83	SF	Type IV Arrow (Small Turn Arrow)	\$ 6.00	\$ 498.00	\$ 6.60	\$ 547.80	\$ 5.00	\$ 415.00	\$ 4.40	\$ 365.20	\$ 4.00	\$ 332.00
28.13	84	SF	Bike Lane / Shared Lane Symbol	\$ 6.00	\$ 504.00	\$ 6.60	\$ 554.40	\$ 5.00	\$ 420.00	\$ 4.40	\$ 369.60	\$ 4.00	\$ 336.00
28.14	22	SF	"ONLY" Pavement Marking	\$ 6.00	\$ 132.00	\$ 6.60	\$ 145.20	\$ 5.00	\$ 110.00	\$ 4.40	\$ 96.80	\$ 4.00	\$ 88.00
28.15	88	SF	"STOP" Pavement Marking	\$ 6.00	\$ 528.00	\$ 6.60	\$ 580.80	\$ 5.00	\$ 440.00	\$ 4.40	\$ 387.20	\$ 4.00	\$ 352.00
28.16	7	EA	Channelizer Posts	\$ 208.00	\$ 1,456.00	\$ 135.00	\$ 945.00	\$ 100.00	\$ 700.00	\$ 160.00	\$ 1,120.00	\$ 150.00	\$ 1,050.00
29A	68	LF	Curb Paint (Bus Bulbout on University, NE Corner)	\$ 3.00	\$ 204.00	\$ 3.30	\$ 224.40	\$ 2.50	\$ 170.00	\$ 2.00	\$ 136.00	\$ 2.00	\$ 136.00
29B	932	LF	Curb Paint (All Other Locations)	\$ 3.00	\$ 2,796.00	\$ 3.30	\$ 3,075.60	\$ 2.50	\$ 2,330.00	\$ 2.00	\$ 1,864.00	\$ 2.00	\$ 1,864.00
30	40	EA	Roadside Sign on Post	\$ 566.00	\$ 22,640.00	\$ 3.60	\$ 144.00	\$ 275.00	\$ 11,000.00	\$ 435.00	\$ 17,400.00	\$ 400.00	\$ 16,000.00
31	18	LF	Wood Fence	\$ 200.00	\$ 3,600.00	\$ 84.00	\$ 1,512.00	\$ 120.00	\$ 2,160.00	\$ 150.00	\$ 2,700.00	\$ 150.00	\$ 2,700.00
32.1	1	LS	Mulch	\$ 5,000.00	\$ 5,000.00	\$ 1,600.00	\$ 1,600.00	\$ 3,500.00	\$ 3,500.00	\$ 3,200.00	\$ 3,200.00	\$ 2,000.00	\$ 2,000.00
32.2	1	LS	Wood Chips	\$ 3,000.00	\$ 3,000.00	\$ 1,200.00	\$ 1,200.00	\$ 2,200.00	\$ 2,200.00	\$ 1,750.00	\$ 1,750.00	\$ 1,000.00	\$ 1,000.00
32.3	1	LS	Decomposed Granite	\$ 4,000.00	\$ 4,000.00	\$ 800.00	\$ 800.00	\$ 400.00	\$ 400.00	\$ 750.00	\$ 750.00	\$ 1,000.00	\$ 1,000.00

ATTACHMENT 3
CITY OF BERKELEY
ABSTRACT OF BIDS

For: e Streets Improvements Project

Spec. No. 20-11379-C

Bid Opening: March 10, 2020, 2:00 PM

Item No.	Est. Qty	Unit	Description	CF Contracting, Inc. San Francisco, CA		Sposeto Engineering, Inc. Livermore, CA		Ghilotti Construction Company, Inc. Santa Rosa, CA		Gruendl Inc. DBA Ray's Electric Oakland, CA		Gallagher & Burk, Inc. Oakland, CA	
				Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
33	1	LS	Soil Preparation at Planting Areas	\$ 3,000.00	\$ 3,000.00	\$ 1,500.00	\$ 1,500.00	\$ 900.00	\$ 900.00	\$ 2,100.00	\$ 2,100.00	\$ 2,000.00	\$ 2,000.00
34	1	LS	Traffic Signal Improvements	\$ 342,000.00	\$ 342,000.00	\$ 680,000.00	\$ 680,000.00	\$ 298,053.00	\$ 298,053.00	\$ 665,000.00	\$ 665,000.00	\$ 257,000.00	\$ 257,000.00
35.1	1	LS	Temporary Traffic Signal Systems - Delaware Intersection	\$ 251,000.00	\$ 251,000.00	\$ 32,000.00	\$ 32,000.00	\$ 218,517.00	\$ 218,517.00	\$ 39,000.00	\$ 39,000.00	\$ 190,000.00	\$ 190,000.00
35.2	1	LS	Temporary Traffic Signal Systems - University Intersection	\$ 81,000.00	\$ 81,000.00	\$ 13,000.00	\$ 13,000.00	\$ 70,845.00	\$ 70,845.00	\$ 23,000.00	\$ 23,000.00	\$ 40,000.00	\$ 40,000.00
Total Price of Bid				\$ 2,250,175.00	\$ 2,250,175.00	\$ 2,342,455.70	\$ 2,342,455.70	\$ 2,419,424.25	\$ 2,419,424.25	\$ 2,497,347.70	\$ 2,497,347.70	\$ 3,097,478.00	\$ 3,097,478.00

Text in ***bold italicized font*** indicates an arithmetic error in the bid documents, which has been corrected in this bid canvass. The error was found to not affect the determination of the lowest responsible responsive bidder.

Verified by: Kenneth Jung *KJ*

Submitted by: Kenneth Jung *KJ*



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Phillip L. Harrington, Director, Department of Public Works
 Subject: Contract Amendment Contract 10747: Clean Harbors, Inc. for Hazardous Waste Management Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract amendment with Clean Harbors, Inc. for hazardous waste management, removal, and disposal services for the City of Berkeley, increasing the contract amount by \$300,000 for an amount not-to-exceed \$450,000 and extend the contract term through June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Depending on the type and frequency of service, the annual expenditure is estimated to be \$50,000 primarily from the Funds listed below. Additional funding will be provided by the specific departments requesting services during FY 2021 – FY 2023. Annual allocations of funds will be subject to approval of the Budget and Annual Appropriation Ordinances. Additional funding sources may be added in response to the novel coronavirus emergency situation.

Funding is currently available as listed below:

General Fund 011	\$22,000
Zero Waste Fund 601	\$25,000
State Transportation Tax Fund 127	\$1,000
Library Fund 101	\$2,000
Estimated Annual Contract Amendment Expenditures	\$50,000

CURRENT SITUATION AND ITS EFFECTS

Clean Harbors, Inc. and its subsidiary Safety-Kleen (that focuses on used oil collection and recycling) remove hazardous waste generated or illegally disposed of at the City’s Solid Waste Management Center and Transfer Station (Transfer Station), Corporation Yard and Marina. In addition, Clean Harbors responds to hazardous material emergencies that exceed the Berkeley Fire Department and Hazardous Materials Response Team’s capabilities to remove and dispose of such materials located on City property. Services to be provided under this contract include classification, packaging, recycling, treatment and disposal of hazardous and universal waste abandoned in and

generated by the City; and emergency response, clean up and disposal services for accidental hazardous substance releases.

Additional emergency services may be added in response to the novel coronavirus.

BACKGROUND

The City issued a Request for Proposals in March 2017 (Spec No. 17-11112-C). Department of Public Works staff evaluated three submitted proposals and selected Clean Harbors, Inc. as the most responsive, cost competitive and qualified vendor to meet the needs of the City. Clean Harbors, Inc. and its subsidiary Safety-Kleen are currently under contract to provide treatment and disposal of hazardous and universal waste services. The current contract not to exceed amount is \$150,000.

The City generates hazardous waste through its routine business processes including vehicle, street and building maintenance. Additionally, hazardous waste is occasionally abandoned or spilled onto city streets thus posing a risk to the public. The City must have access to the services of a licensed hazardous waste contractor compliant with all federal, State and local regulations, whom is available to provide services to mitigate these risks, as well as the protection afforded by a full service hazardous waste firm for the cleanup of potentially large, highly toxic or more complex hazardous waste cleanup efforts. Clean Harbors has continuously provided reliable service.

ENVIRONMENTAL SUSTAINABILITY

The contract details a hierarchy for hazardous waste management outlining the ultimate disposition of such waste with direct reuse as the first option and landfill as the last option. Clean Harbors, Inc. has been proven to dispose of hazardous waste responsibly, thereby minimizing the potential for accidental release of such materials.

RATIONALE FOR RECOMMENDATION

This contract execution will allow proper disposal and management of hazardous waste and spill response. State and federal regulations require all hazardous and universal waste be disposed of according to strict guidelines. The City has neither the staff nor equipment in-house to provide these services. Clean Harbors, Inc. was selected through a competitive process and is considered most qualified to provide service to the City.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Phillip L. Harrington, Director, Department of Public Works (510) 981-6303
Joy Brown, Senior Management Analyst, Public Works (510) 981-6629

Attachment:
1: Resolution

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

CONTRACT NO. 10747 AMENDMENT: CLEAN HARBORS, INC.
FOR HAZARDOUS WASTE MANAGEMENT SERVICES

WHEREAS, on March 17, 2017 the City requested proposals (Spec. No. 17-11112-C) for hazardous waste management and Clean Harbors, Inc. was selected as the most qualified, responsive and competitive firm to provide these services; and

WHEREAS, on 2017 by Resolution No. 68,089-N.S. City Council authorized the City Manager to enter into a contract with Clean Harbors, Inc. in the amount not to exceed \$150,000; and

WHEREAS, the City generates hazardous waste through its routine business processes including vehicle, street and building maintenance, and hazardous waste is occasionally abandoned or spilled into the City right of way posing a risk to the public, and hazardous waste must be properly managed, recycled and disposed of, and Clean Harbors has an excellent reputation of providing these services; and

WHEREAS, the City may have the need for emergency response services; and

WHEREAS, funds have been identified from each participating department and division subject to appropriation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract amendment with Clean Harbors, Inc. including its subsidiary Safety-Kleen for as-needed hazardous waste management, removal, recycling, treatment and disposal services in an amount not to exceed \$450,000 through June 30, 2022. A record signature of this contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Phillip L. Harrington, Director, Department of Public Works
 Subject: Contract: Bay Cities Paving & Grading, Inc. for Street Rehabilitation FY 2020 Project

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Street Rehabilitation FY 2020 Project, Specification No. 20-11367-C; accepting the bid of Bay Cities Paving & Grading, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project, in accordance with the approved plans and specifications in an amount not to exceed \$4,478,909.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available from the Street Capital Improvement Program budget. No other funding is required, and no other projects will be delayed due to this expenditure.

Low bid by Contractor	\$3,732,424
20% Contingency	\$746,485
Total construction cost	\$4,478,909

FY 2020 Funding:

Street & Transportation Capital Improvement Program Funds	
State Transportation Tax (127-54-623-673-0000-000-431-665110).....	\$401,391
Measure B Sales Tax (130-54-623-673-0000-000-431-665110)	\$100,000
Measure BB Sales Tax (135-54-622-668-0000-000-431-665110)	\$100,000
Capital Improvement Fund (501-54-623-673-0000-000-431-665110)...	\$1,277,518
Clean Storm Water Fund (616-54-623-675-0000-000-473-665120)	\$700,000
Road Maintenance & Rehabilitation Account (SB1)	
(127-54-623-673-0000-000-431-665110)	\$1,500,000
Annual Appropriations Ordinance #2 Capital Improvement Fund	
(501-54-623-673-0000-000-431-665110)	\$400,000
Total construction cost	\$4,478,909

CURRENT SITUATION AND ITS EFFECTS

The Street Rehabilitation FY 2020 Project (Specification No. 20-11367-C) was released for bids on January 28, 2020, and bids were opened on February 20, 2020 (see

Attachment 3, Abstract of Bids). Five non-local bids were received, from a low of \$3,732,424 to a high of \$4,015,579. The engineer's estimate for the project was \$3,900,000. Bay Cities Paving & Grading, Inc. of Concord, California was the lowest responsive and responsible bidder, with a bid of \$3,732,424, and their references were found to be satisfactory. This project includes a 20% contingency, which brings the total contract amount up to the requested \$4,478,909. Staff recommends a contract for this project be awarded to Bay Cities Paving & Grading, Inc.

The Street Rehabilitation FY 2020 Project is a Strategic Plan Priority Project, advancing our goal to provide state-of-the art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Streets throughout Berkeley are scheduled for rehabilitation as part of the City's Five-Year Street Rehabilitation Plan. Berkeley maintains a rolling 5-Year Street Rehabilitation Plan for resurfacing and repaving City streets. The plan is generated with the aid of a sophisticated Pavement Management System developed by the Metropolitan Transportation Commission. The plan was most recently updated for Fiscal Years 2020 through 2024 by Resolution 69,271-N.S. adopted by Council on January 21, 2020.

This contract is for construction of approximately 2.6 miles of City streets, and consists of rehabilitation and surface seal of selected streets as shown in Attachment 2: Location Map & List of Streets.

In addition to street repaving, the project incorporates many other improvements to selected streets in compliance with the Berkeley Complete Streets Policy (Resolution No. 65,978-N.S.), the Americans with Disabilities Act, and stormwater best management practices. Among the Complete Streets improvements included are Bicycle Plan and Pedestrian Master Plan recommendations to build a concrete island bicycle crossing at the 9th Street Bicycle Boulevard and Cedar Street intersection; install painted buffered and parking-protected bicycle lanes on Center Street; install painted bulbouts and sharrows on Santa Fe Avenue; and paint high visibility crosswalks at multiple locations. Additional infrastructure repairs including curb ramps, curbs, sidewalks, drainage inlets and pipes, gutters, and speed tables are also included in this project. Taken together, all of the non-repaving related costs represent approximately 30% to 40% of construction costs.

The project plans and specifications have gone through planning, coordination with outside utility companies, preliminary cost estimates, field investigations, surveys, and extensive design prior to being released for bid.

The plans and specifications are on file in the Public Works Department. In accordance with the requirements of the California Environmental Quality Act (CEQA), this project has been determined to be categorically exempt because it consists of maintenance of existing streets and does not expand their use beyond existing conditions.

The Living Wage Ordinance does not apply to this project since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. Bay Cities Paving & Grading, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated value of the project exceeds \$500,000. As a result, the contractor and all subcontractors will be required to sign an agreement to be bound by the terms of the Agreement.

ENVIRONMENTAL SUSTAINABILITY

During analysis and revision of the Five-Year Street Rehabilitation Plan, these project locations were analyzed for possible green infrastructure improvements to treat urban runoff before entering the storm drain system. Due to underlying soil and geographic conditions and existing land use, it was determined that green infrastructure improvements would be more beneficial at alternative paving locations. The project includes rubberized hot mix asphalt treatments which will divert waste tires from local landfills.

RATIONALE FOR RECOMMENDATION

This street repair project is part of the City's ongoing annual program to rehabilitate deteriorated streets throughout the City. The work requires contracted services, as the City does not possess the in-house labor or equipment resources necessary to complete the project.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this pavement rehabilitation project. The City could choose not to proceed with this project. However, the street pavement would then continue to deteriorate and drainage improvements would not be made, affecting use by the community and others.

CONTACT PERSON

Nisha Patel, Manager of Engineering & City Engineer (510) 981-6406
Joe Enke, Supervising Civil Engineer (510) 981-6411

Attachments:

- 1: Resolution
- 2: Location Map & List of Streets for Project
- 3: Abstract of Bids

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

CONTRACT: BAY CITIES PAVING & GRADING, INC. FOR STREET
REHABILITATION FY 2020 PROJECT

WHEREAS, the Street Rehabilitation FY 2020 Project is part of the City's ongoing Street Capital Improvement Program to rehabilitate deteriorated streets located throughout the City; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this Street Rehabilitation FY 2020 Project; and

WHEREAS, an invitation for bids was duly advertised and Bay Cities Paving & Grading, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, funding is available in the current year budget in the Street and Transportation Capital Improvement Program State Transportation Tax (Fund 127), Measure B Sales Tax (Fund 130), Measure BB Sales Tax (Fund 135), Capital Improvement Fund (Fund 501), and Clean Storm Water (Fund 616).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 20-11367-C for the Street Rehabilitation FY 2020 Project are approved.

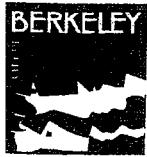
BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions or change orders, until completion of the project in accordance with the approved plans and specifications with Bay Cities Paving & Grading, Inc. for the Street Rehabilitation FY 2020 Project, in an amount not to exceed \$4,478,909, which includes a 20% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.

Street Rehabilitation FY 2020



Street	From	To
Acton	Ashby	66th
Arcade	Grizzly Peak	Fairlawn
Cedar	6 th	San Pablo
Center	M. L. King Jr.	Shattuck
Deakin	Russell	Prince

Dohr	Ashby	Prince
Michigan	Maryland	Spruce
Roosevelt	Channing	Dwight
Rose	Tamalpais	End East of Greenwood Terrace
Santa Fe	N. City Limit	Cornell
Shasta	Grizzly Peak	E. City Limit
West	Bancroft	Dwight



City of Berkeley
Abstract of Bids Worksheet

Finance Department
General Service Division

For: Street Rehabilitation FY 2020

Specification#: 20-11367-C Bid Date: 2-20-2020 SAV
CTM

Bidders		Engineer's Estimate: <u>\$3,900,000</u>	Nuc Free	Work Force Comp	Opp. States	Living Wage	EBO	Bid Bond	Addendum
1	<u>McGraw-Hill Construction</u>	<u>3,000,000.00</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2	<u>McGraw-Hill Construction</u>	<u>3,800,000.00</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3	<u>McGraw-Hill Construction</u>	<u>3,050,100.15</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4	<u>McGraw-Hill Construction</u>	<u>3,700,400.00</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5	<u>McGraw-Hill Construction</u>	<u>4,000,000.00</u>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6									
7									
8									
9									
10									

Bid Recorder: [Signature]
 Bid Opener: Shirley Dugan 2/20/20
 Project Manager: [Signature] 2-20-20

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390
 E-mail: finance@ci.berkeley.ca.us



Office of the City Manager

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CONSENT CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Public Works

Subject: Contract No. 10552A Amendment: Revel Environmental Manufacturing, Inc. for on-call Storm Water Maintenance Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 10552A with Revel Environmental Manufacturing, Inc. for on-call storm water maintenance services, increasing the current contract by \$100,000 for a total contract amount not to exceed \$600,000 and extend the term of the contract through June 30, 2021.

FISCAL IMPACTS OF RECOMMENDATION

This proposed contract amendment will provide funding through June 30, 2021. Funding is available in and additional funds will be appropriated in Fiscal Year 2021 from Zero Waste Fund.

CURRENT SITUATION AND ITS EFFECTS

Revel Environmental Services, Inc. (REM) is well qualified to provide the City on-call and routine storm water maintenance to support the quality of storm water that flows to the San Francisco Bay. Moreover, this contract amendment provides the City with services needed to comply with the requirements of the City of Berkeley Transfer Station's Industrial General Storm Water Permit. That permit covers the City's property located at the intersection of Second and Gilman Streets that is occupied by the Transfer Station, the Ecology Center and the Community Conservation Centers, Inc. (CCC). REM performs weekly maintenance of the storm system including catch basins, water treatment filter vaults, and maintenance access points. REM also provides catch basin and inlet filters, and makes recommendations to ensure the City remains in compliance with this permit. Amending the contract with REM supports the Strategic Plan Priority of advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

The City issued a February 2017 Request for Proposals for On-Call Storm Water Maintenance Services (Specification No. 17-11113) to provide storm water system maintenance in support of the industrial storm water permit for the Transfer Station and CCC. One bid was submitted by REM, and their Contract No. 10552 was approved by

the City Manager with a not-to-exceed amount of \$50,000 for the period March 20, 2017 to June 30, 2020. A contract amendment was approved by Council on December 19, 2017 increasing the contract to \$275,000. The frequency of service provided by REM was increased over the past year to ensure the stormwater filters at the Transfer Station are operating as effectively as possible.

ENVIRONMENTAL SUSTAINABILITY

REM assists the City with maintaining the storm water system at the Second Street property that includes the City's Transfer Station, Ecology Center, and CCC. REM provides services that improve storm water quality, and help minimize effects of storm water runoff at these locations that may otherwise negatively impact the water quality of area watersheds and the San Francisco Bay.

RATIONALE FOR RECOMMENDATION

The proposed amendment will provide the City additional resources needed to comply with storm water regulations. The City has increased the frequency of storm water system service due to regulatory requirements. REM has consistently provided excellent, cost effective, and timely professional services to the City.

ALTERNATIVE ACTIONS CONSIDERED

A new Request for Proposals will be issued for these services during the contract term.

CONTACT PERSON

Joy Brown, Senior Management Analyst, Public Works (510) 981-6629

Attachment:
1: Resolution

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

CONTRACT NO. 10552A AMENDMENT: REVEL ENVIRONMENTAL MANUFACTURING, INC. FOR ON-CALL STORM WATER MAINTENANCE SERVICES

WHEREAS, Revel Environmental Manufacturing, Inc. has provided reliable storm water maintenance services during the contract term; and

WHEREAS, the City issued a February 2017 Request for Proposals for on-call storm water maintenance services (Specification No. 17-11113) to provide storm water maintenance services at the Zero Waste Transfer Station. Revel Environmental Manufacturing, Inc. (REM) was selected, and the City Manager executed Contract No. 10552 with REM to provide on-call storm water maintenance services in an amount not to exceed \$50,000 for a three year term beginning March 20, 2017; and

WHEREAS, in December 2017, Council approved a contract amendment (Resolution No. 68,625-N.S.) increasing the contract by \$225,000 for a new total not to exceed \$275,000; and

WHEREAS, in December 2018, Council approved a contract amendment (Resolution No. 68,714-N.S.) increasing the contract by \$225,000 for a new total not to exceed \$500,000; and

WHEREAS, REM is necessary to support the storm water compliance efforts for the City, and \$100,000 has been identified in Zero Waste Fund 601.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 10552A with Revel Environmental Manufacturing Services, Inc. in the amount of \$100,000 for on-call storm water maintenance services for a total contract amount not to exceed \$600,000 and extend the contract term through June 30, 2021. A record signature copy of the contract and any amendments to be on file in the City Clerk Department



Office of the City Manager

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Phil Harrington, Director, Public Works
Subject: Contract: National Data & Surveying Services, for On-Call Transportation and Parking Survey Consulting Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with National Data & Surveying Services for on-call transportation and parking survey consulting services for the period May 15, 2020 to May 14, 2023 with an option of up to two one-year extensions in the amount not-to-exceed \$240,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this on-call contract will be identified and expended only for actual data collection services required. Therefore, funding will be subject to appropriation in the specific fiscal year (covered in the contract term) that the services are needed. Some of the funding sources that are available for use are the Capital Improvement Fund (Fund 501), Measure B Bike and Pedestrian Fund (131), Measure F Alameda County VRF Street & Road Fund (133), and the Parking Meter Fund (631).

The total not-to-exceed contract amount is \$240,000 during the term of the contract.

CURRENT SITUATION AND ITS EFFECTS

The Public Works Department, Transportation Division, issued a request for qualifications (RFQ), Specification No. 19-11282-C on November 30, 2018, with invitations sent to several companies serving the Bay Area. Three proposals were received (IDAX Data Solutions, National Data & Surveying Services (NDS), and TJKM Transportation Consultants) on January 8, 2019 meeting all requirements and specifications.

Due to staff vacancies following the release of the RFQ, the Transportation Division was not able to immediately review the proposals. Staff resources have since become available for RFQ review and after evaluations of these proposals the highest score was given to NDS. This contract will provide on-call services to continue providing valuable data that informs the engineering decisions of several transportation programs and projects including the Traffic Calming Program.

BACKGROUND

The City has consistently hired outside firms to perform transportation surveys due to insufficient staff resources and the lack of necessary data collection equipment. The existing on-call contract with Traffic Counts Plus will expire on March 31, 2020. It is necessary to execute a new contract due to the high demand for traffic data for various transportation programs and projects. Traffic and parking data collection is essential for evaluating streets and intersections and has an integral role in the City's traffic calming program.

Selecting an On-Call Transportation and Parking Survey Consultant is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

ENVIRONMENTAL SUSTAINABILITY

The awarding of this contract is consistent with the City's efforts to improve efficiency of movement of people and vehicles throughout the City's roadway network. Data collected through the on-call contract will help inform decisions that make the City of Berkeley a more pedestrian, bicycle, and transit friendly community thus working to reduce greenhouse gases and pollutants that impact air quality.

RATIONALE FOR RECOMMENDATION

The factors considered during the selection process included firm experience, client references, work understanding, work samples, and conformance with RFQ requirements. NDS was the highest ranked respondent based on their comprehensive quality control and data collection approach, extensive experience, and quality work samples. Additionally, all references that were contacted for NDS provided very positive feedback.

ALTERNATIVE ACTIONS CONSIDERED

The only alternative would be to postpone indefinitely the execution of certain assignments, including the traffic calming program.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works, 510-981-7061
Jesse Peoples, Assistant Traffic Engineer, Public Works, 510-981-6416

Attachments:

1: Resolution

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

CONTRACT: NATIONAL DATA & SURVEYING SERVICES (NDS) FOR ON-CALL
TRANSPORTATION AND PARKING SURVEY CONSULTING SERVICES

WHEREAS, outside traffic and parking data collection services are needed for traffic calming, speed surveys, parking studies, intersection evaluation, and other essential tasks; and

WHEREAS, a Request for Qualifications (Specification No. 19-11282-C) was issued and National Data & Surveying Services (NDS) was selected from three respondents as the most qualified; and

WHEREAS, the City lacks both human resources and the equipment necessary to carry out all the traffic and parking data collection the consultant is capable of providing; and

WHEREAS, the Public Works Department, Transportation Division, must conduct studies requiring these services to proceed with crucial transportation tasks; and

WHEREAS, funding is subject to appropriation in the FY 2020 and future fiscal year budgets in various Funds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with NDS for On-Call Transportation and Parking Survey Consulting Services in an amount not to exceed \$240,000 for the period of May 15, 2020 through May 14, 2023 with an option for two one-year extensions. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.



CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Homeless Commission
Submitted by: Carole Marasovic, Chairperson, Homeless Commission
Subject: Developing a Mechanism to Facilitate an Improved Homeless Point-In-Time Count

RECOMMENDATION

The Homeless Commission recommends to Council that Council refer to staff to assign an intern or seek a volunteer affiliation, through an educational institution, to conduct outreach to, and engage with, community stakeholders including homeless advocates and persons who are experiencing or have experienced homelessness, to identify how homeless persons can be more thoroughly counted during the upcoming 2021 Berkeley Homeless Point-In-Time count.

SUMMARY

The 2019 Homeless Point-In-Time count produced gaps where much of the homeless population was clearly undercounted. To arrive at a more accurate count, resulting in potential additional monies to the City to mitigate homelessness, and to better inform needs to be met during the Council allocation process, there needs to be increased outreach to community stakeholders to identify means of more thoroughly counting homeless persons.

FISCAL IMPACTS OF RECOMMENDATION

Staff can better advise of the costs but the use of an intern or alternatively, a volunteer affiliation, through an educational institution, to conduct outreach to, and engage community stakeholders would minimize costs.

CURRENT SITUATION AND ITS EFFECTS

The 2019 Homeless Point-In-Time Count produced results of over 1,108 homeless persons in Berkeley. Yet, there were obvious inaccuracies such as no unsheltered families having been counted; a radical decrease in the percentage of transition age youth from the 2017 Point-in-Time Count which is unable to be confirmed one way or the other; and conjecture that homeless adults are being significantly undercounted because of the lack of visibility where they are homeless. To this effect, among the adult homeless population, many persons live outside in singles or doubles in a manner to conceal their homeless status.

BACKGROUND

The Homeless Commission voted on January 8, 2020 as follows:

Action: M/S/C Mulligan/ Marasovic to approve the recommendation as written.

Vote: Ayes: Mulligan, Marasovic, Kealoha-Blake, Behm-Steinberg

Noes: Andrew. *Abstain:* Hill. *Absent:* Hirpara.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities associated with the content of this report.

RATIONALE FOR RECOMMENDATION

A more thorough homeless count would better inform Council and staff how incoming homeless monies to Berkeley should be allocated. An increase in the number of persons counted could potentially result in additional monies allocated to the City to address homelessness. A significant challenge is identifying the location of homeless persons who choose to keep their location less visible; community stakeholders can best advise how to lessen that challenge for a more thorough homeless count.

ALTERNATIVE ACTIONS CONSIDERED

Recommending a supplemental homeless count was considered. However, a supplemental homeless count limited to Berkeley would not be recognized by the County or other entities and could be at great expense to the City of Berkeley without reaping any financial benefit to the City nor to the homeless population through additional allocations. Of greater benefit would be focusing on improving the HUD Homeless Point-In-Time Count through identifying how additional homeless persons could be counted.

CITY MANAGER

The City Manager concurs that community stakeholders including homeless advocates and persons who are experiencing or have experienced homelessness should be consulted on how to best identify how homeless persons can be more thoroughly counted during the upcoming 2021 Berkeley Homeless Point-In-Time count and will direct staff to manage the consultation.

CONTACT PERSON

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



Mental Health Commission

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Mental Health Commission
Submitted by: Jamie Works-Wright, Secretary, Mental Health Commission
Subject: Appointment of Ann Hawkins to the Mental Health Commission

RECOMMENDATION

Adopt a Resolution approving the appointment of Ann Hawkins to the Mental Health Commission, as a representative of the special public interest (peer) category, for a three year term beginning April 15, 2020 and ending April 14, 2023.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently five vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will fill a vacancy, and allow the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or seven of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership. Two members shall be residents of the City of Albany with at least one of these seats filled by a direct consumer or family member.

Currently, the Mental Health Commission consists of the following: two Berkeley Special Public Interest Commissioners; four Berkeley General Public Interest Commissioners; one Albany General Public Interest Commissioner; and one Mayoral appointee.

At its January 23, 2020 meeting, the Mental Health Commission interviewed Ann Hawkins a former professor in Environmental Sociology, who is passionate about preventative measures and de-stigmatization regarding mental health. She's involved with activities, which focuses on mental health issues and climate change. Her unique contribution to the Mental Health Commission is that she has worked in Mexico and Indonesia, speaks the language and has done postdoctoral research and even taken a Peer Support Specialist Training. Ann is eligible for a Berkeley Special interest seat in both the family and consumer category, but prefers the Consumer seat on the Mental Health Commission.

On January 23, 2020 the Mental Health Commission passed the following motion:

M/S/C (Fine, Davila) Motion to nominate Ann Hawkins to be appointed to the special public interest (peer) as a representative of the Mental Health Commission

Ayes: Castro, cheema, Davila, Fine, Kealoha-Blake, Moore, Opton, Prichett Noes: None; Abstentions: None; Absent: Izadi

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Jamie Works-Wright, Commission Secretary, (510) 981-7721

Attachments:

1: Resolution

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

APPOINTMENT OF ANN HAWKINS TO THE MENTAL HEALTH COMMISSION AS A REPRESENTATIVE OF THE SPECIAL PUBLIC INTEREST

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, two appointments of residents of Albany (*one of which shall be a representative of the special public interest category*), and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, the Mental Health Commission, at its January 23, 2020 meeting recommended the appointment of Ann Hawkins to the Mental Health Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Ann Hawkins to the Mental Health Commission, as representative of the special public interest (peer) category, for a three year term beginning April 15, 2020 and ending April 14, 2023.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Budget Referral: \$279,000 to Fund Berkeley Youthworks Participants
Commensurate with the Berkeley Minimum Wage

RECOMMENDATION

Budget Referral: Refer to the FY 2020-21 budget process the allocation of \$184,000 for the purpose of funding Youthworks participants at the local minimum wage, which is scheduled to increase in July 2020 to \$15.75 per hour plus the Consumer Price Index.

CURRENT SITUATION AND ITS EFFECTS

YouthWorks is a program operated by the City of Berkeley’s Health Housing and Community Services Department with the goal of providing a variety of employment opportunities to allow participants to build their employment skills. The program is open to Berkeley residents aged 14-25, and largely serves young people of color and marginalized youth. The program offers employment, exposure to career options, mentorship, financial management advice, and encouragement for primary school completion and postsecondary education. Youthworks operate on a year-round basis, with a 7-8 week session in the summer and winter.

Currently, YouthWorks participants are compensated at a rate of \$14.50 per hour. The City’s Health Housing and Community Services Department has not allocated necessary funds to compensate Youthworks participants at a rate commensurate with the scheduled increase in local minimum wage. The Berkeley Minimum Wage will be \$15.75 effective July 1, 2020. A budget referral is needed to fund an additional \$95,000 for fiscal year 2020 and \$184,000 for fiscal year 2021 to fairly compensate participants in the Youthworks programs.

FISCAL IMPACTS OF RECOMMENDATION

\$279,000 total from the General Fund: \$95,000 for FY 2020 and \$184,000 for FY 2021.

ENVIRONMENTAL SUSTAINABILITY

Providing a variety of employment skills and training for our City of Berkeley youth is environmentally sustainable.

CONTACT PERSON

Cheryl Davila, Councilmember District 2

ATTACHMENTS

- 1. Resolution

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

BUDGET REFERRAL TO ALLOCATE AN ADDITIONAL \$279,000 TO YOUTHWORKS, ENSURING YOUTH JOBS TRAINING PARTICIPANTS ARE PAID AT LEAST THE BERKELEY MINIMUM WAGE

WHEREAS, The Berkeley Minimum Wage is scheduled to increase in July, 2020 to \$15.75 per hour; and

WHEREAS, Youthworks is a program managed by the City of Berkeley's Health, Housing, and Community Services (HHCS) Department, with the goal of providing employment opportunities and job training to Berkeley residents aged 14-25 years old; and

WHEREAS, Youthworks primarily services low-income youth and communities of color in Berkeley; and

WHEREAS, Youthworks participants are currently compensated \$14.50 per hour; and

WHEREAS, The HHCS requires additional funding of \$279,000 to ensure participants in Youthworks will continue to be paid the minimum wage;

THEREFORE BE IT RESOLVED that the Berkeley City Council refer to the budget process the allocation of \$95,000 for fiscal YR 2020 and \$184,000 for fiscal YR 2021 to fund Youthworks.



Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Cheryl Davila
Subject: Berkeley Humane's 7th Annual Pints for Paws Fundraiser on June 6, 2020:
Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Berkeley Humane Society's 7th Annual Pints for Paws Fundraiser on June 6, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

BACKGROUND

For 125 years, Berkeley Humane has served animals and our community by providing life saving programs for cats and dogs, cultivating compassion, and strengthening the human animal bond. Berkeley Humane continues to expand and adapt the services of the organization to meet the ongoing needs of the community's animals and their human guardians. Berkeley Humane's work would not be possible without its strong partnerships with local animal welfare groups and the support from animal-loving friends who share the Society's vision. Today, Berkeley Humane has thousands of supporters and volunteers, and remains steadfast in its practices to curb pet overpopulation in the East Bay and give pet guardians the tools they need to ensure that their pets remain happy and healthy in their homes for the rest of their lives. Berkeley Humane will hold their 7th Annual Pints for Paws Fundraiser on June 6, 2020 from 2PM -5PM at 2700 Ninth Street in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$150 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

ENVIRONMENTAL SUSTAINABILITY

Protecting our pets is itself an act of environmental sustainability.

CONTACT PERSON

Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:

1. Resolution
2. Berkeley Humane will hold their 7th Annual Pints for Paws Fundraiser Information:
<https://berkeleyhumane.org/Pints-For-Paws>

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY 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, Councilmember Cheryl Davila has surplus funds in her office expenditure account (budget code 011-11-102-000-0000-000-411); and

WHEREAS, Berkeley Humane, a California non-profit tax-exempt corporation, is seeking donations for their Pints for Paws Fundraiser on June 6, 2020 at 5 PM at 2700 Ninth Street in Berkeley; and

WHEREAS, For 125 years, Berkeley Humane has served animals and our community by providing life saving programs for cats and dogs, cultivating compassion, and strengthening the human animal bond; and

WHEREAS, Berkeley Humane's work would not be possible without its strong partnerships with local animal welfare groups and the support from animal-loving friends who share the Society's vision; 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 \$250 per Councilmember, including \$150 from Councilmember Cheryl Davila, shall be granted.

<https://berkeleyhumane.org/Pints-For-Paws>



Saturday, June 6 2020 | 2:00 PM - 5:00 PM | 21+ Event

2700 Ninth St, Berkeley, CA 94710

Breaking News! Pints for Paws® was voted Best Fundraising Event in the East Bay again this year! Our 7th Annual Pints for Paws® promises to be even bigger and better!

Have a great time while benefiting Berkeley Humane's life-saving programs. Meet local craft brewers and sample an unlimited number of very special unique beers. Additional featured beverages include amazing ciders, local artisan wines, hand crafted vodka – and so much more! Great selection of tasty food from Off The Grid's local food trucks available for purchase. Enjoy live music, games, and hundreds of crowd-friendly dogs!

Every dollar raised will save the lives of shelter pets. But don't wait to purchase your tickets. Pints for Paws® sold out for the last two years, so get your tickets today!



Kate Harrison
Councilmember District 4

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CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison, Councilmember Sophie Hahn,
Councilmember Cheryl Davila and Councilmember Susan Wengraf

Subject: Resolution in Support of Senate Bill 54 and Assembly Bill 1080: The
California Circular Economy and Plastic Pollution Reduction Act

RECOMMENDATION

Adopt a resolution affirming Berkeley's support for Senate Bill 54 and Assembly Bill 1080, The California Circular Economy and Plastic Pollution Reduction Act. Send a letter in support to Assemblymember Gonzalez and Senator Allen.

BACKGROUND

Californians throw away 123,000 tons of plastic bags each year, with much of it finding its way into regional and international waterways.¹ Each year, 18 billion pounds of plastic are added to the oceans, with existing waste rapidly accumulating.² Only nine percent of plastic is recycled.³

The problem is only projected to worsen. Plastic production is projected to increase by 40% in the next ten years alone.⁴ As one of the world's largest economies,⁵ California has disproportionate power to change this trend. California can have a positive impact on the world's oceans by reducing plastic pollution.

In 2014, the state legislature passed Senate Bill 270, mandating that grocery stores, convenience stores, and self-service retail stores provide reusable bags instead of single-use plastic bags. However, this bill contained exemptions, including for thicker plastic bags that qualify as reusable because they can be used more than 125 times.⁶ Some studies have suggested, however, less than one percent of consumers reuse these

¹ <https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>

² [http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20\(1\).pdf](http://dbw.parks.ca.gov/pages/28702/files/Changing%20Tide%20Summer%202018%20HQ%20(1).pdf)

³ <https://www.nationalgeographic.com/news/2017/07/plastic-produced-recycling-waste-ocean-trash-debris-environment/>

⁴ <https://www.theguardian.com/environment/2017/dec/26/180bn-investment-in-plastic-factories-feeds-global-packaging-binge>

⁵ <https://www.cbsnews.com/news/california-now-has-the-worlds-5th-largest-economy/>

⁶ <https://www.sfchronicle.com/politics/article/California-banned-plastic-bags-So-why-do-stores-14872852.php>

thicker bags in practice.⁷ Over a hundred localities in California have passed plastic bag bans of their own,⁸ but hundreds more have not, and only statewide action can ensure a unified approach in combating plastic waste and pollution.

In 2019, State Senator Ben Allen and Assemblymember Lorena Gonzalez introduced Senate Bill 54⁹ and Assembly Bill 1080,¹⁰ respectively, to the state legislature. The identical bills would set binding goals stipulating that all single-use plastic packaging and products sold or distributed in California be reduced or recycled by 75 percent by 2030 and that such packaging and products be recyclable or compostable on and after 2030. The bills also require producers to source reduce single-use packaging and priority single-use products to the maximum extent feasible and instruct California's Department of Resources Recycling and Recovery to develop incentives and policies to encourage in-state manufacturing using recycled material generated in California.¹¹

These bills would have multi-pronged effects. Reduced plastic waste and pollution would not only significantly ameliorate worsening environmental conditions and help California achieve its environmental goals but would also provide financial benefits in decreasing the costs associated with handling and processing plastic waste. Furthermore, building the recycling infrastructure needed to achieve these goals would create green jobs that would both benefit the environment and provide badly needed employment to Californians across the state. In enacting SB 54 and AB 1080, California would be taking another step forward in its role as a national and global leader on environmental issues.

FISCAL IMPACTS OF RECOMMENDATION

No impact. Clerk time necessary to send letters.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

- 1: Resolution
- 2: Letters

⁷ <https://saveourshores.org/help-ban-plastic-bags/>

⁸ <https://environmentcalifornia.org/programs/cae/keep-plastic-out-pacific>

⁹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB54

¹⁰ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1080

¹¹ <https://www.cawrecycles.org/sb-54-ab-1080-bill-page>

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

RESOLUTION IN SUPPORT OF SENATE BILL 54 AND ASSEMBLY BILL 1080

WHEREAS, Californians throw away 123,000 tons of plastic bags each year; and

WHEREAS, only nine percent of plastic is recycled, with the vast majority instead discarded; and

WHEREAS, 18 billion pounds of plastic are added to the oceans each year; and

WHEREAS, plastic production is projected to increase by 40% in the next ten years; and

WHEREAS, Senate Bill 270, which restricted plastic bag distribution in favor of reusable bag use, nevertheless provided exemptions for certain thicker bags which produce more waste; and

WHEREAS, Senate Bill 54, introduced by Senator Ben Allen, and Assembly Bill 1080, introduced by Assemblymember Lorena Gonzalez, would require that all single-use plastic packaging and products sold or distributed in California be reduced or recycled by 75 percent by 2030, that such packaging and products be recyclable or compostable on and after 2030, that producers source reduce single-use packaging and priority single-use products to the maximum extent feasible, and that California's Department of Resources Recycling and Recovery develop incentives and policies to encourage in-state manufacturing using recycled material generated in California; and

WHEREAS, the stipulations of these bills would reduce plastic waste and pollution, thus benefiting the environment and helping California achieve its environmental goals as well as decreasing costs associated with handling and processing plastic waste; and

WHEREAS, building the recycling infrastructure needed to achieve these goals would create green jobs that would both benefit the environment and provide employment to Californians in need; and

NOW THEREFORE, BE IT RESOLVED that the Berkeley City Council expresses its support for California State Senate Bill 54 and Assembly Bill 1080, and the California Legislature to pass and Governor Gavin Newsom to sign into law the aforementioned Bills; and

BE IT FURTHER RESOLVED that copies of this Resolution will be sent to Senator Ben Allen, Assemblymember Lorena Gonzalez, Governor Gavin Newsom, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

Resolution in Support of Senate Bill 54 and Assembly Bill 1080:
The California Circular Economy and Plastic Pollution Reduction Act

CONSENT CALENDAR
April 14, 2020

March 17, 2020

The Honorable Ben Allen
California State Senate
State Capitol, Room 4076
Sacramento, CA 95814

**RE: Senate Bill 54, The California Circular Economy and Plastic Pollution
Reduction Act
Support from the Berkeley City Council**

Dear Senator Allen:

We, the Berkeley City Council, wish to express our support for Senate Bill 54.

With 18 billion pounds of plastic being added to the oceans each year, and plastic production projected to increase by 40% over the next decade, it is imperative that California fulfil its role as a leader on the environmental forefront and act to prevent additional plastic waste and pollution.

Senate Bill 54, as well as Assembly Bill 1080, would take important steps to regulate the production and distribution of plastic bags to maximize recyclability and compostability, thereby reducing environmental impacts, decreasing costs, and creating green jobs that would benefit Californians.

We thank you for introducing Senate Bill 54 and for your leadership on environmental issues and hope that the bill be enacted in the near future.

Sincerely,

Berkeley City Council

CC: The Honorable Assemblymember Buffy Wicks
The Honorable Senator Nancy Skinner
The Honorable Governor Gavin Newsom

Resolution in Support of Senate Bill 54 and Assembly Bill 1080:
The California Circular Economy and Plastic Pollution Reduction Act

CONSENT CALENDAR
April 14, 2020

March 17, 2020

The Honorable Lorena Gonzalez
California State Assembly
State Capitol, Room 2114
Sacramento, CA 95814

**RE: Assembly Bill 1080, The California Circular Economy and Plastic Pollution
Reduction Act
Support from the Berkeley City Council**

Dear Assemblymember Gonzalez:

We, the Berkeley City Council, wish to express our support for Assembly Bill 1080.

With 18 billion pounds of plastic being added to the oceans each year, and plastic production projected to increase by 40% over the next decade, it is imperative that California fulfil its role as a leader on the environmental forefront and act to prevent additional plastic waste and pollution.

Assembly Bill 1080, as well as Senate Bill 54, would take important steps to regulate the production and distribution of plastic bags to maximize recyclability and compostability, thereby reducing environmental impacts, decreasing costs, and creating green jobs that would benefit Californians.

We thank you for introducing Assembly Bill 1080 and for your leadership on environmental issues and hope that the bill be enacted in the near future.

Sincerely,

Berkeley City Council

CC: The Honorable Assemblymember Buffy Wicks
The Honorable Senator Nancy Skinner
The Honorable Governor Gavin Newsom



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmember Wengraf, Councilmember Hahn, and Councilmember Bartlett
Subject: Support for SB-1160 (Stern) Public utilities: electrical and communication infrastructure: undergrounding

RECOMMENDATION

Write a letter to Senator Stern in support of SB-1160 and send copies to Senator Nancy Skinner, Assembly Member Buffy Wicks and Governor Gavin Newsom.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The CPUC's Rule 20A undergrounding program directs the conversion of overhead electrical facilities to below ground for municipal or other applicant-identified projects. This bill would require the commission to revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

A significant area of the City of Berkeley is in the CPUC's Tier 2 and Tier 3 High Fire Threat District, making Berkeley highly susceptible to wildfire. According to nationally recognized Hazard Mitigation Expert Charles Scawthorn, 26,000 Berkeley residents live in this designated area. Egress and ingress throughout Berkeley's hillside of narrow and windy streets would be impeded if utility poles and/or wires fall down and block escape and rescue in an earthquake or wildfire. Additionally, utility wires have proven responsible for igniting at least eleven of Northern California's most destructive wildfires.

Undergrounding in High Fire Threat Districts is critical to reducing wildfire risk, increasing egress and ingress, and supporting local resiliency efforts after disasters. Further, it will protect the environment against the extreme greenhouse gases produced by fire smoke, protect human health, and protect local economies so communities can thrive.

ENVIRONMENTAL SUSTAINABILITY

Passage of this bill could result in a reduction of wildfires and therefore greenhouse gases.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: SB 1160

2: Letter

SENATE BILL No. 1160**Introduced by Senator Stern**

February 20, 2020

An act to amend Section 320 of the Public Utilities Code, relating to public utilities.

legislative counsel's digest

SB 1160, as introduced, Stern. Public utilities: electrical and communication infrastructure: undergrounding.

Under existing law, the Public Utilities Commission has jurisdiction over public utilities, including electrical corporations. Under existing law, the Legislature has declared that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities that are proposed to be erected in proximity to designated state scenic highways and that would be visible from those highways if erected above ground. The commission's existing Tariff Rule 20A undergrounding program requires electrical corporations to convert overhead electric facilities to underground facilities when doing so is in the public interest for specified reasons.

This bill would require the commission to revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because a violation of an order, decision, rule, direction, demand, or requirement of the commission implementing the provisions of this bill would be a crime, this bill would impose a state-mandated local program.

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SB 1160 — 2 —

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

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

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

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

- 1 SECTION 1. Section 320 of the Public Utilities Code is
- 2 amended to read:
- 3 320. (a) (1) The Legislature hereby declares that it is the
- 4 policy of this state to achieve, whenever feasible and not
- 5 inconsistent with sound environmental planning, the

6 undergrounding of all future electric and communication
 7 distribution facilities—~~which that~~ are proposed to be erected in
 8 proximity to any highway designated a state scenic highway
 9 pursuant to Article 2.5 (commencing with Section 260) of Chapter
 10 2 of Division 1 of the Streets and Highways Code and—~~which that~~
 11 would be visible from—~~such those~~ scenic highways if erected above
 12 ground. The commission shall prepare and adopt by December
 13 31, 1972, a statewide plan and schedule for the undergrounding
 14 of—~~all such those~~ utility distribution facilities in accordance with
 15 ~~the aforesaid that~~ policy and the rules of the commission relating
 16 to the undergrounding of facilities.

17 ~~The~~
 18 (2) *The* commission shall coordinate its activities regarding the
 19 plan with local governments and planning commissions concerned.

20 ~~The~~
 21 (3) *The* commission shall require compliance with the plan upon
 22 its adoption.

23 ~~This section~~
 24 (4) *This subdivision* shall not apply to facilities necessary to the
 25 operation of any railroad.

26 (b) (1) *The Legislature further finds and declares that it is the*
 27 *policy of the state to underground electrical and communication*
 28 *infrastructure located within high fire-threat districts and the*
 29 *wildland-urban interface.*

1

*(2) The commission shall revise Tariff Rule 20A to authorize
2 and fund the undergrounding of electrical and communication
3 infrastructure within high fire-threat districts and the
4 wildland-urban interface.*

*(3) For purposes of this subdivision, “high fire-threat district”
5 means the areas identified as tier 2 (elevated) or tier 3 (extreme)
6 fire risk on the fire-threat map maintained by the commission.
7*

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

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April 14, 2020

The Honorable Henry Stern
California State Senate
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 1160 (Stern) Public utilities: electrical and communication infrastructure: undergrounding. Support from the Berkeley City Council.

Dear Senator Stern:

The City Council of the City of Berkeley officially expresses our support on SB 1160 (Stern) Public utilities: electrical and communication infrastructure: undergrounding. This bill would require the CPUC to revise Tariff Rule 20A to authorize and fund the undergrounding of electrical and communication infrastructure within high fire-threat districts and the wildland-urban interface.

A significant area of the City of Berkeley is in the CPUC's Tier 2 and Tier 3 High Fire Threat District, making Berkeley highly susceptible to wildfire. According to nationally recognized Hazard Mitigation Expert Charles Scawthorn, 26,000 Berkeley residents live in this designated area. Egress and ingress throughout Berkeley's hillside of narrow and windy streets would be impeded if utility poles and/or wires fall down and block escape and rescue in an earthquake or wildfire. Additionally, utility wires have proven responsible for igniting at least eleven of Northern California's most destructive wildfires.

Undergrounding in High Fire Threat Districts is critical to reducing wildfire risk, increasing egress and ingress, and supporting local resiliency efforts after disasters. Further, it will protect the environment against the extreme greenhouse gases produced by fire smoke, protect human health, and protect local economies so communities can thrive. The investment is worth it.

The Berkeley City Council thanks you for your leadership on this important policy topic.

Sincerely,

Berkeley City Council

CC: Senator Nancy Skinner
Assembly Member Buffy Wicks
Governor Gavin Newsom



Office of the City Manager

PUBLIC HEARING

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: General Plan Redesignation and Rezone of The Rose Garden Inn at 2740 Telegraph Avenue (APN 054-1716-002-00), 2744 Telegraph Avenue (APN 054-1716-003-00), and 2348 Ward Street (APN 054-1716-031-00)

RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt a resolution amending the General Plan land use designations of portions of parcels that comprise The Rose Garden Inn from Low Medium Density Residential to Avenue Commercial;
2. Adopt first reading of an ordinance amending the Zoning Map for the portion of parcels that comprise the Rose Garden Inn from Restricted Two-Family Residential District (R-2) to General Commercial District (C-1); and
3. Certify that the reclassification of General Plan land use designations and rezoning are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Classes 1, 3, 5, and 31

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts to the City of Berkeley by considering this General Plan redesignation and rezoning application. The property owner has an application pending to renovate the existing hotel site and add 14 hotel rooms. If these General Plan and zoning amendments are approved and The Rose Garden Inn improvements are built, the City may accrue increased property and transit occupancy tax revenues.

CURRENT SITUATION AND ITS EFFECTS

The Rose Garden Inn was originally established as a bed and breakfast in the 1970s. In the 1990s, it was converted to a hotel and restaurant. The Rose Garden Inn currently operates as a hotel with 40 guestrooms and a restaurant that is open to the general public.

The hotel occupies three parcels and includes five buildings (Attachment 3). The three parcels under consideration for a General Plan redesignation and rezoning are split-zoned between R-2 and C-1 (Attachment 4). One building (Building D) is also split between R-2 and C-1. The property owner is requesting the General Plan redesignation and Zoning Map amendment to bring the existing hotel uses at the Rose Garden Inn into conformity with the General Plan and Zoning Map. Previous work on this property, which included renovation of existing buildings and the addition of hotel rooms and improved food service areas, was approved with Use Permits, Design Review, Structural Alteration Permits and a Variance.

BACKGROUND

On December 4, 2019, the Planning Commission discussed and considered the proposed General Plan redesignation and zoning map amendments and directed staff to set a public hearing for the proposed amendments. On February 5, 2020, the Planning Commission conducted a public hearing and voted to recommend approval of the General Plan redesignation and rezone to the City Council by an 8-0-0-1 vote (Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: None. Abstain: None. Absent: Martinot.). See meeting minutes, included as Attachment 5.

ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental opportunities from these proposed actions, however the existing hotel is on a major transit corridor and is within walking distance of Alta Bates Hospital and the University of California campus. If future improvements to the hotel are approved, they would need to meet the recently adopted 2019 California Building Code requirements which include higher sustainability standards.

RATIONALE FOR RECOMMENDATION

The rationale for the requested General Plan redesignation and zoning map amendment is to bring the existing hotel uses at the project site into conformity with the General Plan and Zoning Map, and to allow for future improvements to the hotel without need for a Variance (hotels are not allowed in the R-2 District). If approved, future improvements will be subject to C-1 development standards and regulations. The property owner is separately applying for Use Permits to upgrade and expand the non-historic portion of the hotel complex, which will be considered by the Zoning Adjustments Board if this zoning action is approved by the City Council. No changes to the overall use of the hotel are proposed and historic buildings (Berkeley Landmarks 125 and 126) would not be adversely impacted by these improvements.

The proposed General Plan redesignation and zoning map amendment would move the Low Medium Density/Avenue Commercial and the R-2/C-1 boundary approximately 50 feet west of its existing location to reflect the boundaries of the existing hotel site. Adjacent parcels to the north and south have the same geometry as this block-face (i.e. C-1 parcels fronting Telegraph Avenue and R-2 parcels to the west of the C-1). The proposed General Plan redesignation from Low Medium Density Residential to Avenue

Commercial and the rezoning of portions of the site from R-2 to C-1 would allow continuation of existing commercial uses at the project site that are compatible with commercial uses along the Telegraph Avenue corridor and have existed compatibly with the neighboring residential area.

The proposed General Plan amendment serves the public interest by allowing the entire existing hotel use to operate within a unified Avenue Commercial land use designation. The existing hotel has been in operation in some form since the 1970s. It is located on a pedestrian-friendly corridor that is serviced by a high-frequency bus line and is walking distance from Alta Bates Hospital and the UC Berkeley campus. These actions will also reconcile mapping irregularities that result in a split designation on a property that has been used as a hotel for several decades, and facilitate future renovation that would meet General Plan policies such as *Land Use Policy 13 and 27 (Basic Goods and Services and Avenue Commercial Areas)*, *Economic Development Policy 3 (Local Businesses)* and *Transportation Policy 16 (Access by Proximity)*. The Avenue Commercial land use designation would also be consistent with existing General Commercial land use designations along the Telegraph Avenue commercial corridor.

ALTERNATIVE ACTIONS CONSIDERED

The Council may deny the amendments, or continue the public hearing, or take no action, in which case the proposed renovation of The Rose Garden Inn would not occur.

CONTACT PERSON

Alene Pearson, Principal Planner, Planning & Development Department (510) 981-7489

Attachments:

- 1: Resolution for General Plan Amendment
Exhibit A: General Plan Amendment Map
- 2: Ordinance to adopt Zoning Amendment
Exhibit A: Zoning Amendment Map
- 3: Existing Site Plan
4. Current Zoning Map
- 5: Planning Commission meeting minutes– February 5, 2020
- 6: Public Hearing Notice of City Council Hearing on April 14, 2020

RESOLUTION NO. ___ N.S

AMENDING THE BERKELEY GENERAL PLAN TO REDESIGNATE ASSESSOR PARCEL NUMBERS (APNS) 054-1716-002-00, 054-1716-003-00, AND 054-1716-031-00 FROM LOW MEDIUM DENSITY RESIDENTIAL TO AVENUE COMMERCIAL

WHEREAS, the City Council of the City of Berkeley has the authority to approve and amend the designation of parcels from one General Plan land use designation to another in order to address unforeseen circumstances and changing priorities; and

WHEREAS, the redesignation of the noted parcels was prepared based on a request from a property owner that wishes to modify and unify the allowable uses within buildings and lots that currently cross General Plan land use designation boundaries; and

WHEREAS, on February 5, 2020, the Planning Commission held a duly noticed public hearing and took public testimony and recommended approval to the City Council regarding the adoption of a General Plan redesignation of Assessor Parcel Numbers (APNs) 054-1716-002-00, 054-1716-003-00, and 054-1716-031-00; and

WHEREAS, on April 14, 2020, the City Council held a duly noticed public hearing to consider the recommendations of the Planning Commission, staff, property owner and the general public regarding the General Plan map amendment of APNs 054-1716-002-00, 054-1716-003-00, AND 054-1716-031-00; and

WHEREAS, the proposed General Plan amendment serves the public interest by allowing the entire existing hotel use to operate within a unified Avenue Commercial land use designation. The existing hotel business has been in operation since the 1970s. It is located on a pedestrian-friendly corridor that is serviced by a high-frequency bus line and is walking distance from Alta Bates Hospital and the UC Berkeley campus; and

WHEREAS, the proposed General Plan amendment reconciles mapping irregularities that result in a split designation on a property that has been used as a hotel for several decades, as well as facilitates future renovation that would meet General Plan policies such as *Land Use Policy 13 and 27 (Basic Goods and Services and Avenue Commercial Areas)*, *Economic Development Policy 3 (Local Businesses)* and *Transportation Policy 16 (Access by Proximity)*.

WHEREAS, the proposed General Plan amendment would redesignate portions of the three parcels that comprise the Rose Garden Inn from Low Medium Density Residential to Avenue Commercial, maintaining consistency with current uses and existing land use designations along the Telegraph Avenue commercial corridor; and

WHEREAS, the proposed General Plan amendment would not directly result in changes to the physical characteristics of the property or existing structures, but will facilitate

renovation that would be completed in compliance with current codes and regulations. New development also would be reviewed for compliance with Berkeley Municipal Code and CEQA and would be constructed in compliance with California Building and Safety Code as adopted by the City of Berkeley; and

WHEREAS, staff evaluated the amendment request and determined it is categorically exempt from CEQA pursuant to Classes 1, 3, 5, and 31, which apply to the proposed General Plan and zoning amendments as well as the currently proposed renovation and expansion project. Section 15301 of the *CEQA Guidelines* states that a Class 1 Categorical Exemption (CE) is for minor alterations of existing private structures that involve negligible or no expansion of an existing use. Section 15303 states that a Class 3 CE is for construction of limited numbers of new structures and the conversion of existing structures from one use to another where only minor modifications are made in the exterior of the structure. Class 1 and Class 3 apply to the proposed project because the proposed amendment is undertaken to permit improvements to the existing hotel which are shown in pending Use Permit applications to include only minor expansions to the existing footprint and exterior of the buildings. Section 15305 states that a Class 5 CE is for minor alterations in land use limitations which do not result in changes to land use or density. As the proposed project includes only minor alterations to the land use limitations on a site with an existing building and does not include any proposed change to density, Class 5 applies to the proposed project. Section 15331 of the *State CEQA Guidelines* states that a Class 31 CE is for rehabilitation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for Rehabilitating Historic Buildings (1995). Class 31 applies to the proposed project because rehabilitation will be undertaken consistent with the Secretary of the Interior's standards as required by future Structural Alteration Permits. Notwithstanding the above, development proposed subsequent to the rezoning will be subject to project-level review under CEQA and the City of Berkeley's Environmental Review; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the General Plan is hereby amended as shown in Exhibit A.

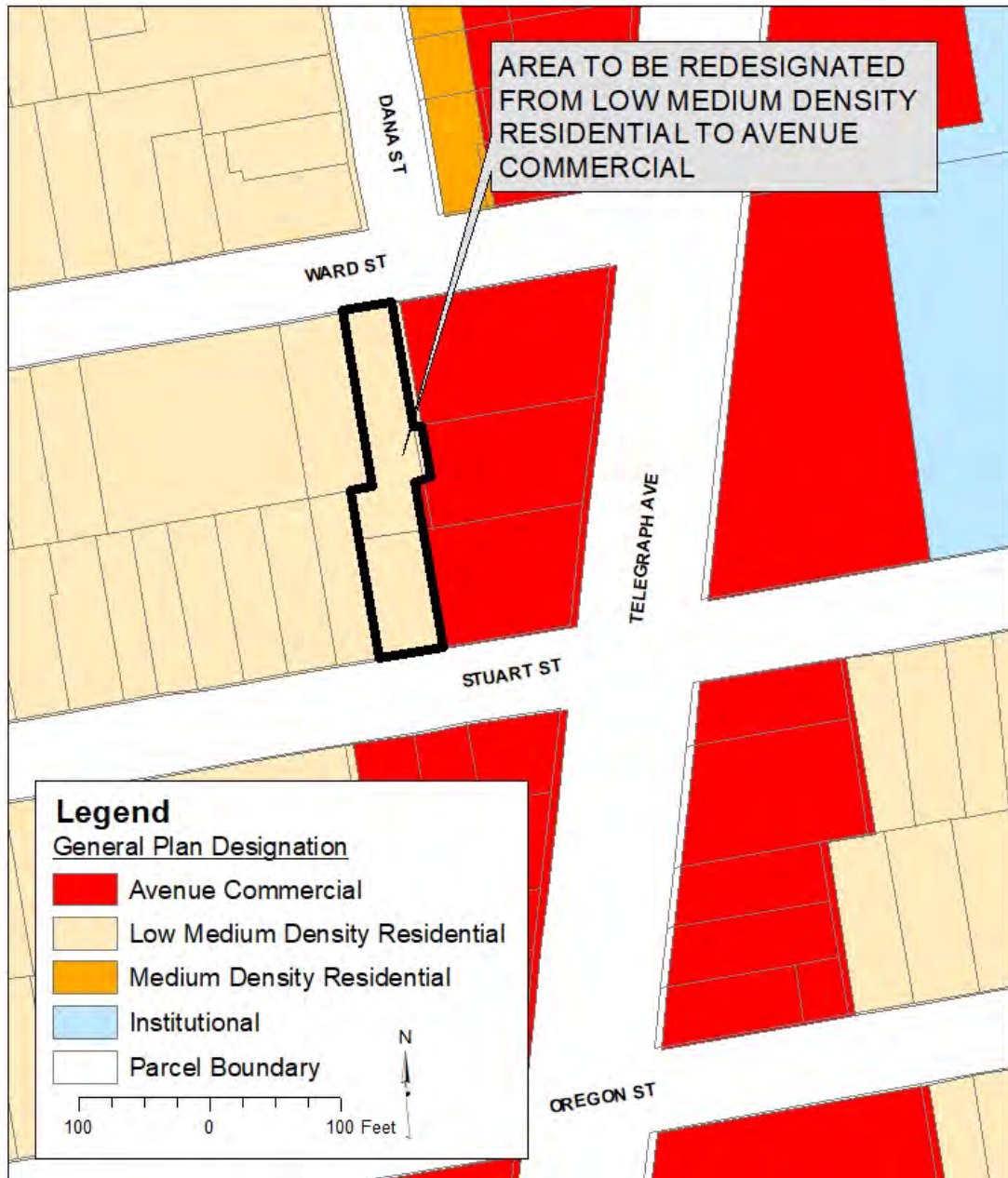
Attachment

Exhibit A: General Plan Amendment Map

ATTACHMENT 1: EXHIBIT A

GENERAL PLAN MAP AMENDMENT

2740 Telegraph Avenue (APN 054-1716-002-00),
2744 Telegraph Avenue (APN 054-1716-003-00)
2348 Ward Street (APN 054-1716-031-00)



source: G:\Planning\LANDUSE\GIS\Rezone\mxd\GenPlan.mxd

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) TITLE 23 (ZONING), OFFICIAL ZONING MAP, TO REZONE ASSESSOR PARCEL NUMBERS (APN) 054-1716-002-00, 054-1716-003-00, AND 054-1716-031-00 FROM RESTRICTED TWO-FAMILY RESIDENTIAL DISTRICT (R-2) TO GENERAL COMMERCIAL DISTRICT (C-1)

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

Section 1. The City Council has certified that the rezone amendment request is categorically exempt from CEQA pursuant to Classes 1, 3, 5, and 31, which apply to the proposed amendment as well as the pending future hotel renovation project.

Section 2. The City Council finds this rezoning from R-2 (Restricted Two-family Residential) to C-1 (General Commercial) serves the public interest by eliminating the legal non-conformity of a hotel use. The amendment serves the public interest by allowing the entire existing hotel use to continue by-right within the General Commercial zoning district. The rezoning would correct a mapping anomaly that splits three parcels and a building, resolving unnecessary complexity in land use permitting processes and decisions for the site.

Section 3. The City Council finds that the proposed zoning map amendment would align the boundary between the R-2 and C-1 Districts with existing property lines, approximately 50 feet to the west, to include the entire existing footprint of the Rose Garden Inn. The proposed rezoning is compatible with existing General Commercial zoning district to the east, north and south of the project site and would align with the proposed General Plan amendment described above. The R-2 zoning district to the west and south would remain undisturbed by this amendment and is consistent with similar compatible adjacencies in the area.

Section 4. The City Council finds that the proposed zoning map amendment moves the R-2/C-1 boundary approximately 50 feet west of its existing location. Adjacent parcels to the north and south have the same geometry as this block-face (i.e. C-1 parcels fronting Telegraph Avenue and R-2 parcels to the west of the C-1). The proposed rezoning of portions of the site from R-2 to C-1 would allow continuation of existing commercial uses at the project site that are compatible with commercial uses along the Telegraph Avenue corridor and have existed compatibly with the neighboring residential area. The proposed C-1 zoning would allow compatible mixed residential/commercial and higher density uses with approval of a Use Permit, which would be consistent with the remainder of properties along Telegraph Avenue.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

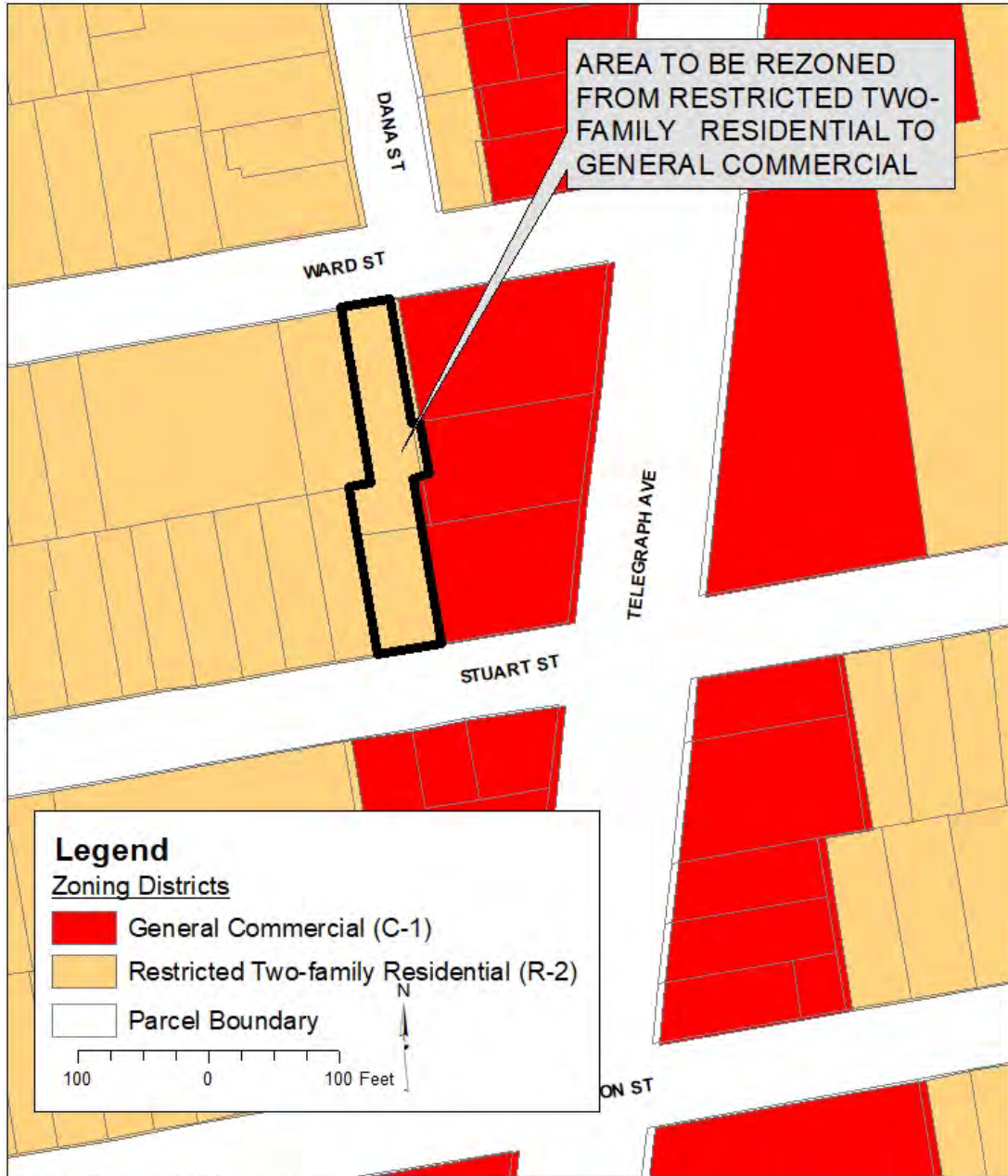
Exhibit

A: Zoning Map Amendment

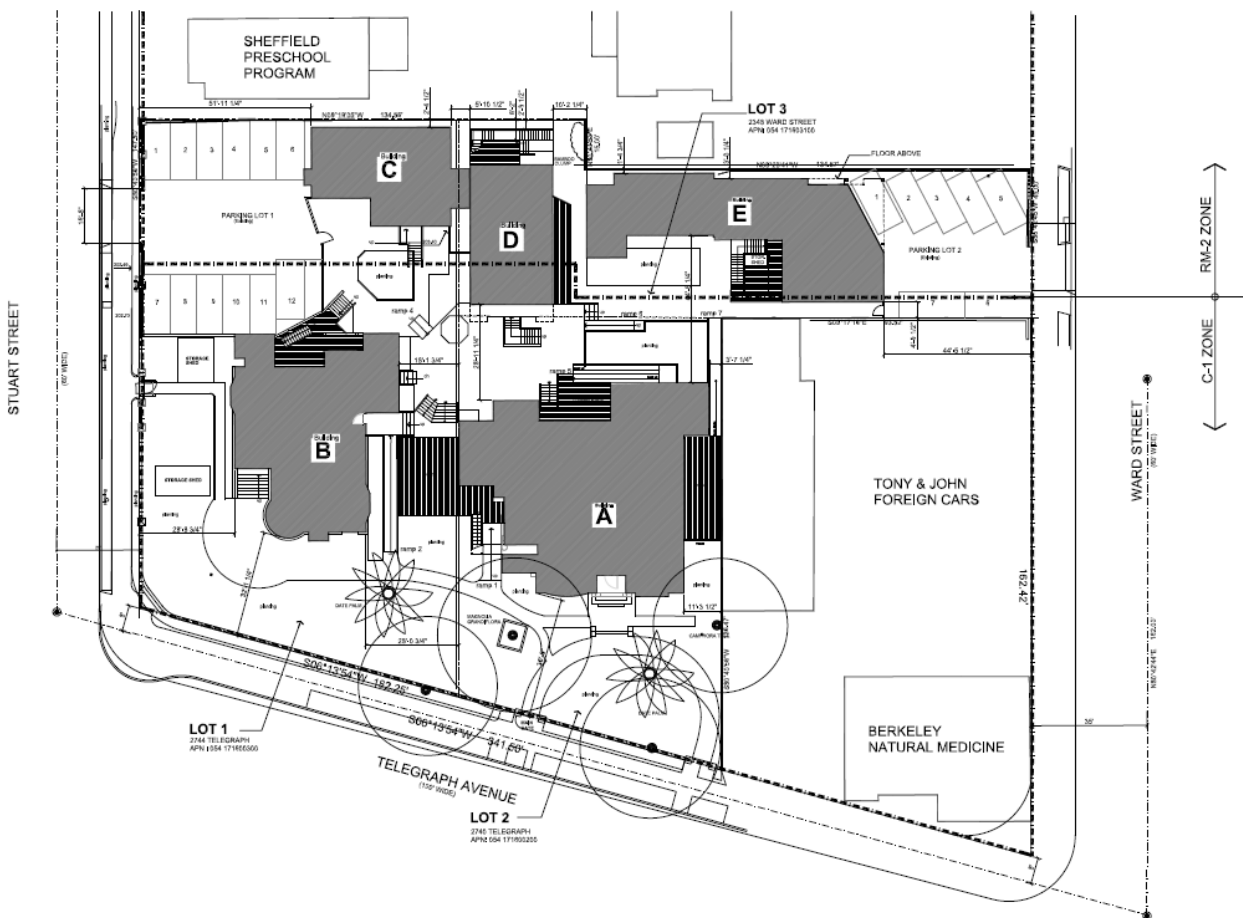
ATTACHMENT 2: EXHIBIT A

ZONING MAP AMENDMENT

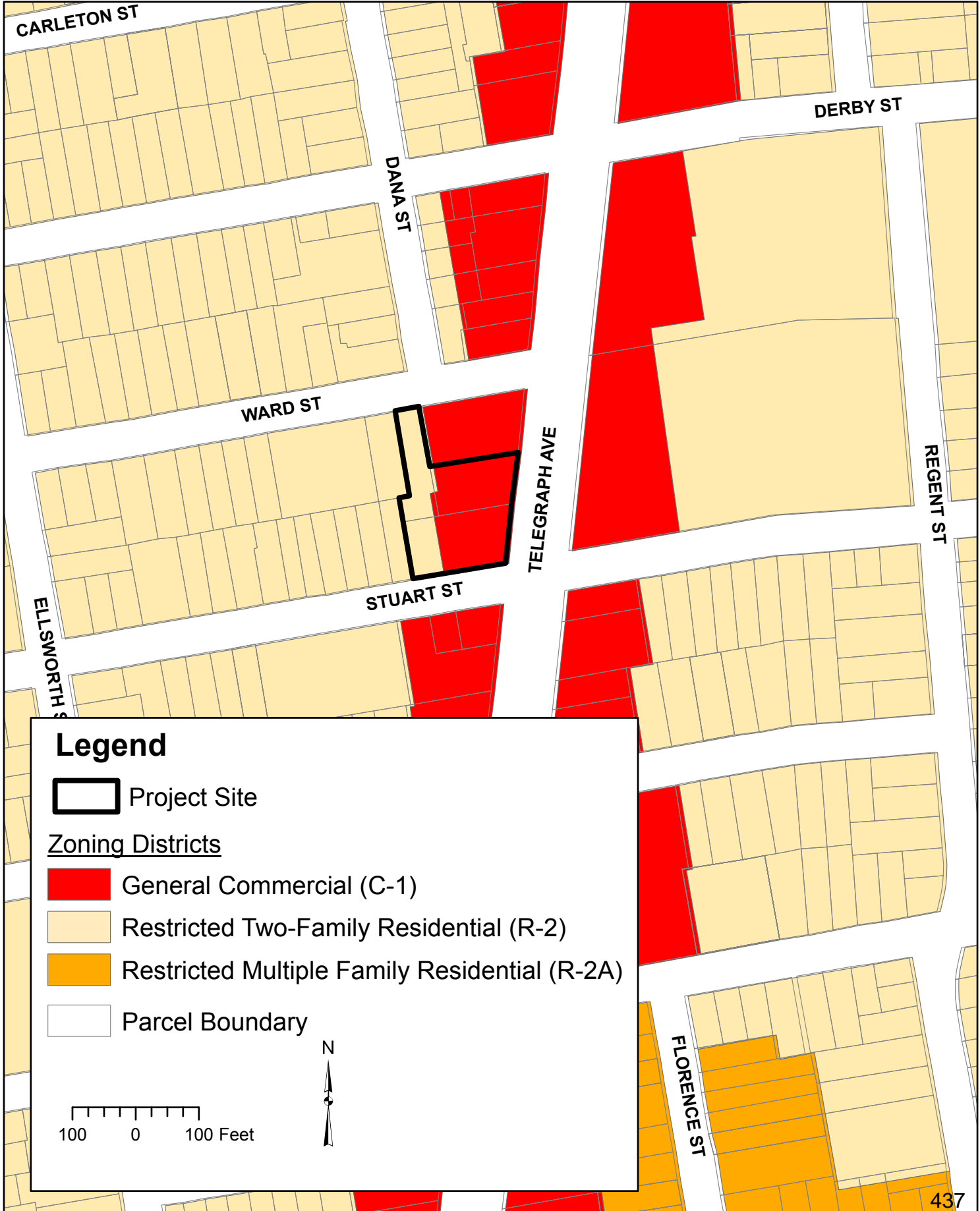
2740 Telegraph Avenue (APN 054-1716-002-00),
2744 Telegraph Avenue (APN 054-1716-003-00)
2348 Ward Street (APN 054-1716-031-00)



ATTACHMENT 3: EXISTING SITE PLAN



PROJECT SITE AND CURRENT ZONING





Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**

2 **February 5, 2020**

3 The meeting was called to order at 7:01 p.m

4 **Location:** South Berkeley Senior Center, Berkeley, CA

5 **1. ROLL CALL:**

6 **Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Mary Kay Lacey,
7 Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

8 **Commissioners Absent:** Steve Martinot.

9 **Staff Present:** Secretary Alene Pearson, Katrina Lapira, and Beth Greene.

10 **2. ORDER OF AGENDA:** Move Item 9 (2020 Planning Commission Elections) to before Item 3
11 (Public Comment Period).

12 **9. 2020 Planning Commission Elections**

13 Motion (Schildt) to elect Commissioner Robb Kapla as Chair of the Planning Commission.
14 Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: None.
15 Abstain: None. Absent: Martinot. (8-0-0-1)

17 Motion (Schildt) to elect Commissioner Mary Kay Lacey as Vice Chair of the Planning
18 Commission.
19 Ayes: Beach, Kapla, Lacey, Schildt, and Wrenn. Noes: None. Abstain: Krpata, Vincent, and
20 Wiblin. Absent: Martinot. (5-0-3-1)

22 **3. PUBLIC COMMENT PERIOD: 1**

23 **4. PLANNING STAFF REPORT:**

- 24
- 25 • January 21 - City Council adopted Extension of ADU Urgency Ordinance
 - 26 • January 28 - City Council adopted First Reading of Comprehensive Cannabis Ordinance
 - 27 • February 4 - City Council held Work Session on the Adeline Corridor Plan
 - 28 • Planning Commission Meeting on February 19 is canceled

29 **Information Items:** *None.*

30 **Communications:**

- 31 • December 3, 2019 – Sheffield Preschool, 2740-44 Telegraph & 2348 Ward Re-zone
- 32 • January 22 – Planning Staff, APA Annual Planning Commissioner Conference
- 33 • January 24 – City Manager’s Office, Strategic Plan Information
- 34 • January 27 – Southside Neighborhood Consortium, Southside EIR
- 35 • January 28 – Yovino-Young, 2740-44 Telegraph & 2348 Ward Re-zone
- 36 • January 29 – People’s Park Historic District Advocacy Group, Southside EIR
- 37 • January 30 – Bell, Accessory Dwelling Units

38

39 **Late Communications** (Received after the Packet deadline):

- 40 • January 31 - Posselt, Southside EIR
- 41 • January 31 – Lee, Accessory Dwelling Units
- 42 • February 4 – Singh, Southside EIR
- 43 • February 4 – March, Southside EIR

44

45 **Late Communications** (Received and distributed at the meeting):

- 46 • February 5 – Associated Students University of California, Southside EIR
- 47 • February 5 - Griffin, Accessory Dwelling Units
- 48 • February 5 – Staff, Item 10 – Housing Capacity Analysis + Proposed Southside Zoning
- 49 Modifications (Updated February 5, 2020)

50 **5. CHAIR REPORT:** None.

51

52 **6. COMMITTEE REPORT:**

53

- 54 • Adeline Corridor Specific Plan Subcommittee: The next subcommittee meeting will be
- 55 on March 18.
- 56
- 57 • Zoning Ordinance Revision Project (ZORP): The next subcommittee meeting will be on
- 58 February 24.
- 59
- 60 • Joint Subcommittee for the Implementation of State Housing Laws: At the next meeting
- 61 on February 26, JSISHL will discuss objective design, shadow, and density standards.
- 62
- 63 • APA Planning Commissioner’s Training: Commissioner Shane Krpata shared some
- 64 insights about training session.

65 **7. APPROVAL OF MINUTES:**

66 Motion/Second/Carried (Wrenn/Schildt) to approve the Planning Commission Meeting Minutes
 67 from January 15, 2020 with the discussed corrections to line 81. Ayes: Beach, Kapla, Krpata,
 68 Lacey, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: Martinot. (8-
 69 0-0-1)

70

71 **FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** At the next meeting,
 72 March 4, 2020 the following items may be presented. (There will be no Planning Commission
 73 meeting on February 19.)

- 74 • Public Hearing on Parking Reform

75 **AGENDA ITEMS**

76 **10. Discussion: Public Hearing: Southside EIR Discussion**

77 Staff introduced the Southside Environmental Impact Report (EIR) project, explaining the basis
 78 for the project and the role of CEQA analysis as part of the study of potential development
 79 standards. Staff shared feedback received from the Southside EIR subcommittee and asked
 80 the Commission to provide comment on the proposed Zoning Ordinance and Zoning Map
 81 changes. The Commission directed Staff to include in their analysis the study of a scenario
 82 where 5-story buildings would be permissible in the R-3 zoning district, density bonus heights,
 83 and other alternatives.

84 **Public Comments: 13**

85 **11. Action: Public Hearing: Amendments to the Berkeley Zoning Map and** 86 **General Plan for 2740 & 2744 Telegraph Avenue and 2348 Ward** 87 **Street**

88 Staff provided a reviewed the proposal to redesignate and re-zone portions of parcels
 89 addressed 2740 & 2744 Telegraph Avenue and 2348 Ward Street- the existing Rose Garden
 90 Inn. The project requests a General Plan redesignation of the three parcels from Low Medium
 91 Density Residential to Avenue Commercial and a rezone from Restricted Two-family Residential
 92 (R-2) to General Commercial (C-1).

93 **Public Comments: 2**

94 Motion/Second/Carried (Schildt/Wiblin) to close the public hearing.
 95 Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: None.
 96 Abstain: None. Absent: Martinot. (8-0-0-1)
 97

98 Motion/Second/Carried (Vincent/Schildt) to make a recommendation to the City Council that
 99 portions of the parcels located at 2740 Telegraph Avenue (Assessor's Parcel Number [APN]
 100 054-1716-002-00), 2744 Telegraph Avenue (APN 054-1716-003-00) and 2348 Ward Street
 101 (APN 054-1716-031-00) be re-designated from Low Medium Density Residential to Avenue
 102 Commercial and be rezoned from Restricted Two-Family Residential District (R-2) to
 103 General Commercial District (C-1).
 104 Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: None.
 105 Abstain: None. Absent: Martinot. (8-0-0-1)

106
 107 **12. Discussion: ADU Discussion**

108 Staff presented information on the existing interim ADU ordinance, noting areas in State law
109 where modifications could be adopted in a local ordinance. The Commission directed staff to
110 assess common issues experienced by the public as a result of the new State law and explore
111 ADU development incentives related to accessibility and affordability.

112 **Public Comments: 8**

113 **The meeting was adjourned at 11:12pm**

114 **Commissioners in attendance: 8**

115 **Members in the public in attendance: 33**

116 **Public Speakers: 23 speakers**

117 **Length of the meeting: 4 hours and 11 minutes**

DRAFT

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**2740 & 2744 TELEGRAPH AVENUE / 2348 WARD STREET
GENERAL PLAN REDESIGNATION AND ZONING MAP AMENDMENT**

The Department of Planning and Development is proposing, at the request of the property owner, a rezoning and General Plan amendment for Assessor Parcel Numbers (APNs) 054-1716-002-00, 054-1716-003-00 and 054-1716-031-00, shown on the attached map. These parcels comprise the project site and correspond to 2740 and 2744 Telegraph Avenue and 2348 Ward Street. The requested General Plan amendment would change portions of the parcels from Low Medium Density Residential to Avenue Commercial. The rezoning would change portions of the parcels from the Restricted Two-Family Residential (R-2) District [Berkeley Municipal Code (BMC) Chapter 23D.28] to the General Commercial (C-1) District [BMC Chapter 23E.36].

The purpose of the requested re-designation and rezone is to bring the existing hotel uses at the project site into conformity with the General Plan and Zoning Map and to allow for future improvements to the hotel. The property owner is separately applying for Use Permits to upgrade and expand the non-historic portion of the hotel complex, but no changes to the hotel use are proposed, and the historic buildings (Berkeley Landmarks 125 and 126) would not be adversely impacted.

The hearing will be held on April 14, 2020 at 6:00 p.m.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of Thursday, April 2, 2020.

For further information, please contact Alene Pearson, Principal Planner, at 510-981-7489.

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the April 14, 2020 meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://zoom.us/j/724407089>. 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 on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **724 407 089**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair. NOTE: Your phone number will appear on the videoconference screen.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: April 3, 2020 per California Code Sections 65856(a) and 65090.

~~~~~

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on Thursday, April 2, 2020.

\_\_\_\_\_  
Mark Numainville, City Clerk



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Additional data provided by City of Berkeley, 2019; Alameda County, 2018.





Office of the City Manager

PUBLIC HEARING

April 14, 2020

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Subject: Zoning Ordinance Amendments for Family Daycare Homes to comply with Senate Bill 234

RECOMMENDATION

Conduct a public hearing and, upon conclusion:

1. Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 23 (Zoning Ordinance) to comply with Family Daycare Home regulations recently enacted by Senate Bill 234 (SB 234); and
2. Adopt a Resolution amending Resolution 67,985-N.S., the Planning Department Fee Schedule, to reflect the requirement that no permit fees may be charged for Family Daycare Homes pursuant to SB 234.

FISCAL IMPACTS OF RECOMMENDATION

Pursuant to SB 234, the proposed Zoning Ordinance amendments are designed to streamline the permitting process for Small and Large Family Daycare Homes. The attached resolution eliminating City fees for Family Daycare Homes to zero dollars will have minimal financial impacts on the City because in reducing discretion for these permits, staff review can be accomplished over-the-counter. Additionally, the Finance Department will no longer require business licenses for Family Daycare Homes, which will also have a minimal fiscal impact on the City. Changes are expected to reduce barriers and costs to those operating or wanting to operate licensed Family Daycare Homes in Berkeley.

CURRENT SITUATION AND ITS EFFECTS

Family Daycare Homes, as defined by the State, are facilities that regularly provide care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day.

SB 234 (Skinner)<sup>1</sup>, adopted on September 5, 2019, revised regulations of Family Daycare Homes in the State of California by:

1. Prohibiting jurisdictions from levying business license fees or taxes on Family Daycare Homes; and
2. Requiring ministerial approval of Family Daycare Homes in all zoning districts where residential uses are allowed.

The City of Berkeley currently allows licensed Family Daycare Home providers to operate with a Zoning Certificate (ZC) for less than 8 children or an Administrative Use Permit (AUP) for up to 14 children where they are allowed in R-prefixed districts, the West Berkeley Commercial (C-W) district, the Mixed-Use Residential (MU-R) district, and the Mixed Use-Light Industrial (MU-LI) district. Both permit types have incurred a review fee of between \$200 and \$1,000 and Family Daycare Homes are subject to an annual local business tax.

The recommended changes would update the BMC to comply with State law. Specifically, the Zoning Ordinance amendments would update the Uses Permitted Tables to allow Family Daycare Homes to locate in all districts where residential uses are permitted, reduce the level of discretion for large facilities, remove large facilities from findings, and update the definition and spelling to be consistent with SB 234.

The proposed Zoning Ordinance amendments affect the following BMC Chapters: Sections 23D.16.030, 23D.20.030, 23D.24.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030, 23E.36.030, 23E.40.030, 23E.44.030, 23E.48.030, 23E.52.030, 23E.56.030, 23E.60.030, 23E.68.030, 23E.80.040, 23E.80.090, 23E.84.040, 23E.84.090.H, and 23F.04.010.

### **Planning Commission Recommendations**

On January 15, 2020 the Planning Commission held a public hearing and recommended a set of Zoning Ordinance amendments by an 8-1-0-0 vote (Yes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn; No: Martinot; Abstain: none; Absent: none). See Attachments 2 and 3 for the Planning Commission staff report and meeting minutes.

Recommended Zoning Ordinance amendments are presented in five categories listed below:

1. Reduce Level of Discretion for Land Use Permits
2. Expand Districts where Permitted Use is Allowed
3. Remove Large Family Daycare Home from Findings
4. Update Definition of Family Daycare Home

---

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB234](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB234)

## 5. Update Spelling for Consistency with State Law

**1. Reduce Level of Discretion (Uses Permitted Table)**

Change the permit required to establish a Large Family Daycare Home from an AUP to a ZC as required by SB 234.

Districts Affected: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU, C-W, MU-LI, and MU-R.

**2. Expand Districts where Permitted Use is Allowed (Uses Permitted Table)**

Amend the Uses Permitted Tables to expand districts where Family Daycare Homes can locate and operate. Currently Family Daycares are not permitted in the ES-R and in most C-prefixed districts. SB 234 requires that the City allow Family Daycares wherever residential uses are permitted in the City.

Districts Affected: ES-R, C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, and C-DMU.

**3. Remove Large Family Daycare Homes from Findings**

Amend Findings to remove reference to Large Family Daycare Homes since findings are not required for uses permitted with a ZC.

Districts Affected: MU-LI and MU-R.

**4. Update Family Daycare Home Definition (Sub-Title 23F)**

Amend the definition of Family Daycare Home to reflect the new definition provided in Government Code Section 1596.78, thereby eliminating the distinction between small and large daycares.

**5. Update Spelling to be Consistent with State Law**

Update 52 instances of “day care” to “daycare” to be consistent with spelling in the State law. These changes can be found throughout the Zoning Ordinance.

**BACKGROUND**

Family Daycare Homes, as defined by the State, are facilities that regularly provide care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day. Family Daycare Homes, licensed by the State of California, are classified as follows:

1. Small Family Daycare Home involves the use of a dwelling, as described above, for eight or fewer children, inclusive of children under 10 years of age who reside at the home.

2. Large Family Daycare Home involves the use of a dwelling, as described above, for nine to fourteen children, inclusive of children under 10 years of age who reside at the home.

According to the State legislation, licensed Family Daycare Homes play an important role in the childcare market – providing flexible hours, affordable care, and low staff-to-child ratios in a home environment. This bill reduces barriers and costs to those operating or wanting to operate licensed Family Daycare Homes by prohibiting jurisdictions from levying business license fees or taxes on Small and Large Family Daycare Homes. The law also requires ministerial approval of Family Daycare Homes in all districts where residential uses are allowed.

#### ENVIRONMENTAL SUSTAINABILITY

Decreasing financial barriers to establishing Family Daycare Homes while expanding where providers can locate is expected to create more childcare options for families. More options may allow parents to identify providers close to home or work. Convenient locations for Family Daycare Homes can contribute to a family's quality of life, help build community, and support sustainable transportation choices.

#### RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments would bring the BMC into compliance with State law and reduce barriers for Family Daycare Homes, providing more childcare options for Berkeley families.

#### ALTERNATIVE ACTIONS CONSIDERED

Council could take no action, in which case the Zoning Ordinance will be out of compliance with SB 234.

#### CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, (510)-981-7437  
Paola Boylan, Assistant Planner, Land Use Planning Division, 510-981-7418  
Alene Pearson, Principal Planner, Land Use Planning Division, (510) 981-7489

#### Attachments:

- 1: Ordinance amending BMC Title 23
- 2: Resolution revising the Planning Department Fee Schedule
- 3: January 15, 2020 Planning Commission Staff Report (without Attachments)
- 4: January 15, 2020 Planning Commission Meeting Minutes
- 5: Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENT TO MODIFY BERKELEY MUNICIPAL CODE SECTIONS 23D.16.030, 23D.20.030, 23D.24.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030, 23E.36.030, 23E.40.030, 23E.44.030, 23E.48.030, 23E.52.030, 23E.56.030, 23E.60.030, 23E.68.030, 23E.80.040, 23E.80.090, 23E.84.040, 23E.84.090.H, AND 23F.04.010 TO MODIFY DEFINITION AND PERMITTING REGULATIONS FOR FAMILY DAYCARE HOMES IN ALL RESIDENTIAL AND NON-RESIDENTIAL DISTRICTS.

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

Section 1. That the “Accessory Uses and Structures” section of Table 23D.16.030 in Chapter 23D.16 Section 23D.16.030 of the Berkeley Municipal Code is amended to read as follows:

| <b>Table 23D.16.030</b>                                                                                 |                       |                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                         |                       |                                                                                                                                                           |
| <b>Use</b>                                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                      |
| <b>Accessory Uses and Structures</b>                                                                    |                       |                                                                                                                                                           |
| Accessory Buildings or Structures                                                                       | ZC                    | Must satisfy the requirements of Chapter 23D.08                                                                                                           |
| If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>      | AUP                   |                                                                                                                                                           |
| When located on a vacant lot without a Main Building                                                    | AUP                   |                                                                                                                                                           |
| With Urban Agriculture                                                                                  | ZC                    | Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>                          | ZC                    |                                                                                                                                                           |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP                   | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                                               |
| Short-Term Rental                                                                                       | ZC                    | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                                 |

|                                                           |           |                                                                     |
|-----------------------------------------------------------|-----------|---------------------------------------------------------------------|
| Child Care; Family Day-Care/Daycare Home (Small or Large) | <u>ZC</u> |                                                                     |
| Small Family Day Care Homes: of eight or fewer children   | ZC        | -                                                                   |
| Large Family Day Care Homes: of nine to 14 children       | AUP       | -                                                                   |
| Fences                                                    |           |                                                                     |
| If six ft. or less in height                              | ZC        |                                                                     |
| Exceed six ft. in height                                  | AUP       | In required setbacks                                                |
| Home Occupations                                          |           |                                                                     |
| Low Impact                                                | ZC        | If the requirements of Section <a href="#">23C.16.020</a> are met   |
| Moderate Impact, teaching-related                         | AUP       | Subject to the requirements of Section <a href="#">23C.16.030.A</a> |
| Moderate Impact                                           | UP(PH)    | Subject to the requirements of Section <a href="#">23C.16.030.B</a> |
| Hot Tubs, Jacuzzis, Spas                                  | AUP       | See Section <a href="#">23D.08.060.C</a>                            |
| Stables for Horses                                        | AUP       |                                                                     |

Section 2. That the "Accessory Uses and Structures" section of Table 23D.20.030 in Chapter 23D.20 Section 23D.20.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.20.030</i>                                                                                 |                       |                                                                       |
|---------------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                         |                       |                                                                       |
| <b>Use</b>                                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                  |
| <b>Accessory Uses and Structures</b>                                                                    |                       |                                                                       |
| Accessory Buildings or Structures                                                                       | ZC                    | Must satisfy the requirements of Chapter 23D.08                       |
| If has either habitable space and/or exceeds the requirements under Chapter 23D.08                      | AUP                   |                                                                       |
| When located on a vacant lot without a Main Building                                                    | AUP                   |                                                                       |
| With Urban Agriculture                                                                                  | ZC                    | Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>                          | ZC                    |                                                                       |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP                   | Subject to making applicable findings in Section 23C.24.070           |
| Short-Term Rental                                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                             |
| <del>Child Care; Family Day Care Daycare Home (Small or Large)</del>                                    | <del>ZC</del>         |                                                                       |
| <del>Small Family Day Care Daycare Homes: of eight or fewer children</del>                              | <del>ZC</del>         |                                                                       |
| <del>Large Family Day Care Homes: of nine to 14 children</del>                                          | <del>AUP</del>        |                                                                       |
| <b>Fences</b>                                                                                           |                       |                                                                       |
| If six ft. or less in height                                                                            | ZC                    |                                                                       |
| Exceeding six ft. in height                                                                             | AUP                   | In required yards                                                     |
| <b>Home Occupations</b>                                                                                 |                       |                                                                       |
| Low Impact                                                                                              | ZC                    | If the requirements of Section 23C.16.020 are met                     |
| Moderate Impact, teaching-related                                                                       | AUP                   | Subject to the requirements of Section 23C.16.030.A                   |

|                          |        |                                                     |
|--------------------------|--------|-----------------------------------------------------|
| Moderate Impact          | UP(PH) | Subject to the requirements of Section 23C.16.030.B |
| Hot Tubs, Jacuzzis, Spas | AUP    | See Section 23D.08.060.C                            |
| Stables for Horses       | AUP    |                                                     |



Section 3. That the "Accessory Uses and Structures" section of Table 23D.24.030 in Chapter 23D.24 Section 23D.24.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.24.030</i>                                                                                                            |                       |                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                                                    |                       |                                                                                                                                           |
| <b>Use</b>                                                                                                                         | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                      |
| <b>Accessory Uses and Structures</b>                                                                                               |                       |                                                                                                                                           |
| Accessory Buildings or Structures                                                                                                  |                       |                                                                                                                                           |
| Under 100 sq. ft.                                                                                                                  | ZC                    | Must satisfy the requirements of Chapter 23D.08                                                                                           |
| 100 or more sq. ft.                                                                                                                | UP(PH)                | If has either habitable space and/or exceeds the requirements of Chapter 23D.08                                                           |
| Located on a vacant lot without a Main Building                                                                                    | UP(PH)                |                                                                                                                                           |
| Accessory Dwelling Units                                                                                                           | Prohibited            |                                                                                                                                           |
| Child Care: <del>Small</del><br>Family <del>Day-Care</del> Daycare<br>Homes <del>of eight or fewer children</del> (Small or Large) | ZC                    | <del>Permitted as a residential use pursuant to State Health and Safety Code Sec. 1597.40 et seq.</del>                                   |
| Fences                                                                                                                             |                       |                                                                                                                                           |
| Four ft. or less in height                                                                                                         | ZC                    |                                                                                                                                           |
| Exceeding four ft. in height                                                                                                       | AUP                   | Subject to Fire Department review and comment                                                                                             |
| Home Occupations                                                                                                                   |                       |                                                                                                                                           |
| Low Impact                                                                                                                         | AUP                   | If the requirements of Section 23C.16.020 are met                                                                                         |
| Moderate Impact                                                                                                                    | UP(PH)                | Subject to the requirements of Section 23C.16.030, except that no non-resident employees or customer visits are allowed in ES- R District |
| Hot Tubs, Jacuzzis, Spas or Swimming Pools                                                                                         | UP(PH)                | See Section 23D.08.060.C                                                                                                                  |
| Rental of Rooms                                                                                                                    | UP(PH)                | Not to exceed four persons. Occupancy of a single dwelling unit by a single household as defined in Sub-title 23F is permitted            |
| Stables for Horses                                                                                                                 | AUP                   |                                                                                                                                           |

Section 4. That the “Accessory Uses and Structures” section of Table 23D.28.030 in Chapter 23D.28 Section 23D.28.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.28.030</i>                                                                 |                       |                                                                       |
|-----------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                                       |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                  |
| <b>Accessory Uses and Structures</b>                                                    |                       |                                                                       |
| Accessory Buildings or Structures                                                       | ZC                    | Must satisfy the requirements of Chapter 23D.08                       |
| If has either habitable space and/or exceeds the requirements under Chapter 23D.08      | AUP                   |                                                                       |
| When located on a vacant lot without a Main Building                                    | AUP                   |                                                                       |
| With Urban Agriculture                                                                  | ZC                    | Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Accessory Dwelling Units in compliance with Section 23C.24.050                          | ZC                    |                                                                       |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070           |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                             |
| Child Care; Family <del>Day</del> <del>Gare</del> Daycare Home (Small or Large)         | <del>ZC</del>         |                                                                       |
| <del>Small Family Daycare Home : of eight or fewer children</del>                       | <del>ZC</del>         |                                                                       |
| <del>Large Family Daycare Home: of nine to 14 children</del>                            | <del>AUP</del>        |                                                                       |
| Fences                                                                                  |                       |                                                                       |
| If six ft. or less in height                                                            | ZC                    |                                                                       |
| Exceeding six ft. in height                                                             | AUP                   | In required setbacks                                                  |
| Home Occupations                                                                        |                       |                                                                       |
| Low Impact                                                                              | ZC                    | If the requirements of Section 23C.16.020 are met                     |
| Moderate Impact, teaching-related                                                       | AUP                   | Subject to the requirements of Section 23C.16.030.A                   |

|                          |        |                                                     |
|--------------------------|--------|-----------------------------------------------------|
| Moderate Impact          | UP(PH) | Subject to the requirements of Section 23C.16.030.B |
| Hot Tubs, Jacuzzis, Spas | AUP    | See Section 23D.08.060.C                            |
| Stables for Horses       | AUP    |                                                     |

Section 5. That the “Accessory Uses and Structures” section of Table 23D.32.030 in Chapter 23D.32 Section 23D.32.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.32.030</i>                                                                 |                       |                                                                       |
|-----------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                                       |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                  |
| <b>Accessory Uses and Structures</b>                                                    |                       |                                                                       |
| Accessory Buildings or Structures                                                       | ZC                    | Must satisfy the requirements of Chapter 23D.08                       |
| If has either habitable space and/or exceeds the requirements under Chapter 23D.08      | AUP                   |                                                                       |
| When located on a vacant lot without a Main Building                                    | AUP                   |                                                                       |
| With Urban Agriculture                                                                  | ZC                    | Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Accessory Dwelling Units in compliance with Section 23C.24.050                          | ZC                    |                                                                       |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070           |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                             |
| Child Care; Family Day Care Daycare Home (Small or Large)                               | <del>ZC</del>         |                                                                       |
| <del>Small Family Day Care Homes: of eight or fewer children</del>                      | <del>ZC</del>         |                                                                       |
| <del>Large Family Day Care Homes: of nine to 14 children</del>                          | <del>AUP</del>        |                                                                       |
| Fences                                                                                  |                       |                                                                       |
| If six ft. or less in height                                                            | ZC                    |                                                                       |
| Exceeding six ft. in height                                                             | AUP                   | In required setbacks                                                  |
| Home Occupations                                                                        |                       |                                                                       |
| Low Impact                                                                              | ZC                    | If the requirements of Section 23C.16.020 are met                     |
| Moderate Impact, teaching-related                                                       | AUP                   | Subject to the requirements of Section 23C.16.030.A                   |
| Moderate Impact                                                                         | UP(PH)                | Subject to the requirements of                                        |

|                          |     |                          |
|--------------------------|-----|--------------------------|
|                          |     | Section 23C.16.030.B     |
| Hot Tubs, Jacuzzis, Spas | AUP | See Section 23D.08.060.C |
| Stables for Horses       | AUP |                          |

Section 6. That the “Accessory Uses and Structures” section of Table 23D.36.030 in Chapter 23D.36 Section 23D.36.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.36.030</i>                                                                            |                       |                                                                       |
|----------------------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                    |                       |                                                                       |
| <b>Use</b>                                                                                         | <b>Classification</b> | <b>Special Requirements (if any)</b>                                  |
| <b>Accessory Uses and Structures</b>                                                               |                       |                                                                       |
| Accessory Buildings or Structures                                                                  | ZC                    | Must satisfy the requirements of Chapter <a href="#">23D.08</a>       |
| If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a> | AUP                   |                                                                       |
| When located on a vacant lot without a Main Building                                               | AUP                   |                                                                       |
| With Urban Agriculture                                                                             | ZC                    | Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Accessory Dwelling Units in compliance with Section 23C.24.050                                     | ZC                    |                                                                       |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050            | AUP                   | Subject to making applicable findings in Section 23C.24.070           |
| Short-Term Rental                                                                                  | ZC                    | Subject to requirements of Chapter 23C.22                             |
| <del>Child Care: Family Daycare Home Day Care (Small or Large)</del>                               | <del>ZC</del>         |                                                                       |
| <del>    Small Family Day Care Homes: of eight or fewer children</del>                             | <del>ZC</del>         |                                                                       |
| <del>    Large Family Day Care Homes: of nine to 14 children</del>                                 | <del>AUP</del>        |                                                                       |
| Fences                                                                                             |                       |                                                                       |
| If six ft. or less in height                                                                       | ZC                    |                                                                       |
| Exceeding six ft. in height                                                                        | AUP                   | In required setbacks                                                  |
| Home Occupations                                                                                   |                       |                                                                       |
| Low Impact                                                                                         | ZC                    | If the requirements of Section 23C.16.020 are met                     |

|                                   |        |                                                     |
|-----------------------------------|--------|-----------------------------------------------------|
| Moderate Impact, teaching-related | AUP    | Subject to the requirements of Section 23C.16.030.A |
| Moderate Impact                   | UP(PH) | Subject to the requirements of Section 23C.16.030.B |
| Hot Tubs, Jacuzzis, Spas          | AUP    | See Section 23D.08.060.C                            |
| Stables for Horses                | AUP    |                                                     |

Section 7. That the “Accessory Uses and Structures” section of Table 23D.40.030 in Chapter 23D.40 Section 23D.40.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.40.030</i>                                                                 |                       |                                                                          |
|-----------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                                          |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                     |
| <b>Accessory Uses and Structures</b>                                                    |                       |                                                                          |
| Accessory Buildings or Structures                                                       | ZC                    | Must satisfy the requirements of Chapter 23D.08                          |
| If has either habitable space and/or exceeds the requirements under Chapter 23D.08      | AUP                   |                                                                          |
| When located on a vacant lot without a Main Building                                    | AUP                   |                                                                          |
| With Urban Agriculture                                                                  | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060.              |
| Accessory Dwelling Units in compliance with Section 23C.24.050                          | ZC                    |                                                                          |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making of applicable findings set forth in Section 23C.24.070 |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                                |
| Child Care <sup>15</sup> ; Family Day Care Daycare Home (Small or Large)                | <u>ZC</u>             |                                                                          |
| Small Family Day Care Homes: of eight or fewer children                                 | ZC                    |                                                                          |
| Large Family Day Care Homes: of nine to 14 children                                     | AUP                   |                                                                          |
| Fences                                                                                  |                       |                                                                          |
| Six ft. or less in height                                                               | ZC                    |                                                                          |
| Exceeding six ft. in height                                                             | AUP                   | In required setbacks                                                     |
| Home Occupations                                                                        |                       |                                                                          |
| Low Impact                                                                              | ZC                    | If the requirements of Section 23C.16.020 are met                        |
| Moderate Impact, teaching-related                                                       | AUP                   | Subject to the requirements of Section 23C.16.030.A                      |



|                                              |        |                                                                                                          |
|----------------------------------------------|--------|----------------------------------------------------------------------------------------------------------|
| Moderate Impact                              | UP(PH) | Subject to the requirements of Section 23C.16.030.B                                                      |
| Hot Tubs, Jacuzzis, Spas                     | AUP    | See Section 23D.08.060.C                                                                                 |
| Stables for Horses                           | AUP    |                                                                                                          |
| Stores and Shops (Incidental to another Use) | UP(PH) | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 8. That the “Accessory Uses and Structures” section of Table 23D.44.030 in Chapter 23D.44 Section 23D.44.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.44.030</i>                                                                                 |                       |                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                         |                       |                                                                                                                                                |
| <b>Use</b>                                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                           |
| <b>Accessory Uses and Structures</b>                                                                    |                       |                                                                                                                                                |
| Accessory Buildings or Structures                                                                       | ZC                    | Must satisfy the requirements of Chapter <a href="#">23D.08</a>                                                                                |
| If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a>      | AUP                   |                                                                                                                                                |
| When located on a vacant lot without a Main Building                                                    | AUP                   |                                                                                                                                                |
| With Urban Agriculture                                                                                  | ZC                    | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Accessory Dwelling Units in compliance with Section <a href="#">23C.24.050</a>                          | ZC                    |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP                   | Subject to making applicable findings set forth in Section <a href="#">23C.24.070</a>                                                          |
| Short-Term Rental                                                                                       | ZC                    | Subject to requirements of Chapter <a href="#">23C.22</a>                                                                                      |
| Child Care, Family <del>Day Care</del> <u>Daycare Home (Small or Large)</u>                             |                       |                                                                                                                                                |
| <del>Small Family Day Care Homes: of eight or fewer children</del>                                      | <del>ZC</del>         |                                                                                                                                                |
| <del>Large Family Day Care Homes: of nine to 14 children</del>                                          | <del>AUP</del>        |                                                                                                                                                |
| Fences                                                                                                  |                       |                                                                                                                                                |
| Six ft. or less in height                                                                               | ZC                    |                                                                                                                                                |
| Exceeding six ft. in height                                                                             | AUP                   | In required setbacks                                                                                                                           |
| Home Occupations                                                                                        |                       |                                                                                                                                                |
| Low Impact                                                                                              | ZC                    | If the requirements of Section <a href="#">23C.16.020</a> are met                                                                              |
| Moderate Impact, teaching-related                                                                       | AUP                   | Subject to the requirements of Section <a href="#">23C.16.030.A</a>                                                                            |

|                                              |        |                                                                                                          |
|----------------------------------------------|--------|----------------------------------------------------------------------------------------------------------|
| Moderate Impact                              | UP(PH) | Subject to the requirements of Section 23C.16.030.B                                                      |
| Hot Tubs, Jacuzzis, Spas                     | AUP    | See Section 23D.08.060.C                                                                                 |
| Stables for Horses                           | AUP    |                                                                                                          |
| Stores and Shops (Incidental to another Use) | UP(PH) | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 9. That the “Accessory Uses and Structures” section of Table 23D.48.030 in Chapter 23D.48 Section 23D.48.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.48.030</i>                                                                 |                       |                                                                       |
|-----------------------------------------------------------------------------------------|-----------------------|-----------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                                       |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                  |
| <b>Accessory Uses and Structures</b>                                                    |                       |                                                                       |
| Accessory Buildings or Structures                                                       | ZC                    | Must satisfy the requirements of Chapter 23D.08                       |
| If has either habitable space and/or exceeds the requirements under Chapter 23D.08      | AUP                   |                                                                       |
| When located on a vacant lot without a Main Building                                    | AUP                   |                                                                       |
| With Urban Agriculture                                                                  | ZC                    | Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060 |
| Accessory Dwelling Units in compliance with Section 23C.24.050                          | ZC                    |                                                                       |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings set forth in Section 23C.24.070 |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                             |
| Child Care, Family Day Care Daycare Home (Small or Large)                               | <u>ZC</u>             |                                                                       |
| Small Family Day Care Homes: of eight or fewer children                                 | ZC<br>AUP             |                                                                       |
| Large Family Day Care Homes: of nine to 14 children                                     |                       |                                                                       |
| Fences<br>Six ft. or less in height<br>Exceeding six ft. in height                      | ZC<br>AUP             | In required setbacks                                                  |

|                                                                                                           |                                    |                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Home Occupations</p> <p>Low Impact</p> <p>Moderate Impact, teaching-related</p> <p>Moderate Impact</p> | <p>ZC</p> <p>AUP</p> <p>UP(PH)</p> | <p>If the requirements of Section 23C.16.020 are met</p> <p>Subject to the requirements of Section 23C.16.030.A</p> <p>Subject to the requirements of Section 23C.16.030.B</p> |
| <p>Hot Tubs, Jacuzzis, Spas</p>                                                                           | <p>AUP</p>                         | <p>See Section 23D.08.060.C</p>                                                                                                                                                |
| <p>Stables for Horses</p>                                                                                 | <p>Prohibited</p>                  |                                                                                                                                                                                |
| <p>Stores and Shops (Incidental to another Use)</p>                                                       | <p>UP(PH)</p>                      | <p>Contained within a building with no street access and no displays or merchandise visible from the street</p>                                                                |

Section 10. That the “Accessory Uses and Structures” section of Table 23D.52.030 in Chapter 23D.52 Section 23D.52.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23D.52.030</i>                                                                            |                       |                                                                                                                                                |
|----------------------------------------------------------------------------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                    |                       |                                                                                                                                                |
| <b>Use</b>                                                                                         | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                           |
| <b>Accessory Uses and Structures</b>                                                               |                       |                                                                                                                                                |
| Accessory Buildings or Structures                                                                  | ZC                    | Must satisfy the requirements of Chapter <a href="#">23D.08</a>                                                                                |
| If has either habitable space and/or exceeds the requirements under Chapter <a href="#">23D.08</a> | AUP                   |                                                                                                                                                |
| When located on a vacant lot without a Main Building                                               | AUP                   |                                                                                                                                                |
| With Urban Agriculture                                                                             | ZC                    | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
| Accessory Dwelling Units in compliance with Section 23C.24.050                                     | ZC                    |                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050            | AUP                   | Subject to making applicable findings set forth in Section 23C.24.070                                                                          |
| Short-Term Rental                                                                                  | ZC                    | Subject to requirements of Chapter 23C.22                                                                                                      |
| <del>Child Care; Family Day Care</del> <u>Daycare Home (Small or Large)</u>                        | <del>ZC</del>         |                                                                                                                                                |
| <del>    Small Family Day Care Homes: of eight or fewer children</del>                             | <del>ZC</del>         |                                                                                                                                                |
| <del>    Large Family Day Care Homes: of nine to 14 children</del>                                 | <del>AUP</del>        |                                                                                                                                                |
| Fences                                                                                             |                       | In required setbacks                                                                                                                           |
| Six ft. or less in height                                                                          | ZC                    |                                                                                                                                                |
| Exceeding six ft. in height                                                                        | AUP                   |                                                                                                                                                |

|                                              |            |                                                                                                          |
|----------------------------------------------|------------|----------------------------------------------------------------------------------------------------------|
| Home Occupations<br>Low Impact               | ZC         | If the requirements of Section 23C.16.020 are met                                                        |
| Moderate Impact, teaching-related            | AUP        | Subject to the requirements of Section 23C.16.030.A                                                      |
| Moderate Impact                              | UP(PH)     | Subject to the requirements of Section 23C.16.030.B                                                      |
| Hot Tubs, Jacuzzis, Spas                     | AUP        | See Section 23D.08.060.C                                                                                 |
| Stables for Horses                           | Prohibited |                                                                                                          |
| Stores and Shops (Incidental to another Use) | UP(PH)     | Contained within a building with no street access and no displays or merchandise visible from the street |

Section 11. That the “Uses Permitted in Residential Districts” section of Table 23E.36.030 in Chapter 23E.36 Section 23E.36.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.36.030</i>                                                                 |                       |                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                                                                                                                                                                                |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                                                                                                                                                           |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                                                                                                                                                                                |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                                                                                                                                                                                |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070                                                                                                                                                    |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                                                                                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060                                                                                                                                                     |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                                                                                                                                                                      |
| Child Care Centers                                                                      | UP(PH)                |                                                                                                                                                                                                                |
| <a href="#">Child Care; Family Daycare Home (Small or Large)</a>                        | <u>ZC</u>             |                                                                                                                                                                                                                |
| Clubs, Lodges                                                                           | UP(PH)                |                                                                                                                                                                                                                |
| Community Centers                                                                       | UP(PH)                |                                                                                                                                                                                                                |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)                | Standards may be modified under Section 23E.36.070.E. Residential-only projects are prohibited within the University Avenue Node Overlay areas, and permitted within University Avenue Overlay Mixed Use areas |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)                | Standards may be modified under Section 23E.36.070.E                                                                                                                                                           |
| Hospitals                                                                               | UP(PH)                | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                        |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                       | UP(PH)                |                                                                                                                                                                                                                |
| Libraries                                                                               | UP(PH)                | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                        |
| Nursing Homes                                                                           | UP(PH)                | Subject to parking requirements; see Section 23E.36.080                                                                                                                                                        |
| Parks and Playgrounds                                                                   | ZC                    |                                                                                                                                                                                                                |
| Public Safety and Emergency Services                                                    | UP(PH)                |                                                                                                                                                                                                                |
| Religious Assembly Uses                                                                 | UP(PH)                |                                                                                                                                                                                                                |
| Schools, Public or Private                                                              | UP(PH)                |                                                                                                                                                                                                                |



|                                                                                               |                     |                                               |
|-----------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------|
| Senior Congregate Housing<br>Six or fewer people<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH) | Changes of use from an existing dwelling unit |
|-----------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------|

Section 12. That the “Uses Permitted in Residential Districts” section of Table 23E.40.030 in Chapter 23E.40 Section 23E.40.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.40.030</i>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agricultures                              | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Child Care Centers                                                                      | UP(PH)                |                                                             |
| <u>Child Care; Family Daycare Home (Small or Large)</u>                                 | <u>ZC</u>             |                                                             |
| Clubs, Lodges                                                                           | UP(PH)                |                                                             |
| Community Centers                                                                       | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)                | Standards may be modified under Section 23E.40.070.E        |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)                | Standards may be modified under Section 23E.40.070.E        |
| Hospitals                                                                               | Prohibited            |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                       | UP(PH)                |                                                             |
| Libraries                                                                               | UP(PH)                | Subject to parking requirements; see Section 23E.40.080.B   |
| Nursing Homes                                                                           | UP(PH)                | Subject to parking requirements; see Section 23E.40.080.B   |
| Parks and Playgrounds                                                                   | ZC                    |                                                             |
| Public Safety and Emergency Services                                                    | UP(PH)                |                                                             |
| Religious Assembly Uses                                                                 | UP(PH)                |                                                             |
| Schools, Public or Private                                                              | UP(PH)                |                                                             |
| Senior Congregate Housing<br>Six or fewer persons                                       | ZC                    | Changes of use from an existing dwelling unit               |

|                       |        |  |
|-----------------------|--------|--|
| Seven or more persons | AUP    |  |
| New Construction      | UP(PH) |  |

Section 13. That the “Uses Permitted in Residential Districts” section of Table 23E.44.030 in Chapter 23E.44 Section 23E.44.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.44.030</i>                                                                        |                       |                                                             |
|------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                |                       |                                                             |
| <b>Use</b>                                                                                     | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| <b>Uses Permitted in Residential Districts</b>                                                 |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                                  | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050        | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                                  | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Child Care Centers                                                                             | UP(PH)                |                                                             |
| <u>Child Care; Family Daycare Home (Small or Large)</u>                                        | <u>ZC</u>             |                                                             |
| Clubs, Lodges                                                                                  | UP(PH)                |                                                             |
| Community Centers                                                                              | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                       | UP(PH)                | Standards may be modified under Section 23E.44.070.F        |
| Group Living Accommodations, subject to R-3 Standards                                          | UP(PH)                | Standards may be modified under Section 23E.44.070.F        |
| Hospitals                                                                                      | Prohibited            |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                              | UP(PH)                |                                                             |
| Libraries                                                                                      | UP(PH)                | Subject to parking requirements under Section 23E.44.080    |
| Nursing Homes                                                                                  | UP(PH)                | Subject to parking requirements under Section 23E.44.080    |
| Parks and Playgrounds                                                                          | ZC                    |                                                             |
| Public Safety and Emergency Services                                                           | UP(PH)                |                                                             |
| Religious Assembly Uses                                                                        | UP(PH)                |                                                             |
| Schools, Public or Private                                                                     | UP(PH)                |                                                             |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH)   | Changes of use from an existing dwelling unit               |

Section 14. That the “Uses Permitted in Residential Districts” section of Table 23E.48.030 in Chapter 23E.48 Section 23E.48.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.48.030</i>                                                                        |                       |                                                             |
|------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                |                       |                                                             |
| <b>Use</b>                                                                                     | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| <b>Uses Permitted in Residential Districts</b>                                                 |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                                  | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050        | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                                  | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                              | ZC                    | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                             | UP(PH)                |                                                             |
| <u>Child Care; Family Daycare Home (Small or Large)</u>                                        | <u>ZC</u>             |                                                             |
| Clubs, Lodges                                                                                  | Prohibited            |                                                             |
| Community Centers                                                                              | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                       | UP(PH)                | Subject to the standards under Section 23E.48.070.F         |
| Group Living Accommodations, subject to R-3 Standards                                          | UP(PH)                | Subject to the standards under Section 23E.48.070.F         |
| Hospitals                                                                                      | Prohibited            |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                              | UP(PH)                |                                                             |
| Libraries                                                                                      | UP(PH)                | Subject to parking requirements; see Section 23E.48.080     |
| Nursing Homes                                                                                  | UP(PH)                | Subject to parking requirements; see Section 23E.48.080     |
| Parks and Playgrounds                                                                          | ZC                    |                                                             |
| Public Safety and Emergency Services                                                           | UP(PH)                |                                                             |
| Religious Assembly Uses                                                                        | UP(PH)                |                                                             |
| Schools, Public or Private                                                                     | UP(PH)                |                                                             |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH)   | Change of use from an existing dwelling unit                |



Section 15. That the “Uses Permitted in Residential Districts” section of Table 23E.52.030 in Chapter 23E.52 Section 23E.52.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.52.030</i>                                                                 |                       |                                                                         |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                                         |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                                    |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                                         |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                                         |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070             |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                                    |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060              |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                               |
| Child Care Centers                                                                      | UP(PH)                |                                                                         |
| <u>Child Care; Family Daycare Home (Small or Large)</u>                                 | <u>ZC</u>             |                                                                         |
| Clubs, Lodges                                                                           | UP(PH)                |                                                                         |
| Community Centers                                                                       | UP(PH)                |                                                                         |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)                | Subject to the standards under Section 23E.52.070.E                     |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)                | Subject to the standards under Section <a href="#">23E.52.070.E</a>     |
| Hospitals                                                                               | Prohibited            |                                                                         |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                       | UP(PH)                |                                                                         |
| Libraries                                                                               | UP(PH)                | Subject to parking requirements; see Section <a href="#">23E.52.080</a> |
| Nursing Homes                                                                           | UP(PH)                | Subject to parking requirements; see Section <a href="#">23E.52.080</a> |
| Parks and Playgrounds                                                                   | ZC                    |                                                                         |
| Public Safety and Emergency Services                                                    | UP(PH)                |                                                                         |
| Religious Assembly Uses                                                                 | UP(PH)                |                                                                         |
| Schools, Public or Private                                                              | UP(PH)                |                                                                         |

|                                                                                              |                     |                                              |
|----------------------------------------------------------------------------------------------|---------------------|----------------------------------------------|
| Senior Congregate Housing<br>Six or fewer people<br>Seven or more people<br>New construction | ZC<br>AUP<br>UP(PH) | Change of use from an existing dwelling unit |
|----------------------------------------------------------------------------------------------|---------------------|----------------------------------------------|



Section 16. That the “Uses Permitted in Residential Districts” section of Table 23E.56.030 in Chapter 23E.56 Section 23E.56.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.56.030</i>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                      | UP(PH)                |                                                             |
| <u>Child Care; Family Daycare Home (Small or Large)</u>                                 | <u>ZC</u>             |                                                             |
| Clubs, Lodges                                                                           | UP(PH)                |                                                             |
| Community Centers                                                                       | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                | UP(PH)                | Subject to the standards under Section 23E.56.070.E         |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)                | Subject to the standards under Section 23E.56.070.E         |
| Hospitals                                                                               | Prohibited            |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                       | UP(PH)                |                                                             |
| Libraries                                                                               | UP(PH)                |                                                             |
| Nursing Homes                                                                           | UP(PH)                |                                                             |
| Parks and Playgrounds                                                                   | ZC                    |                                                             |
| Public Safety and Emergency Services                                                    | UP(PH)                |                                                             |
| Religious Assembly Uses                                                                 | UP(PH)                |                                                             |
| Schools, Public or Private                                                              | UP(PH)                |                                                             |
| Senior Congregate Housing                                                               |                       | Change of use from an existing dwelling unit                |
| Six or fewer people                                                                     | ZC                    |                                                             |
| Seven or more persons                                                                   | AUP                   |                                                             |
| New Construction                                                                        | UP(PH)                |                                                             |

Section 17. That the “Uses Permitted in Residential Districts” section of Table 23E.60.030 in Chapter 23E.60 Section 23E.60.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.60.030</i>                                                                        |                       |                                                             |
|------------------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                |                       |                                                             |
| <b>Use</b>                                                                                     | <b>Classification</b> | <b>Special Requirements (if any)</b>                        |
| <b>Uses Permitted in Residential Districts</b>                                                 |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                  | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050        | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                                  | Per R-3 District      | See Table 23D.36.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Child Care Centers                                                                             | UP(PH)                |                                                             |
| <a href="#">Child Care; Family Daycare Home (Small or Large)</a>                               | <u>ZC</u>             |                                                             |
| Clubs, Lodges                                                                                  | Prohibited            |                                                             |
| Community Centers                                                                              | UP(PH)                |                                                             |
| Dwelling Units, subject to R-3 Standards                                                       | UP(PH)                | Standards may be modified under Section 23E.60.070.F        |
| Group Living Accommodations, subject to R-3 Standards                                          | UP(PH)                | Standards may be modified under Section 23E.60.070.F        |
| Hospitals                                                                                      | Prohibited            |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                              | UP(PH)                |                                                             |
| Libraries                                                                                      | UP(PH)                | Subject to parking requirements; see Section 23E.60.080     |
| Nursing Homes                                                                                  | UP(PH)                | Subject to parking requirements; see Section 23E.60.080     |
| Parks and Playgrounds                                                                          | ZC                    |                                                             |
| Public Safety and Emergency Services                                                           | UP(PH)                |                                                             |
| Religious Assembly Uses                                                                        | UP(PH)                |                                                             |
| Schools, Public or Private                                                                     | UP(PH)                |                                                             |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH)   | Change of use from an existing dwelling unit                |

Section 18. That the “Residential and Related Uses” section of Table 23E.64.030 in Chapter 23E.64 Section 23E.64.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.64.030</i>                                                                 |                                                                      |                                                                                         |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                                                                      |                                                                                         |
| <b>Use</b>                                                                              | <b>Permits Required to Establish, Expand or Change Use (sq. ft.)</b> | <b>Special Requirements (if any)</b>                                                    |
| <b>Residential and Related Uses</b>                                                     |                                                                      |                                                                                         |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                                                                   |                                                                                         |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                                                                  | Subject to making applicable findings in Section 23C.24.070                             |
| Additions, Major Residential                                                            | AUP                                                                  | See definition in Sub-title 23F. Subject to required finding under Section 23E.64.090.G |
| Short-Term Rental                                                                       | ZC                                                                   | Subject to requirements of Chapter 23C.22                                               |
| Child Care; Family <del>Day Care</del> <u>Daycare Home (Small or Large)</u>             | <u>ZC</u>                                                            |                                                                                         |
| <del>Small Family Day Care Home of 8 or fewer children</del>                            | <del>ZC</del>                                                        |                                                                                         |
| <del>Large Family Day Care Home of 9 to 14 children</del>                               | <del>AUP</del>                                                       |                                                                                         |
| Child Care Centers                                                                      | UP(PH)                                                               |                                                                                         |
| Clubs, Lodges                                                                           | UP(PH)                                                               |                                                                                         |
| Community Care Facilities/Homes                                                         | ZC                                                                   |                                                                                         |
| Community Centers                                                                       | UP(PH)                                                               |                                                                                         |
| Dwelling Units                                                                          | UP(PH)                                                               | Subject to Development Standards under Section 23E.64.070                               |
| Group Living Accommodations                                                             | UP(PH)                                                               | Subject to Development Standards under Section 23E.64.070                               |
| Home Occupations<br>Low Impact                                                          | ZC                                                                   | If the requirements of Section 23C.16.020 are met                                       |
| Moderate Impact, teaching-related                                                       | AUP                                                                  | Subject to the requirements of Section <a href="#">23C.16.030.A</a>                     |

|                                                                                                |                     |                                                                                                                                                |
|------------------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Moderate Impact                                                                                | UP(PH)              | Subject to the requirements of Section <a href="#">23C.16.030.B</a>                                                                            |
| Hospitals                                                                                      | UP(PH)              | Subject to parking requirements; see Section <a href="#">23E.64.080.F</a>                                                                      |
| Hot Tubs, Jacuzzis, Spas                                                                       | AUP                 | See Section 23D.08.070.C                                                                                                                       |
| Hotels, Residential, including Single Room Occupancy (SRO)                                     | UP(PH)              |                                                                                                                                                |
| Libraries                                                                                      | UP(PH)              | Subject to parking requirements; see Section <a href="#">23E.64.080.F</a>                                                                      |
| Nursing Homes                                                                                  | UP(PH)              |                                                                                                                                                |
| Parks and Playgrounds                                                                          | AUP                 |                                                                                                                                                |
| Public Safety and Emergency Services                                                           | UP(PH)              |                                                                                                                                                |
| Religious Assembly Uses                                                                        | AUP                 |                                                                                                                                                |
| Schools, Public or Private                                                                     | UP(PH)              |                                                                                                                                                |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH) | Changes of use from an existing dwelling unit                                                                                                  |
| All other Residential Accessory Structures and Uses not listed                                 | Per R-3 District    | See Table <a href="#">23D.36.030</a>                                                                                                           |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                  | <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |

Section 19. That the “Uses Permitted in Residential Districts” section of Table 23E.68.030 in Chapter 23E.68 Section 23E.68.030 of the Berkeley Municipal Code is amended to read as follows:

| <i>Table 23E.68.030</i>                                                                 |                       |                                                             |
|-----------------------------------------------------------------------------------------|-----------------------|-------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                         |                       |                                                             |
| <b>Use</b>                                                                              | <b>Classification</b> | <b>Special Requirements</b>                                 |
| <b>Uses Permitted in Residential Districts</b>                                          |                       |                                                             |
| Accessory Dwelling Unit in compliance with Section 23C.24.050                           | ZC                    |                                                             |
| Accessory Dwelling Unit that does not comply with requirements under Section 23C.24.050 | AUP                   | Subject to making applicable findings in Section 23C.24.070 |
| Accessory Uses and Structures                                                           | As per R-5 District   | See Table 23D.44.030                                        |
| Accessory Buildings and Structures with Urban Agriculture                               | ZC                    | 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060  |
| Short-Term Rental                                                                       | ZC                    | Subject to requirements of Chapter 23C.22                   |
| Child Care Centers                                                                      | AUP                   |                                                             |
| <a href="#">Child Care; Family Daycare Home (Small or Large)</a>                        | <u>ZC</u>             |                                                             |
| Clubs, Lodges                                                                           | UP(PH)                |                                                             |
| Community Centers                                                                       | UP(PH)                |                                                             |
| Dwelling Units, including multifamily developments                                      | UP(PH)                | Subject to the standards under Section 23E.68.060.F         |
| Group Living Accommodations subject to R-3 Standards                                    | UP(PH)                | Subject to the standards under Section 23E.68.060.F         |
| Hospitals                                                                               | UP(PH)                |                                                             |
| Hotels, Residential, including Single Room Occupancy (SRO) Hotels                       | UP(PH)                | Subject to Section 23E.68.060.F                             |
| Libraries                                                                               | UP(PH)                |                                                             |
| Nursing Homes                                                                           | UP(PH)                |                                                             |
| Parks and Playgrounds                                                                   | ZC                    |                                                             |
| Public Safety and Emergency Services                                                    | UP(PH)                |                                                             |
| Religious Assembly Uses                                                                 | UP(PH)                |                                                             |
| Schools, Public or Private                                                              | UP(PH)                |                                                             |
| Senior Congregate Housing                                                               |                       | Change of use of an existing dwelling unit                  |
| Six or fewer people                                                                     | ZC                    |                                                             |

|                                           |               |                                               |
|-------------------------------------------|---------------|-----------------------------------------------|
| Seven or more persons<br>New Construction | AUP<br>UP(PH) | Subject to Section <a href="#">23E.68.070</a> |
|-------------------------------------------|---------------|-----------------------------------------------|

Section 20. That the “Residential and Related Uses” section of Table 23E.80.030 in Chapter 23E.80 Section 23E.80.030 of the Berkeley Municipal Code is amended to read as follows:

| Table 23E.80.030                                                                |                                                                              |                 |                  |                                                                                                    |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------|------------------|----------------------------------------------------------------------------------------------------|
| Use and Required Permits                                                        |                                                                              |                 |                  |                                                                                                    |
| Uses                                                                            | Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.) |                 |                  | Special Requirements (if any)                                                                      |
|                                                                                 | Under 20,000                                                                 | 20,000 – 30,000 | More than 30,000 |                                                                                                    |
| <b>Residential and Related Uses</b>                                             |                                                                              |                 |                  |                                                                                                    |
| Child Care Centers                                                              | UP(PH)                                                                       |                 |                  | Subject to the findings in Section <a href="#">23E.80.090.I</a>                                    |
| Child Care; Family Day Care Daycare Home (Small or Large)                       | <u>ZC</u>                                                                    |                 |                  |                                                                                                    |
| <del>Small Family Day Care Homes of 8 or fewer children</del>                   | <del>ZC</del>                                                                |                 |                  |                                                                                                    |
| <del>Large Family Day Care Homes of 9 to 14 children</del>                      | <del>AUP</del>                                                               |                 |                  | <del>Subject to the findings in Section 20E.80.090.I</del>                                         |
| Clubs, Lodges, Union Halls and similar uses for persons working in the district | UP(PH)                                                                       |                 |                  |                                                                                                    |
| Dwelling Units                                                                  | Prohibited                                                                   |                 |                  |                                                                                                    |
| Group Living Accommodations                                                     | Prohibited                                                                   |                 |                  |                                                                                                    |
| Major Residential Additions                                                     | Prohibited                                                                   |                 |                  |                                                                                                    |
| Public Safety and Emergency Services                                            | UP(PH)                                                                       |                 |                  |                                                                                                    |
| Religious Assembly Uses                                                         | Prohibited                                                                   |                 |                  |                                                                                                    |
| Schools                                                                         |                                                                              |                 |                  |                                                                                                    |
| Public or Private (other than vocational)                                       | Prohibited                                                                   |                 |                  |                                                                                                    |
| Vocational                                                                      | ZC                                                                           | AUP             | UP(PH)           | Must provide training for occupations and/or industries found in the West Berkeley Plan area       |
| Shelters for Homeless Persons                                                   | Prohibited                                                                   |                 |                  | Existing shelter shall not be considered a non-conforming use and may add floor area with a UP(PH) |
| Utility Substations, Buildings and Tanks                                        | UP(PH)                                                                       |                 |                  |                                                                                                    |
| All Other uses permitted in residential districts                               | Prohibited                                                                   |                 |                  |                                                                                                    |

|                                                           |    |                                                                                                                                                           |
|-----------------------------------------------------------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Accessory Buildings and Structures with Urban Agriculture | ZC | Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |
|-----------------------------------------------------------|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------|



Section 21. That the “Residential and Related Uses” section of Table 23E.84.030 in Chapter 23E.84 Section 23E.84.030 of the Berkeley Municipal Code is amended to read as follows:

| <b>Table<br/>23E.84.030</b>                                                                             |                                                                     |                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| <b>Use and Required Permits</b>                                                                         |                                                                     |                                                                                                                                      |
| <b>Uses</b>                                                                                             | <b>Permit Required to Establish, Expand or Change Use (sq. ft.)</b> | <b>Special Requirements (if any)</b>                                                                                                 |
| <b>Residential and Related Uses</b>                                                                     |                                                                     |                                                                                                                                      |
| Accessory Dwelling Unit in compliance with Section <a href="#">23C.24.050</a>                           | ZC                                                                  |                                                                                                                                      |
| Accessory Dwelling Unit that does not comply with requirements under Section <a href="#">23C.24.050</a> | AUP                                                                 | Subject to making applicable findings in Section <a href="#">23C.24.070</a>                                                          |
| Additions, Major Residential                                                                            | AUP                                                                 | See Definition in Sub-title 23F. Subject to finding required under 23E.84.090.L; see limitations on location in Section 23E.84.060.G |
| Short-Term Rental                                                                                       | ZC                                                                  | Subject to requirements of Chapter 23C.22                                                                                            |
| Child Care Centers                                                                                      | UP(PH)                                                              | Subject to the findings in Section 23E.84.090.H                                                                                      |
| <del>Child Care; Family Day Care Daycare Home (Small or Large)</del>                                    | <del>ZC</del>                                                       |                                                                                                                                      |
| <del>Small Family Day Care Homes of 8 or fewer children</del>                                           | <del>ZC</del>                                                       | <del>Subject to the findings in Section 23E.84.090.H</del>                                                                           |
| <del>Large Family Day Care Homes of 9 to 14 children</del>                                              | <del>AUP</del>                                                      |                                                                                                                                      |
| Clubs, Lodges                                                                                           | UP(PH)                                                              |                                                                                                                                      |
| Community Care Facilities/Homes (Changes of Use)                                                        | ZC                                                                  | Subject to parking requirements; see Section 23E.84.080.B                                                                            |
| Community Centers                                                                                       | UP(PH)                                                              |                                                                                                                                      |

|                                                                |            |                                                                                                                                                             |
|----------------------------------------------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dwelling Units                                                 |            | See limitation on location in Section 23E.84.060.G. Subject to development standards of Section 23E.84.070 and parking requirements in Section 23E.84.080.B |
| 1 – 4 Units                                                    | AUP        |                                                                                                                                                             |
| 5+ Units                                                       | UP(PH)     |                                                                                                                                                             |
| Group Living Accommodations, subject to R-3 District Standards | UP(PH)     | See limitations on location in Section 23E.84.060.G                                                                                                         |
| Home Occupations                                               |            |                                                                                                                                                             |
| Low Impact                                                     | ZC         | Subject to requirements under Section 23C.16.020                                                                                                            |
| Moderate Impact, teaching-related                              | AUP        | Subject to requirements under Section 23C.16.030.A                                                                                                          |
| Moderate Impact                                                | UP(PH)     | Subject to requirements under Section 23C.16.030.B                                                                                                          |
| Hospitals                                                      | Prohibited |                                                                                                                                                             |
| Hotels, Residential                                            | Prohibited |                                                                                                                                                             |
| Hot Tubs, Jacuzzis, Spas                                       | AUP        | See Section 23D.08.060.C                                                                                                                                    |
| Libraries                                                      | UP(PH)     | Subject to additional parking requirements; see Section 23E.84.080.B                                                                                        |
| Nursing Homes                                                  | UP(PH)     | Subject to additional parking requirements; see Section 23E.84.080.B                                                                                        |
| Parks, Playgrounds, and outdoor recreation facilities          | UP(PH)     | If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under 23E.84.090.H                         |
| Public Safety and Emergency Services                           | UP(PH)     |                                                                                                                                                             |
| Public Utilities Substations, Buildings, Tanks                 | UP(PH)     |                                                                                                                                                             |
| Religious Assembly Uses                                        | UP(PH)     |                                                                                                                                                             |

|                                                                                                |                     |                                                                                                                                                           |
|------------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Schools, Public or Private and Other Educational Institutions                                  | UP(PH)              | Subject to the findings in Section <a href="#">23E.84.090.H</a>                                                                                           |
| Senior Congregate Housing<br>Six or fewer persons<br>Seven or more persons<br>New Construction | ZC<br>AUP<br>UP(PH) | Changes of use from an existing dwelling unit                                                                                                             |
| Accessory Buildings and Structures with Urban Agriculture                                      | ZC                  | Subject to <a href="#">23C.26</a> , <a href="#">23D.08.010</a> , <a href="#">23D.08.020</a> , <a href="#">23D.08.050</a> , and <a href="#">23D.08.060</a> |

Section 22. That Berkeley Municipal Code Section 23E.80.040.A is amended to read as follows:

**23E.80.040 Special Provisions: Protected Uses**

A. The following uses which were lawfully in place as of July 6, 1989 are Protected Uses where the affected space is used exclusively for a Protected Use or the Protected Use is combined with residential use in the form of a Live/Work Unit. Protected Uses are divided into two categories, as follows:

|            |                                                                                                                                                                                                                                                                                                                 |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category 1 | Art/Craft Studio                                                                                                                                                                                                                                                                                                |
| Category 2 | Art Galleries, ancillary to Art/Craft Studios and when located in the same building<br>Child Care Facility<br>Family <del>Day Care</del> Daycare Home<br>Fine arts performance, instruction and rehearsal studios (dance, music, theater)<br>Theaters, Stage Performance, but excluding Motion Picture Theaters |

Section 23. That Berkeley Municipal Code Section 23E.80.090.I is amended to read as follows:

**23E.80.090 Findings**

I. In order to approve a Permit for the establishment or expansion of a child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:

1. Development of the school, child care center, ~~large family day care~~ or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses, including industrial uses;
2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;
3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, ~~large family day care~~ or

recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-LI District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review. (Ord. 7194-NS § 8, 2011; Ord. 7167-NS §§ 20 – 22, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 24. That Berkeley Municipal Code Section 23E.84.040.A is amended to read as follows:

**23E.84.040 Special Provisions: Protected Uses**

A. The following uses which were lawfully in place as of July 6, 1989 are Protected Uses where the affected space is used exclusively for a Protected Use or the Protected Use is combined with residential use in the form of a Live/Work Unit. Protected Uses are divided into two categories, as follows:

|            |                                                                                                                                                                                                                                                                                                                 |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Category 1 | Art/Craft Studio                                                                                                                                                                                                                                                                                                |
| Category 2 | Art Galleries, ancillary to Art/Craft Studios and when located in the same building<br>Child Care Facility<br>Family <del>Day Care</del> Daycare Home<br>Fine arts performance, instruction and rehearsal studios (dance, music, theater)<br>Theaters, Stage Performance, but excluding Motion Picture Theaters |

Section 25. That Berkeley Municipal Code Section 23E.84.090.H is amended to read as follows:

### 23E.84.090 Findings

H. In order to approve a Use Permit for the establishment or expansion of a school, ~~large family day care~~, child care center, or recreational or educational facility to be used by children, the Zoning Officer or Board must make all of the following findings:

1. Development of the school, child care center, ~~large family day care~~ or recreational facility to be used by children is not, in the particular circumstances of the project, incompatible with adjacent and nearby uses;
2. An appropriate risk analysis or risk assessment, as defined by the City, has been made and has shown that there is not significant risk to children in the use from other activities near the site;
3. The applicants have made adequate provisions to ensure that all parents of students or children in the school, child care center, ~~large family day care~~ or recreational facility to be used by children will be notified in writing (on a form approved by the City) that the school is in the West Berkeley Plan MU-R District, and that light manufacturing is a permitted activity in the District and that Primary Production Manufacturing or Construction Products Manufacturing may be permitted uses in adjacent districts, including a requirement that each parent will indicate that they have read and understood this information by means of a written statement returned to the school or child care center and available for review.

Section 26. That Berkeley Municipal Code Chapter 23F.04 is amended to revise the spelling of “day care” and “family day care home” as follows:

### 23F.04.010 Definitions

**Child Care Center or Facility:** An establishment providing ~~day care~~~~daycare~~ for children, other than a ~~Ffamily~~ ~~day care~~~~Daycare~~ ~~H~~home, which is licensed by the State of California Department of Social Services.

**Community Care Facility:** Any facility, place or building where non-medical care and supervision of children, adolescents, adults or elderly persons is conducted under license from the California State Department of Social Services (SDSS), but not including medical care institutions, skilled nursing facilities, nursing homes, foster homes, ~~Ffamily~~ ~~day care~~~~Daycare~~ ~~H~~homes, child care facilities or transitional housing.

Section 27. That Berkeley Municipal Code Chapter 23F.04 is amended to revise the definition of "Family Day Care Home" as follows:

**23F.04.010 Definitions**

For the purposes of this chapter certain terms used herein are defined as follows:

**Family ~~Day Care~~ Daycare Home:** ~~An establishment providing day care for fourteen (14) or fewer children in a dwelling unit as licensed by the State of California Department of Social Services. A facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family daycare home or a small family daycare home as licensed by the State of California.~~ Includes Small Family Daycare Home and Large Family Daycare Home.

**Small Family ~~Day Care~~ Daycare Home:** The use of a dwelling, ~~as described above,~~ for eight (8) or fewer children, ~~including children who reside at the home.~~ including children under 10 years of age who reside at the home, as set forth by the State of California.

**Large Family ~~Day Care~~ Daycare Home:** The use of a dwelling, ~~as described above,~~ for nine (9) to fourteen (14) children, ~~including children who reside at the home.~~ including children under 10 years of age who reside at the home, as set forth by the State of California.

Section 28. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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

SETTING THE FEE RATE FOR ZONING REVIEW OF FAMILY DAYCARE HOMES AT  
ZERO DOLLARS

WHEREAS, the City of Berkeley currently allows licensed Family Daycare Homes to operate with a Zoning Certificate for fewer than eight children, or with an Administrative Use Permit for up to 14 children; and

WHEREAS, State Senate Bill 234, adopted on September 5, 2019 requires that cities now allow such operations with ministerial approval only; and

WHEREAS, State Senate Bill 234 also prohibits cities from assessing any fee for the ministerial review; and

WHEREAS, the mechanism used by the City of Berkeley to conduct such ministerial review will continue to be issuance of Zoning Certificates; and

WHEREAS, on May 16, 2017, Resolution No. 67,985-N.S. updated and consolidated all fees for development-related services provided by the Planning and Development Department.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Planning Department Fee Schedule, Chapter B, Subsection IV ("Zoning Certificates") is amended to note that no fee will be charged for review of Family Daycare Home uses, as shown in Exhibit A, and that Resolution 67,985-N.S. is amended to reflect that new language.

Exhibits

A: Revised Planning Fee Schedule, Chapter B, Subsection IV



ATTACHMENT 2, EXHIBIT A  
 excerpt of Planning Fee Schedule

| CHAPTER B- LAND USE PLANNING                                               |                                                                                  |           |                        |  |
|----------------------------------------------------------------------------|----------------------------------------------------------------------------------|-----------|------------------------|--|
| FEE TYPE / DESCRIPTION                                                     |                                                                                  | FEE       | REMARKS                |  |
| <b>IV. Zoning Certificates (ministerial permits)</b>                       |                                                                                  |           |                        |  |
| <b>A.</b>                                                                  | <b>All projects except as noted below</b>                                        | \$ 200.00 |                        |  |
| 1.                                                                         | Home Occupation (Low-Impact)                                                     | \$ 60.00  |                        |  |
| 2.                                                                         | Business License review - continuation of lawful existing use                    | \$ 60.00  |                        |  |
| <b>NOTE: No fee will be charged for review of Family Daycare Home uses</b> |                                                                                  |           |                        |  |
| 3.                                                                         | Additional staff time (work performed beyond the time covered by the fees above) | \$ 200.00 | per hour of staff time |  |
| <b>B.</b>                                                                  | <b>Building Permit review</b>                                                    |           |                        |  |
| 1.                                                                         | Projects with Administrative Use Permits                                         | \$ 200.00 |                        |  |
| 2.                                                                         | Projects with Use Permit and/or Variance                                         | \$ 400.00 |                        |  |
| 3.                                                                         | In-kind repair/replacement work (e.g. window replacement, dry rot repair, etc.)  | \$ 60.00  |                        |  |
| 4.                                                                         | Fourth and subsequent plan check submittal                                       | \$ 200.00 | per hour of staff time |  |



Development Department  
Division

## STAFF REPORT

DATE: January 15, 2020

TO: Members of the Planning Commission

FROM: Paola Boylan, Assistant Planner

SUBJECT: Public Hearing on Proposed Zoning Ordinance Amendments for Family Daycare Homes

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### RECOMMENDATION

Staff recommends Planning Commission conduct a Public Hearing and upon conclusion, make a recommendation to City Council to adopt amendments to the Zoning Ordinance that address changes in allowable Uses and Use Classification, pursuant to recently enacted State legislation impacting Family Daycare Homes.

### BACKGROUND

Family Daycare Homes, as defined by the State, are facilities that regularly provide care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day. Family Daycare Homes, licensed by the State of California, are classified as follows:

1. Small Family Daycare Home involves the use of a dwelling, as described above, for eight (8) or fewer children, including children under 10 years of age who reside at the home.
2. Large Family Daycare Home involves the use of a dwelling, as described above, for nine (9) to fourteen (14) children, including children under 10 years of age who reside at the home.

On September 5, 2019 the Governor signed into law Senate Bill 234 (Skinner) - Family Daycare Homes (SB 234)<sup>1</sup>. According to Senator Skinner, licensed Family Daycare Homes play an important role in the childcare market – providing flexible hours, affordable care, and low staff-to-child ratios in a home environment. This bill reduces barriers and costs to those operating or wanting to operate licensed Family Daycare Homes. More specifically, SB 234 prohibits jurisdictions from levying any type of business license fee or tax on Small and Large Family Daycare Homes. The law also requires ministerial approval of Family Daycare Homes in all districts where residential uses are allowed.

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<sup>1</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB234](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB234)

## ANALYSIS

The Finance Department is adjusting the City's fee schedule to reduce the cost of a permit for Family Daycare Homes to zero dollars.

The Zoning Ordinance must be amended as follows 1) modify Uses Permitted Tables to allow Small and Large Family Daycare Homes to locate and operate where residential uses are permitted throughout the City; 2) reduce discretion for Large Family Daycare Homes from Administrative Use Permit (AUPs) to Zoning Certificate (ZCs), and 3) update definitions and spellings of Family Daycare Home to align with Government Code Section 1596.78.

This report includes 26 revisions in the following sections:

### *Residential Uses Permitted (Use Tables)*

- 23D.16.030 [R-1 Single Family Residential District Provisions: Uses Permitted]
- 23D.20.030 [R-1A Limited Two-Family Residential District Provisions: Uses Permitted]
- 23D.24.030 [ES-R Environmental Safety-Residential District Provisions: Uses Permitted]
- 23D.28.030 [R-2 Restricted Two-Family Residential District Provisions: Uses Permitted]
- 23D.32.030 [R-2A Restricted Multiple-Family Residential District Provisions: Uses Permitted]
- 23D.36.030 [R-3 Multiple Family Residential District Provisions: Uses Permitted]
- 23D.40.030 [R-4 Multiple-Family Residential District Provision: Uses Permitted]
- 23D.44.030 [R-5 High Density Residential District Provisions: Uses Permitted]
- 23D.48.030 [R-S Residential Southside District Provisions: Uses Permitted]
- 23D.52.030 [R-SMU Residential Southside Mixed Use District Provisions: Uses Permitted]

### *Commercial Uses Permitted (Use Tables)*

- 23E.36.030 [C-1 General Commercial District Provisions: Uses Permitted]
- 23E.40.030 [C-N Neighborhood Commercial District Provisions: Uses Permitted]
- 23E.44.030 [C-E Elmwood Commercial District Provisions: Uses Permitted]
- 23E.48.030 [C-NS North Shattuck Commercial District Provisions: Uses Permitted]
- 23E.52.030 [C-SA South Area Commercial District Provisions: Uses Permitted]
- 23E.56.030 [C-T Telegraph Avenue Commercial District Provisions: Uses Permitted]
- 23E.60.030 [C-SO Solano Avenue Commercial District Provisions: Uses Permitted]
- 23E.64.030 [C-W West Berkeley Commercial District Provisions: Uses Permitted]
- 23E.68.030 [C-DMU Downtown Mixed Use District Provisions: Uses Permitted]
- 23E.80.030 [MU-LI Mixed Use-Light Industrial District Provisions]
- 23E.84.030 [MU-R Mixed Use Residential District Provisions: Uses Permitted]

*Definitions*

- 23F.04.010 [Definitions]

*Spelling Updates*

- 23E.80.040 [Special Provisions: Protected Uses]
- 23E.80.090 [Findings]
- 23E.84.040 [Special Provisions: Protected Uses]
- 23E.84.090 [Findings]
- 23F.04.010 [Definitions]

All of the proposed changes must be considered by the Planning Commission prior to City Council review. The proposed amendments are summarized below. Full text of the Zoning Ordinance amendments are provided (redlined) in Attachments 2 through 5.

**DISCUSSION**

Zoning Ordinance amendments are presented in four categories listed below:

1. Reduce Level of Discretion
2. Expand Districts where Permitted Use is Allowed
3. Update Family Daycare Home Definition
4. Update Spelling for Consistency with State Law

**1. Reduce Level of Discretion (Uses Permitted Table)**

Change the permit required to establish a Large Family Daycare Home from an Administrative Use Permit (AUP) to a Zoning Certificate (ZC) as required by SB234.

*Recommendation:* Modify Uses Permitted Tables in zones R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, and R-SMU, C-W, MU-LI, and MU-R to reduce discretion for Large Family Daycare Homes from AUP to ZC and update spelling as noted in Discussion Item 4. Example redline text below is from BMC 23D.16.030 (R-1 Single Family Residential District) and BMC 23E.80.030 (MU-LI Mixed Use-Light Industrial District). See complete redline text in Attachments 2 and 3.

| <b>Table 23D.16.030</b>                                                            |                       |                                      |
|------------------------------------------------------------------------------------|-----------------------|--------------------------------------|
| <b>Use and Required Permits</b>                                                    |                       |                                      |
| <b>Use</b>                                                                         | <b>Classification</b> | <b>Special Requirements (if any)</b> |
| Accessory Uses and Structures                                                      |                       |                                      |
| Child Care; Family <del>Day Care</del><br><del>Daycare Home (Small or Large)</del> | <u>ZC</u>             |                                      |
| <del>Small Family Day Care Homes:<br/>of 8 or fewer children</del>                 | <u>ZC</u>             |                                      |

|                                                     |     |  |
|-----------------------------------------------------|-----|--|
| Large Family Day Care Homes:<br>of 9 to 14 children | AUP |  |
|-----------------------------------------------------|-----|--|

| Table 23E.80.030                                                                   |                                                                              |                 |                  |                                                            |
|------------------------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------|------------------|------------------------------------------------------------|
| Use and Required Permits                                                           |                                                                              |                 |                  |                                                            |
| Uses                                                                               | Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.) |                 |                  | Special Requirements (if any)                              |
|                                                                                    | Under 20,000                                                                 | 20,000 – 30,000 | More than 30,000 |                                                            |
| Residential and Related Uses                                                       |                                                                              |                 |                  |                                                            |
| Child Care; Family <del>Day care</del><br><del>Daycare Home (Small or Large)</del> | ZC                                                                           |                 |                  |                                                            |
| <del>Small Family Day care Homes of 8 or fewer children</del>                      | ZC                                                                           |                 |                  |                                                            |
| <del>Large Family Day care Homes of 9 to 14 children</del>                         | AUP                                                                          |                 |                  | Subject to the findings in Section <del>23E.80.090-I</del> |

**2. Expand Districts where Permitted Use is Allowed (Uses Permitted Table)**

Amend the Uses Permitted Tables to expand districts where Small and Large Family Daycare Homes can locate and operate. Currently Family Daycares are not permitted in the ES-R and in C-prefixed districts except for C-W. SB 234 allows Family Daycares wherever residential uses are permitted in the City.

Recommendation: Modify Uses Permitted Tables in zones ES-R, C-1, C-N, C-E, C-NS, C-SA, C-T, C-SO, and C-DMU to include Small and Large Family Daycare Homes, allowable with a ZC. Example redline text below is from BMC 23E.60.030 (C-SO Solano Avenue Commercial District) and can be found in Attachments 2 and 3.

| <b>Table 23E.60.030</b>                                 |                       |                                      |
|---------------------------------------------------------|-----------------------|--------------------------------------|
| <b>Use and Required Permits</b>                         |                       |                                      |
| <b>Use</b>                                              | <b>Classification</b> | <b>Special Requirements (if any)</b> |
| <b>Uses Permitted in Residential Districts</b>          |                       |                                      |
| <u>Child Care; Family Daycare Home (Small or Large)</u> | <u>ZC</u>             |                                      |

**3. Update Family Daycare Home Definition (Sub-Title 23F)**

Amend the definition of Family Daycare Home to reflect Government Code Section 1596.78. The updated definition specifies that providers must reside in the dwelling unit where the Family Daycare Home operates and sets guidelines for counting children who live in the dwelling unit.

Recommendation: Update the definition of Family Daycare Home to reflect Government Code Section 1596.78. Suggested wording follows and can be found in Attachment 3.

**Family Day-Care Daycare Home:** ~~An establishment providing day care for fourteen (14) or fewer children in a dwelling unit as licensed by the State of California Department of Social Services. A facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a Large Family Daycare Home or a Small Family Daycare Home as licensed by the State of California.~~

**Small Family Day-Care Daycare Home:** The use of a dwelling, as described above, for eight (8) or fewer children, ~~including children who reside at the home, including children under 10 years of age who reside at the home, as set forth by the State of California.~~

**Large Family Day-Care Daycare Home:** The use of a dwelling, as described above, for nine (9) to fourteen (14) children, ~~including children who reside at the home including children under 10 years of age who reside at the home, as set forth by the State of California.~~

**4. Update Spelling to be Consistent with State Law**

Update 52 instances of “day care” to “daycare” to be consistent with State Law. These changes can be found throughout the Zoning Ordinance. Suggested changes can be found in Attachments 2 through 5.

**CONCLUSION AND NEXT STEPS**

1. Conduct a public hearing.
2. Recommend for adoption by the City Council zoning language amendments to the aforementioned sections.
3. City Council consideration and adoption.

Attachments:

1. Public Hearing Notice
2. Sub-Title 23D [Provisions Applicable in All Residential Districts]
3. Sub-Title 23E [Provisions Applicable in All Non-Residential Districts]
4. Sub-Title 23F [Definitions]
5. Additional Spelling Changes throughout Zoning Ordinance



Planning Commission

**FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING  
January 15, 2020**

The meeting was called to order at 7:04 p.m

**Location:** South Berkeley Senior Center, Berkeley, CA

**1. ROLL CALL:**

**Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Mary Kay Lacey, Steve Martinot, Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

**Commissioners Absent:** None.

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, Paola Boylan, and Justin Horner.

**2. ORDER OF AGENDA:** No changes.

**3. PUBLIC COMMENT PERIOD:** 1

**4. PLANNING STAFF REPORT:**

- City Council (January 21) – ADU Urgency Ordinance Extension
- City Council (February 28) - Comprehensive Cannabis Zoning Ordinance Amendments

**Information Items:**

- December 10, 2019 - City Council Item 30 – ADU Urgency Ordinance *Staff Report*

**Communications:** *None.*

**Late Communications** (Received after the Packet deadline):

- January 10, 2020- Mester, Tentative Tract Map Application #8533

**Late Communications** (Received and distributed at the meeting):

- January 15, 2020 – Thompson- Lastad, BART CAG Recommendation
- January 15, 2020 - Planning Staff, Item 9 Presentation
- January 15, 2020 - Planning Staff, Item 10 Presentation
- January 15, 2020 - Lee, BART CAG Recommendation

**5. CHAIR REPORT:**

- Mom's For Housing



- MLK Event at the McGee Avenue Baptist Church- January 20, 2020 at 2pm
- Planning Commission (February 5) – PC Chair and Vice Chair Elections

## 6. COMMITTEE REPORT:

- Adeline Corridor Specific Plan Subcommittee- The next meeting is on January 29, where the project consultant will provide an update on development feasibility within the Adeline Corridor. On February 1 the subcommittee will reconvene for an all- day meeting to review and discuss recommendations.
- Southside EIR Subcommittee: At their first meeting on December 17, 2019 the subcommittee discussed development standards and development goals that could be included in the project description for the Southside EIR.
- Zoning Ordinance Revision Project (ZORP): The next meeting will be scheduled in late February.
- Joint Subcommittee for the Implementation of State Housing Laws: The next meeting is on February 26.

## 7. APPROVAL OF MINUTES:

Motion/Second/Carried (Krpata/Kapla) to approve the Planning Commission Meeting Minutes from December 4, 2019 with the discussed corrections to lines 50 and 51. Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

**FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** At the next meeting, February 5, 2020 the following items may be presented.

- 2740 and 2744 Telegraph Avenue - General Plan Re-designation and Zoning Map Amendment
- Southside EIR Project Description
- ADU Ordinance Discussion

## AGENDA ITEMS

### 9. Action: **Public Hearing: Proposed Zoning Ordinance Amendments Related to SB 234 Family Daycare Homes**

Staff reviewed the provisions of the recently enacted SB 234 Family Daycare Homes and recommended the adoption of Zoning Ordinance amendments required for compliance with state law. Zoning Ordinance amendments: 1) reduce level of discretion 2) expand districts

where permitted use is allowed 3) update the Family Daycare Home definition and 4) update spelling for consistency with state law.

Motion/Second/Carried (Wiblin/Kapla) to close the public hearing on the proposed Zoning Ordinance amendments related to SB 234 Family Daycare Homes.  
Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wiblin, and Wrenn. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Wiblin/Beach) to adopt the proposed Zoning Ordinance amendments for Family Daycare Homes pursuant to SB 234, with added reference to California Health and Safety Code section in the new definitions.  
Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: Martinot. None. Abstain: None. Absent: None. (8-1-0-0)

**Public Comments: 0**

**10. Action: Public Hearing: Tentative Tract Map Application #8533- 1500 San Pablo Avenue**

Staff presented the Tentative Tract Map application of an entitled development located at 1500 San Pablo Avenue in the West Berkeley Plan Area. The Commission asked clarifying questions about the applicability of the Affordable Housing Mitigation Fee, the Inclusionary Housing Ordinance, and State Density Bonus Law in relation to the potential conversion of the rental to ownership units. To assist in the review and understanding of future Tentative Tract Map applications, the Commission expressed an interest learning more about Regulatory Agreements administered by the Health, Housing and Community Services Department.

**Public Comments: 3**

Motion/Second/Carried (Wiblin/Kapla) to close the public hearing on the Tentative Tract Application #8533 – 1500 San Pablo Avenue.  
Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wiblin, and Wrenn. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Krpata/Kapla) to approve the Tentative Tract Map #8533 subject to the Draft Findings and Conditions (Attachment 1/ Attachment 1- Exhibit A) and requested that the Regulatory Agreement of the project be shared with the Planning Commission.  
Ayes: Beach, Kapla, Krpata, Lacey, Schildt, Vincent, Wiblin, and Wrenn. Noes: Martinot. Abstain: None. Absent: None. (8-1-0-0)

**11. Action: BART Community Advisory Group (CAG)**

Planning Commission nominated and selected a commissioner to serve on the BART CAG.

**Public Comments: 4**

Motion/Second/Carried (Kapla/ Lacey) to nominate Chris Schildt to serve on the BART CAG. Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wiblin, and Wrenn. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

**12. Action: 2020 Nominations for February Election**

Planning Commission accepted nominations for February elections.

- Chair nominations: Robb Kapla
- Vice-Chair nominations: Shane Krpata and Mary Kay Lacey

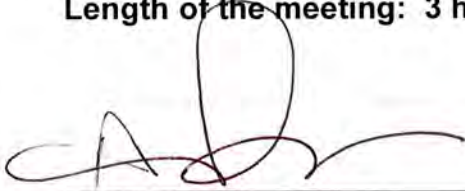
**Public Comments: 0**

**13. Discussion: Parking Maximums**

Staff shared findings on existing parking maximums and recommended that the Commission not institute maximums at this time. After a discussion about the different considerations related to the geographic location of maximums and the potential approaches based on the October 2019 Residential Parking Utilization Study, the Commission directed staff to include parking maximums in the public hearing for the meeting on March 4, 2019. During this public hearing, a parking maximum of 0.5 spaces per unit within a quarter mile of transit, applicable to duplexes and multifamily units, shall be considered along with the TDM program and parking minimums.

**Public Comments: 0**

**The meeting was adjourned at 10:13pm**  
**Commissioners in attendance: 9**  
**Members in the public in attendance: 14**  
**Public Speakers: 7 speakers**  
**Length of the meeting: 3 hours and 9 minutes**



Alene Pearson  
Planning Commission Secretary

2/6/20  
Date

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**ZONING ORDINANCE AMENDMENTS THAT COMPLY WITH STATE  
LAWS REGARDING FAMILY DAYCARE HOMES IN RESIDENTIAL AND  
COMMERCIAL DISTRICTS**

The Department of Planning and Development is proposing amendments to Berkeley's Zoning Ordinance: 1) modify Uses Permitted Tables to allow Small and Large Family Daycare Homes to locate and operate where residential uses are permitted throughout the City; 2) reduce discretion for Large Family Daycare Homes from Administrative Use Permits (AUPs) to Zoning Certificates (ZCs); and 3) update definitions and spellings of Family Daycare Home to align with Government Code Section 1596.78. Amendments respond to Senate Bill 234, which was approved by Governor Newsom on September 05, 2019.

The hearing will be held on April 14, 2020 at 6:00 p.m.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of Thursday, April 2, 2020.

For further information, please contact Alene Pearson, Principal Planner, at 510-981-7489.

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the April 14, 2020 meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://zoom.us/j/724407089>. 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 on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **724 407 089**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair. NOTE: Your phone number will appear on the videoconference screen.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** April 3, 2020 per California Code Sections 65856(a) and 65090.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on Thursday, April 2, 2020.

Mark Numainville, City Clerk



Office of the City Manager

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ACTION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Brown, City Attorney
LaTanya Bellow, Director, Human Resources Department
Andrew Greenwood, Chief of Police
David White, Deputy City Manager

Subject: Placing Charter Amendment Measure on the November 3, 2020 Ballot to Establish a Police Board and Director of Police Accountability

RECOMMENDATION

1. Adopt a Resolution submitting an amendment to the City Charter to add Article XVIII to establish a Police Board and Director of Police Accountability to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

SUMMARY

In 1973, a ballot measure was adopted to establish a Police Review Commission for the community to participate in setting Police Department policies, practices, and procedures and to provide a means for investigation of complaints against sworn employees of the Police Department. The existing Police Review Commission consists of nine (9) commissioners that are appointed by the Mayor and City Council.

The proposed Charter Amendment establishes a Police Board to replace the existing Police Review Commission and creates a new position -- Director of Police Accountability. The purpose of the Police Board and Director of Police Accountability is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. The proposed Police Board will consist of nine (9) members selected by the Mayor and City Council and each member must be approved by a majority vote of the City Council. Both the Police Board and Director of Police Accountability are independent of the City Manager, except for administrative purposes, and report to the Mayor and City Council.

With respect to civilian oversight and investigation of complaints filed by members of the public against sworn employees of the Berkeley Police Department, the proposed Charter Amendment provides for the following:

- **Timeframe.** The current time to complete investigations and notify a sworn employee of the Berkeley Police Department of discipline is 120 days; the proposed Charter Amendment extends the timeframe to 240 days.
- **Standard of Proof.** The current standard of proof that is applied in determining whether a sworn employee of the Berkeley Police Department can be charged with committing misconduct is “clear and convincing”; the standard of proof in the proposed Charter Amendment is the less stringent “preponderance of the evidence” standard.
- **Findings and recommendation.** In addition to making findings (i.e., not sustained, sustained, exonerated), in cases where an allegation of misconduct is sustained, the Director of Police Accountability and Police Board will recommend whether or not discipline is warranted, and in certain circumstances, the level of discipline.
- **Access to records.** The proposed Charter Amendment provides the Director of Police Accountability and Police Board broad access to records and the ability to issue subpoenas to compel the production of records and testimony.

FISCAL IMPACTS OF RECOMMENDATION

City staff is in the process of evaluating the financial and organizational impacts of the proposed Charter Amendment and preliminarily estimates that an additional \$300,000 to \$500,000 in General Fund resources per year will be needed if the proposed Charter Amendment is approved by voters and fully implemented. Fiscal impacts will be refined over the next few months to ensure appropriate information is provided to voters.

CURRENT SITUATION AND ITS EFFECTS

In July 2018, the Mayor and City Council directed the City Manager to analyze a proposed Police Review Commission Charter Amendment in order to ensure legal compliance and determine its impacts on the organization and employees. Since that time, City staff has met regularly with the Berkeley Police Association and, as required by state law, bargained in good faith over the impacts of the proposed Charter Amendment. During this time, staff have regularly met with the Council in closed session to obtain direction on issues that have arisen during the negotiations. The meet and confer process has concluded and City staff is now asking City Council to place the proposed Charter Amendment on the November 3, 2020 ballot.

BACKGROUND

Overview

The existing Police Review Commission consists of nine (9) commissioners, appointed by the Mayor and City Council, and is supported by three (3) full-time equivalent employees. The Police Review Commission's FY 20 adopted budget is approximately \$778,000. In 2018, the Police Review Commission received thirteen (13) individual complaints and no policy complaints.¹

Proposed Charter Amendment

The proposed Charter Amendment establishes a Police Board to replace the existing Police Review Commission and creates a new position -- Director of Police Accountability. The existing Police Review Commission will continue until its functions are transferred to the Police Board, which shall be no later than January 3, 2022.

The purpose of the Police Board and Director of Police Accountability is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. Both the Police Board and Director of Police Accountability are independent of the City Manager and report to the Mayor and City Council, except for administrative matters.

Police Board

The proposed Police Board will consist of nine (9) members. The Mayor and City Council shall each nominate one member to the Police Board that must be approved by a majority vote of the City Council. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two (2) years. Board members serve at the pleasure of the City Council and may be removed by six (6) votes of the City Council.

¹ For more information regarding the work of the Police Review Commission, please refer to the 2018 Annual Report, which can be found at the following link:

https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Level_3_-_General/2018%20ANNUAL%20RPT%20rev%20for%20posting%20on%20the%20Web.pdf.

The proposed Charter Amendment outlines the following responsibilities for the Police Board:

- Advising and making recommendations regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department.
- Reviewing and recommending for City Council approval all agreements, letters, or memoranda of understanding, policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the City of Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations.
- With respect to investigations of alleged misconduct, in addition to making findings (i.e., not sustained, sustained, exonerated), in cases where an allegation of misconduct is sustained, the Police Board shall recommend whether or not discipline is warranted, and in certain circumstances, the level of discipline.
- Recommending termination of the Director of Police Accountability. By majority vote, the Police Board may recommend to the City Council the removal (for cause) of the Director of Police Accountability.
- Participating in the hiring of the Chief of Police. The City Manager is required to consult with the Police Board (or subcommittee of the Police Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.
- Reviewing and making recommendations to the City Council regarding the Police Department budget.
- Working with the Director of Police Accountability, the Board shall develop rules of procedure governing the conduct of its business and regulations for handling complaints.
- Access to records. Subject to confidentiality laws, the Police Board is provided broad access to records including items pertaining to Police Department policies, practices, or procedures; personnel and disciplinary records; and Police Department investigative records. The Police Board also has the ability to issue subpoenas to obtain records and compel testimony.

Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training developed by the Director of Police Accountability on the following topics:

- Quasi-judicial duties and obligations of the Board;

- Constitutional rights and civil liberties;
- Fundamentals of procedure, evidence and due process;
- The Public Safety Officers Procedural Bill of Rights;
- Police Department operations, policies, practices, and procedures; and
- Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Police Board is required to meet at least eighteen (18) times over the course of the year and Board members are entitled to receive a stipend (\$100.00 per meeting) for each regular and special board meeting attended and \$20.00 per hour for each hour of training attended and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid to any Board member may not exceed \$300.00 per month. Board member stipends may be adjusted from time to time by the City Council.

Office of the Director of Police Accountability

The proposed Charter Amendment outlines the responsibilities of the newly created Director of Police Accountability, which includes, but is not limited to the following:

- Carrying out the work of the Police Board that includes the day-to-day operations of the Board office and staff.
- Ensuring a timely, thorough, complete, objective and fair investigation into the complaints from members of the public against sworn employees of the Police Department. The Director of Police Accountability is also responsible for preparing findings and recommendations for Police Board consideration.
- Performing community outreach and soliciting input on the work of the Police Board and Office of the Director of Police Accountability.
- Preparing annual reports to the City Council that shall be presented at a City Council meeting. Annual reports shall consist of a summary of the Police Board's activities over the course of a year, training and/or policy issues that arise during investigations, trends and patterns in vehicle and pedestrian stops of complaints, and trends and patterns regarding use of force and officer-involved shootings.

The Director of Police Accountability is appointed by the City Council. The City Council may also remove the Director of Police Accountability (with or without cause) with six (6) votes either on its own motion or based on the recommendation of the Police Board.

Civilian Oversight and Investigations

Sections 18 and 19 of the proposed Charter Amendment provide a framework as to how complaints filed by members of the public against sworn members of the Berkeley Police Department are handled. Sections 18 and 19 address timing, the standard of proof, and provide for a process to resolve differences between the Chief of Police and Director of Accountability and/or Police Board.

Complaints filed by members of the public with the Director of Accountability/Police Board. Section 18 of the proposed Charter Amendment outlines the process for complaints that are filed by members of the public against sworn employees of the Berkeley Police Department with the Director of Police Accountability and Police Board. The following provides an overview of the investigation process and roles and responsibilities of the Director of Police Accountability and Police Board.

- The Director of Police Accountability is responsible for the investigation of all complaints filed with the Director and Police Board. Upon completion of the investigation, the Director of Police Accountability is responsible for convening the Police Board in a confidential personnel hearing in which the Director of Police Accountability will present all the evidence and documentation obtained or produced during the course of the investigation.
- Upon completion of the confidential personnel hearing, the Police Board shall submit their findings (i.e., sustained, exonerated, not sustained) and recommendations to the Chief of Police, along with a recommendation as to whether or not disciplinary action is warranted. In addition, for those complaints where an allegation of misconduct involves any of the classes of conduct described in Penal Code 832.7 (i.e., discharge of a firearm, use of force against a person that results in death or great bodily injury, sexual assault, dishonesty), the Director of Police Accountability and Police Board shall recommend the level of discipline, if warranted.² This is an expansion of authority in relation to the existing Police Review Commission, which is currently limited to providing the Chief of Police with a recommendation on the findings for a complaint.
- The time limit for investigations and notification of discipline to a sworn employee of the Berkeley Police Department shall be two hundred and forty (240) days.

² SB 1421 that was enacted on January 1, 2019 amended Penal Code 832.7 and generally requires that public records be made available for incidents involving the following classes of misconduct: (i) an incident involving the discharge of a firearm; (ii) an incident in which the use of force against a person resulted in death, or in great bodily injury; (iii) sexual assault, which is defined as “the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority”; and (iv) dishonesty relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence. For the classes of misconduct outlined in Penal Code 832.7, the Director of Police Accountability and Police Board may recommend the level of discipline, if warranted.

Within the two hundred and forty (240) days, the Director of Police Accountability and Police Board have one hundred and ninety five (195) days to submit their findings and recommendation to the Chief of Police. The current time limit for investigations and notification of discipline is one hundred and twenty (120) days, which results in the current Police Review Commission having to complete their investigation and submitting their recommendations to the Chief of Police within approximately one hundred and five (105) days of initiating an investigation.

Subsequent to submitting their findings to the Chief of Police, the Chief of Police has ten (10) days to review the findings and recommendations of the Police Board. If the Chief of Police agrees with the Police Board and Director of Police Accountability, a letter of disposition will be issued to the sworn employee of the Berkeley Police Department. In cases where the Director of Police Accountability and Police Board disagrees with the findings and recommendations of the Chief of Police, the Director of Police Accountability and Police Board have ten (10) days to review the Chief of Police's tentative disposition and appeal the Chief of Police's decision to the City Manager.

- In determining whether a sworn employee of the Berkeley Police Department has committed misconduct, the standard of proof for the Police Board shall be "preponderance of the evidence". The existing standard is "clear and convincing", which is a higher standard of proof.
- In performing its investigations, the Director of Police Accountability and Police Board is provided broad access to documents and records, subject to confidentiality laws, and the Director of Police Accountability and Police Board may issue subpoenas to obtain records and compel testimony.

Complaints filed by members of the public with the Berkeley Police Department.

Section 19 of the proposed Charter Amendment provides an alternative process for members of the public that want to file a complaint against a sworn employee of the Police Department. This section allows a member of the public to file a complaint directly with the Berkeley Police Department, with the opportunity to contest the Chief of Police's decision to the Director of Police Accountability and Police Board. The following provides an overview of the investigation process outlined in Section 19:

- For complaints filed by members of the public with the Berkeley Police Department (not the Director of Police Accountability and Police Board), the Berkeley Police Department is responsible for the investigation.
- Upon completion of the investigation, the Chief of Police is required to issue a letter of disposition to the sworn employee of the Police Department, as well as the Director of Police Accountability and complainant.
- In total, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days. The Chief of Police has one hundred and twenty

(120) days for the Berkeley Police Department to complete its investigation and issue a letter of disposition. The remaining one hundred twenty (120) days is to provide time for the complainant to contest the findings issued by the Chief of Police and for the Director of Police Accountability and Police Board to conduct a review of the investigation.

- After completing its review of the investigation (based on the administrative record), if the Director of Police Accountability and Police Board disagree with the Chief of Police's letter of disposition then the Director of Police Accountability and Police Board may submit a report to the City Manager and ask the City Manager to review the complaint and make a final determination.

Requirements of the Berkeley Police Department

The proposed Charter Amendment imposes certain requirements on the Berkeley Department such as:

- Submitting the Berkeley Police Department's proposed budget to the Police Board for review.
- Submitting newly adopted policies to the Police Board for review.
- Attending regular Police Board meetings. The Chief of Police is required to attend a minimum of twelve (12) meetings per year and will send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police cannot attend.
- Submitting reports to the Police Board, as requested by the Police Board. At least one report submitted to the Police Board shall consist of use of force statistics, and the number of complaints filed with the Internal Affairs Division in the Berkeley Police Department. Information on complaints filed with the Berkeley Police Department shall include the allegation(s) in each complaint, the disposition of closed complaints, and any discipline imposed.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

At the direction of the City Council, City staff has met regularly with the Berkeley Police Association and, as required by state law, bargained in good faith over the impacts of the proposed Charter Amendment. During this time, staff have regularly met with the Council in closed session to obtain direction on issues that have arisen during the negotiations. The meet and confer process has concluded and City staff is now asking City Council to place the proposed Charter Amendment on the November 3, 2020 ballot.

ALTERNATIVE ACTIONS CONSIDERED

The City Council could decide not to place the proposed Charter Amendment on the November 3, 2020 ballot.

CONTACT PERSON

David White, Deputy City Manager, 510 981-7000

Attachments:

1: Resolution

 Exhibit A: Text of Charter Amendment

2: Timeline for Investigations

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN AMENDMENT TO THE BERKELEY CITY CHARTER ON THE NOVEMBER 3, 2020 BALLOT TO ADD ARTICLE XVIII TO ESTABLISH A POLICE BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to add Article XVIII to the Berkeley Charter to establish a Police Board and Director Of Police Accountability; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Presidential General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY CHARTER AMENDMENT	
Shall the measure amending the Berkeley City Charter to create an independent Berkeley Police Board and Director of Police Accountability to provide oversight of the Berkeley Police Department (Department) policies, practices, and procedures; obtain access to records; investigate complaints filed by members of the public against sworn employees of the Department; and recommend discipline of sworn employees of the Department based upon a preponderance of the evidence be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

EXHIBIT A

**CHARTER AMENDMENT TO ESTABLISH A POLICE BOARD AND
DIRECTOR OF POLICE ACCOUNTABILITY**

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley to read as follows:

Section 1. The Charter of the City of Berkeley is amended to add Article XVIII, to read as follows:

Article XVIII. POLICE BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

Section 1. Establishment and purpose.

A Police Board is hereby established in the City of Berkeley. The purpose of the Police Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Board and assist the Board in carrying out the duties prescribed herein.

Section 2. Definitions.

The following definitions apply to this Article:

(a) "Commissioners' Manual" refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) "Complainant" shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Board, or the Police Department.

(c) "Director of Police Accountability" or "DPA" refers to an individual fulfilling the police oversight role established pursuant to section 1 of Article XVIII.

(d) "Effective Date" shall be the date that the Secretary of State accepts and files this Article.

(e) "Police Board" or "Board" refers to the Police Board established in Section 1 of Article XVIII, which shall be the successor agency to the Berkeley Police Review

EXHIBIT A

Commission in accordance with Section 27.

Section 3. Police Board powers and duties.

(a) The Police Board has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations;

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department, and, to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

(5) To access records of City Departments, compel attendance of sworn employees of the Police Department, and exercise the power of subpoena as necessary to carry out its functions;

(6) To adopt rules and regulations necessary for the conduct of its business; and

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Board shall limit the City Council's, Chief of Police's or City Manager's authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.

(c) The Police Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

EXHIBIT A

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

Section 4. Independent agency; budget authority and allocation.

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

Section 5. Composition of Police Board; eligibility.

(a) The Police Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

(1) Be a resident of the City;

(2) Be at least 18 years old;

(3) Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and

(4) Be fair minded and objective with a demonstrated commitment to community service.

(b) Desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations.

(c) All appointees to the Board shall be subject to background checks before final appointment.

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Section 6. Board member selection.

(a) Candidates for the Board must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the City Council.

(b) The City Council shall endeavor to establish a Board 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 the position of Board member, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.

Section 7. Terms; term limits.

(a) Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two years.

(b) To the extent not in conflict with subsection (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding Board member term limits and the effect of interruption in service, apply.

Section 8. Conflicts of interest and Avoiding Bias.

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

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(3) Board members shall be recused from taking any action on or participating in a matter before the Police Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

Section 9. Expiration of term; termination; leaves of absence; removal.

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits, as provided in Section 7.

(b) The term of a Board member who fails to remain eligible to serve on the Board (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Board members, apply to the Police Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

Section 10. Board Chairperson and Vice-Chairperson.

(a) The Board shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

Section 11. Board member stipends.

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

Section 12. Board member training; At will Status; Oath of Maintaining Confidentiality.

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
 - (2) Constitutional rights and civil liberties;
 - (3) Fundamentals of procedure, evidence and due process;
 - (4) The Public Safety Officers Procedural Bill of Rights Act;
 - (5) Police Department operations, policies, practices, and procedures;
- and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by six (6) votes of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

Section 13. Board meetings; quorum; rules of procedure; subcommittees.

(a) At the beginning of each calendar year, the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.

(b) A majority of appointed Board members constitutes a quorum to conduct business and take any action.

(c) The Board shall establish rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the

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subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners' Manual.

Section 14. Office of the Director of Police Accountability.

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing Berkeley City employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
 - (2) Constitutional rights and civil liberties;
 - (3) Fundamentals of procedure, evidence and due process;
 - (4) The Public Safety Officers Procedural Bill of Rights;
 - (5) Police Department operations, policies, practices, and procedures;
- and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by six (6) votes either on its own motion or based on the recommendation of the Police Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the Police Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures,

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personnel rules of the City and Berkeley Police Department.

(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work of the Police Board and the Office of the Director of Police Accountability.

Section 15. Legal counsel.

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

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Section 16. Board reports.

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

(1) A description of the Board's activities during the year, including:

- i. A summary of the number, type, and disposition of complaints filed with the Board;
- ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;
- iii. Policy complaints undertaken; and
- iv. Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

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Section 17. Policy review and approval.

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

Section 18. Complaints filed with the Director of Police Accountability.

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

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(f) No City employee, officer, official or member of the Police Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Board, and to each identified sworn employee of the Police Department.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Board and, if warranted, the Board may agree to hold a personnel hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Board, if the Chief of Police and Director of Police Accountability or Police Board are in accord, the Chief of

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Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

Section 19. Review of complaints filed with the Berkeley Police Department.

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

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(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is not sustained, unfounded or exonerated, within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Board will convene to conduct a review based upon the investigative record provided by the Department; or

ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Board, and Chief of Police.

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(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager, Director of Police Accountability, and the Chief of Police, as applicable.

Section 20. Access to records of City departments; compelling testimony and attendance.

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Director of Police Accountability, Police Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

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Section 21. Advice regarding Police Department budget.

The Board is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

Section 22. Hiring of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

Section 23. Chief of Police or command staff to attend Board meetings.

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

Section 24. Berkeley Police Department written reports to the Board.

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, may prescribe. At least one report shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

Section 25. Contract negotiations.

The City Manager shall inform the Police Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

Section 26. Commendation program.

The Board shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to members of the public, the community at large, or the Department.

Section 27. Transition from Police Review Commission to Police Board.

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Board, but no later than January 3, 2022.

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(b) To assist in an orderly transition between the Police Review Commission and the Police Board established by this Article, Police Review Commission staff shall serve as interim Police Board staff until the City hires a Director of Police Accountability.

(c) The Police Review Commission staff shall transfer all Police Review Commission files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Board.

Section 28. Review of processes.

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

Section 29. Enabling Legislation.

The Board may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

Section 30. Repeal of Ordinance No. 4,644-N.S., as amended.

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Board established by this Article.

Section 31. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 18. Review of Complaints Filed with the Director of Police Accountability and/or Board

Milestone		Timing¹
Director of Police Accountability investigates complaint	Berkeley Police Department Internal Affairs investigates complaint	Within 120 days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct
Director of Police Accountability convenes Police Board in Confidential Personnel Hearing	Internal Affairs convenes Board of Review	Within 60 days of completing the investigation
Director of Police Accountability submits Findings to Chief of Police	Internal Affairs submits findings to Chief of Police	Recommendations submitted to Chief within 15 days of the confidential personnel hearing
Chief of Police reviews findings from Director of Police Accountability / Police Board and Police Department Board of Review: (a) If Chief of Police agrees with the Director of Police Accountability / Police Board, Chief of Police issues letter of disposition to officer (b) If Chief of Police disagrees with the Director of Police Accountability / Police Board, Chief of Police issues tentative decision to the Director of Police Accountability / Police Board		Within 10 days of receiving recommendation from Director of Police Accountability / Police Board and Internal Affairs
Director of Police Accountability reviews tentative decision and either: (a) If agree with Chief of Police, no action, investigation is complete (b) If disagree with Chief of Police, request City Manager to review case		Within 10 days of receiving tentative decision from Chief of Police
City Manager or City Manager's Designee reviews case and makes final determination		Within 25 days of receiving request from Director of Police Accountability
Total Number of Days		240

¹ Timelines set forth are advisory. However, the timeline to complete the investigation and notification of discipline cannot exceed 240 days and the timeline to complete the investigation by the Director of Police Accountability cannot exceed 195 days.

Section 19. Review of Complaints Filed with the Berkeley Police Department

Milestone	Timing ²
Berkeley Police Department Internal Affairs investigates complaint	
Internal Affairs convenes Board of Review	
Internal Affairs submits findings to Chief of Police	
Chief of Police reviews findings from Internal Affairs and issues letter of disposition to officer and notifies complainant of disposition	Letter of Disposition issued within 120 days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct
Complainant receives disposition: (a) If Complainant agrees with Chief of Police, no further action, investigation is complete. (b) If Complainant disagrees with Chief of Police, files an objection with Director of Police Accountability/ Police Board	Complainant has 20 days of receiving notification from Chief of Police to contest findings
If complainant objects to findings, Director of Police Accountability evaluates. Director of Police Accountability may either: (a) Reject Complainant's request, no further action, investigation is complete. (b) Accept Complainant's request and convenes Police Board for a confidential hearing.	Director of Police Accountability has 15 days to accept or reject Complainant's request
Director of Police Accountability convenes Police Board and holds confidential hearing based on investigative record. Police Board may either: (a) Dismiss the complainant's objection, no further action, investigation is complete. (b) Issue a report agreeing with Chief of Police, no further action, investigation is complete.	Within 45 days of the date that the Director of Police Accountability notifies the Complainant that the objection has been accepted

² Timelines set forth are advisory. However, the timeline to complete the initial investigation by the Chief of Police cannot exceed 120 days and the timeline to complete the investigation and notification of discipline cannot exceed 240 days.

Milestone	Timing ²
(c) Issue a report disagreeing with Chief of Police. Report submitted to Chief of Police and City Manager	
If Director of Police Accountability/ Police Board disagrees with Chief of Police, upon receipt of the report from Director of Police Accountability, Chief of Police may submit a report to the City Manager	Chief of Police has 15 days to submit report to the City Manager
City Manager or City Manager's Designee reviews case and makes final determination	City Manager has 25 days of receiving report from Chief of Police to make a final determination
Total Number of Days	240

Note: All days are calendar days.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison, Bartlett, Davila, and Hahn
Subject: Inclusionary Units in Qualified Opportunity Zones

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code chapter 22.20.065 requiring onsite inclusionary units in new rental developments in Qualified Opportunity Zones (QOZs).

POLICY COMMITTEE RECOMMENDATION

On February 20, 2020, the Land Use, Housing, and Economic Development Committee adopted the following action: M/S/C (Arreguin/Harrison) to move the item with a positive recommendation as revised in the materials submitted by the author and further revisions discussed at the meeting. Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – Droste; Absent – None.

BACKGROUND

Qualified Opportunity Zones (QOZs), urban areas associated with the 2017 Trump tax cuts,¹ are an ideal place to begin to require inclusionary on-site units. The stated goal of QOZs is to revitalize low-income communities² and incentivize investment there by delaying capital gains taxes, entirely circumventing federal taxes on profits made in QOZs. Requiring units affordable to lower-income households to be built in QOZs will slow pricing these households out of their own communities and partially offset the reduced services and program funding resulting from the avoided federal tax revenues.

¹ <https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>

² Defined as areas with a median income of less than 80% AMI or a poverty rate above 20%.

QOZ investors are given significant financial benefits and thus can include on-site units while still realizing a profit. Investments in QOZs can increase investor's returns by 70% according to the Congressional Research Service,³ through three distinct mechanisms:

- Regardless of date of investment, earnings in a QOZ are tax free.
- Ten years after an initial investment into a QOZ, the investor can sell the real estate and not owe any taxes on the profits.
- Capital gains from the asset sold to invest in the fund are deferred. Investments held in the fund for longer than seven years exclude 15% of the deferred gain from the original asset. If held for more than five years, 10% is deferred.⁴ The deadline to receive a 15% exclusion of the deferred gain was December 2019, but investors have until 2021 to receive the 10% exclusion and until 2026 to receive the 5%.

Because 90% of capital gains income in the U.S. accrues to the wealthiest 10% (and 70% to the wealthiest 1%), the overwhelming majority of these tax benefits will flow directly to the richest investors⁵.

Many states also have additional tax breaks at the state level for Opportunity Zone projects. California is one of four states that does not have state tax breaks,⁶ but any project that invests in a California Opportunity Zone still receives the same federal benefits. The California Economic Forum estimates that \$1.32 billion will be invested in California Opportunity Zones; one investment fund has accumulated \$50 million to invest in off-campus student housing near California universities, such as U.C. Berkeley⁷.

Qualified Opportunity Zones were established through the 2017 Tax Cuts and Jobs Act, signed into law on December 22, 2017. To become a QOZ, the Governor's Office nominates census tracts and their status is verified by the Internal Revenue Service. Opportunity Zones are "economically distressed communities,"⁸ a designation which is vague but generally refers to census tracts with high poverty rates, or census tracts immediately adjacent to tracts with high poverty rates.

To receive the tax benefit, the fund investing in the QOZ (referred to as a Qualified Opportunity Fund) must either invest in a new building (i.e., purchase vacant property, or tear down an existing building to build a new one) or make "substantial improvements"

³ https://www.novoco.com/sites/default/files/atoms/files/crs_tax_incentives_for_ozs_112018.pdf

⁴ <https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions>

⁵ "Displacement Zones: How Opportunity Zones Turn Communities Into Tax Shelters for the Rich." Strategic Actions for a Just Economy 2019. *Executive Summary*, page 4.

⁶ <https://www.novoco.com/resource-centers/opportunity-zone-resource-center/guidance/state-tax-code-conformity-personal-income>

⁷ <https://qozmarketplace.com/student-housing-opportunity-zone-fund/>

⁸ <https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions>

upon an existing property.⁹ Property is only substantially improved when its value doubles over the period of 30 months, not including appreciation.¹⁰

Though touted as a way to invest in under-resourced communities, most QOZs are in rapidly growing areas, with 75% of the tracts experiencing significant economic growth between 2001 and 2015¹¹ and 64% of tracts seeing a significant increase in new businesses during the same period.¹² Also, in the Bay Area, QOZs are often in gentrifying areas, reflecting a national pattern: almost 70% of all neighborhoods in America that gentrified between 2000 and 2017 either are in a Qualified Opportunity Zone or are adjacent to one.¹³¹⁴ The Urban Institute found that Governors were more likely to designate tracts as Opportunity Zones if they were already experiencing gentrification, and that lobbying from land speculators had a large influence on the tracts that were selected.¹⁵ Locating in a QOZ will greatly increase the profits of already-planned projects.

Berkeley Opportunity Zones

Five census tracts in Berkeley have been designated as Qualified Opportunity Zones, including Downtown, the Adeline Corridor, South Berkeley between Sacramento and Shattuck, and part of West Berkeley between University and Dwight, San Pablo and 5th Street.¹⁶ The tracts in Berkeley are almost all low-income and predominantly communities of color; 18,000 people reside there. They are as follows:

⁹ <https://www.forbes.com/sites/anthonymitti/2019/04/22/irs-releases-latest-round-of-opportunity-zone-regulations-where-do-we-stand-now/#487aacd12772>

¹⁰ “Displacement Zones.” *Understanding Opportunity Zones*, page 7.

¹¹ <https://www.opportunityzonelaw.com/single-post/2018/07/03/Five-Keys-from-the-Novogradac-2018-Opportunity-Zones-Workshop>

¹² Ibid.

¹³ <https://ncrc.org/oz/>

¹⁴ Home value increases in zip code 94704 (which includes census tract 4229) saw a 4.1% increase in home values in the past year, compared to a Citywide increase of 3.1% according to Zillow.

¹⁵ “Adeline Corridor Plan – Multifamily Financial Feasibility Modeling.” Item 3. January 29, 2020. Planning Commission Adeline Corridor Specific Plan Subcommittee.

¹⁶ <https://opzones.ca.gov/oz-map/>

Berkeley Opportunity Zone Demographics

Tract Number	Population ¹⁷	Bordering Streets	Poverty Rate	Average Income	Average Income as a % of AMI ¹⁸	% of units occupied by renters ¹⁹
4232	3,004	University to Dwight; San Pablo to 5 th St	19.2%	\$81,453	100%	75%
4229	5,463	University to Dwight; Oxford to MLK	47.3%	\$52,250	65%	97%
4235	3,501	Dwight to Ashby; Fulton to MLK	20.9%	\$62,386	77%	67%
4239.01	1,954	Southern end of Adeline Corridor	13.9% ²⁰	\$90,882	112%	61%
4240.01	4,151	Ashby to City Limits; Sacramento and Adeline	18.1%	\$60,809	75%	73%

This legislation is an opportunity to realize a portion of the benefits of QOZs locally. The City of Berkeley may itself establish a Qualified Opportunity Fund²¹ to further the goals in

¹⁷ As of 2018 American Community Survey

¹⁸ Compared to the Area Median Income of \$80,912.

¹⁹ Compare to Alameda County average of 47%.

²⁰ This poverty rate is too low to qualify as a QOZ but is adjacent to qualifying tracts.

²¹ "Berkeley Qualified Opportunity Fund." March 19, 2019 Berkeley City Council meeting.

the West Berkeley Plan and the draft Adeline Corridor Plan, including the construction and preservation of affordable housing.²² The East Bay Community Foundation in particular is examining how to use these tax cuts to build wealth rather than extract it in these tracts.²³ However, without sufficient regulation there is no guarantee that the private entities taking advantage of QOZs will further these goals as well. Requiring inclusionary units establishes clear affordable housing goals for all projects in QOZs.

Inclusionary Housing in Berkeley

The Berkeley Housing Trust Fund (HFT) was established in 1990 to pool money from a variety of sources (including developer in-lieu fees) into a single fund for the purpose of constructing affordable housing.²⁴ Under a State court case, from 2009²⁵ to 2017, Berkeley was required to offer project applicants the option of either building affordable units onsite or paying the in-lieu fee. Thus, pursuant to BMC 23C.12, all owner-occupied new projects in Berkeley with five or more units are currently required to *either* set aside 20% of their units as affordable, pay an in-lieu fee to the HFT, or some combination of both. BMC 22.20 has similar provisions for rental housing, and the chapter permits the City Council to adopt resolutions that vary requirements for in-lieu fees. The inclusionary requirement was set at 20% to ensure proposed developments were economically feasible (i.e., profitable) and purposefully set below the 26% level that the 2015 nexus study found would be needed to fully offset the increased demand for low-income housing generated by each 100 units of new market-rate housing.²⁶

AB 2502 and subsequently 1505 (known as the “Palmer Fix”) gave jurisdictions such as Berkeley the authority to require onsite units, construct units off-site or dedicate land in the zone²⁷ but does not require that developers be given an option to pay an in-lieu fee. The decision to charge in-lieu fees, require inclusionary units, or leave the decision to developers is now set according to prevailing market forces and the desires of local policymakers. The California Supreme Court has upheld requiring affordable units as an extension of a municipality’s police powers.²⁸ The City Attorney has confirmed that the City has broad authority to impose onsite inclusionary housing requirements under state and federal law and that this requirement can be applied in a legally permissible manner.

This QOZ ordinance would now require on-site affordable housing in the zones. It would apply only to developments with 10 or more units, which at 20% would require

²² “Referral Response: Opportunity Zone Priorities.” January 23, 2020.

²³ <https://www.ebcf.org/inclusive-economy-ebcf-opportunity-zones/>

²⁴ <https://www.cityofberkeley.info/ContentDisplay.aspx?id=6532>

²⁵ http://www.reubenlaw.com/palmer_case_shakes_up_inclusionary_housing_rules_for_rental_projects/

²⁶ “Affordable Housing Nexus Study.” Item 1 at July 14, 2015 Berkeley City Council meeting

²⁷ These alternatives may not be required in a Charter city.

²⁸ <https://harvardlawreview.org/2016/03/california-building-industry-assn-v-city-of-san-jose/>

two or more affordable units. Projects under 10 units would continue to will still have the option to either include onsite affordable housing or pay the in-lieu fee.²⁹

Requiring developers in QOZs to build affordable housing on-site has several advantages over relying on the traditional preference for in-lieu fees.

- Constructing affordable housing projects using in-lieu fees requires land to be acquired³⁰ and capital to be accrued over many years and results in delays in production that market-rate developers may not face.
- Building affordable units in primarily market-rate developments instead promotes integration of housing throughout the City. Attachment 2 demonstrates that 100% affordable projects are more concentrated in particular neighborhoods than where below market rate units are either already built or planned.
- We are far from achieving our goals for low-income housing. Berkeley has achieved only 15% of its low-income housing target³¹ but 65% of the target set for very low-income housing.³² , According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline, only 11 projects (20% of the 56) provided any low-income units onsite; the balance paid fees in lieu of providing low-income units.³³

A similar trend can be seen in the projects built in areas that are now in a Qualified Opportunity Zone. Of the 23 projects, 11 had no onsite affordable units, and seven that took advantage of the state density bonus (see Attachment 3) built very low-income units but no low-income units.

²⁹ Managing a single affordable unit in a small (under 10 unit) project is an administrative burden to building owners and City administration, and thus small projects.

³⁰ Or scarce public land to be utilized.

³¹ <https://abag.ca.gov/our-work/housing/rhna-regional-housing-need-allocation>

³² The state density bonus provides varying degrees of bonus, depending on the percentage of the base project and the affordability levels of units, as well as for the type of occupancy such as for seniors and students. The type and degree of bonus is at the developer's discretion. Typically projects in Berkeley provide only very-low income units (30%-50% of AMI).

³³ According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline:

- 24 elected to utilize the density bonus and pay fees in lieu of the other 10% of affordable units.
- An additional 21 did not take advantage of the state density bonus and paid in-lieu fees for all or substantial proportion of the remaining local requirement

- Since the passage of Measure O, much more funding for non-profit built affordable housing is available. It is critical, given the displacement occurring in Berkeley, to consider requiring some on-site units instead of providing the option of in-lieu fees.

Conformance with Adeline Corridor Specific Plan

The draft Adeline Corridor Plan already “calls for an ambitious combination of on-site affordable units included in otherwise market rate projects and new 100% affordable housing projects built on public land.”³⁴ The Adeline Corridor falls entirely within Qualified Opportunity Zones (see Attachment 3 – census tracts 4235, 4239.01, and 4240.01),³⁵ and thus this legislation takes an idea already contained within and reasonably consistent with the draft plan – affordability through on-site affordable units – and expands it to other areas of the City already designated by the federal government as low-income areas requiring investment.

The draft plan calls for a series of Tiers of affordable housing incentive standards, wherein a higher percentage of affordable units corresponds to a higher height limit, floor-area ratio, and higher density. ³⁶ Taking advantage of Tiers 2, 3 or 4³⁷ requires that a project include units on-site rather than pay an in-lieu Affordable Housing Mitigation Fee. Projects in the Adeline Corridor are of course encouraged to go beyond and build more affordable housing if feasible, but the requirements set forth in this item are consistent with the incentives in the Plan.

However, similar incentives do not currently exist in the Downtown or Southwest Berkeley, the other two areas designated as Opportunity Zones in Berkeley. By setting similar requirements for all five census tracts, we ensure the same affordability standards in all QOZs, not just those overlapping with the Adeline Corridor.

Feasibility and Profitability in Berkeley

Real estate Project developers typically expect a yield on costs (i.e., profits) of at least 5.5% to be considered potentially feasible. Street Level Advisors, a consultant retained

³⁴ Draft Adeline Corridor Specific Plan, Chapter 4.4: “Affordability Levels and Tenant Types in New Housing.”

³⁵ See Attachment 4

³⁶ The draft zoning regulations for the Adeline Corridor is currently being discussed by a subcommittee of the Planning Commission. A full draft of the zoning chapter was discussed in November 2019 is available on the Planning Commission webpage at: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2019_11_21_PC_Adeline_GP%20Zoning%20Report%20Final.pdf.

³⁷ Corresponding to 20%, 35% and 50% of the project at the Tier 1 density required as on-site affordable housing with half of those units affordable at Low Income and half as Very Low Income levels.

by Berkeley, estimates that typical project investors could be willing to invest in a QOZ project with an even lower yield of only 5.3%.³⁸

The estimated feasibility analysis already conducted for the proposed Adeline Corridor Zoning by the consulting firm Street Level Advisors shows a yield on cost for every Tier, and even for current zoning standards without a state density bonus, is all above 5.3%.³⁹ In other words, the slight change from in-lieu to on-site affordable housing proposed in this ordinance for projects in Opportunity Zones are economically feasible even for projects with 50% affordability of base units (i.e. 25% of total units, Tier 3).

Street Level Advisors asserts that the tax benefits from Qualified Opportunity Zones will likely not be essential to project feasibility. There has not yet been a demonstrable increase in new projects in Berkeley's QOZs since passage of the tax code⁴⁰ and evaluating property sales in the zones requires a site by site analysis. However, feasibility reports are generally concerned with upfront costs to build projects. Qualified Opportunity Zone tax benefits can assist with upfront costs with the initial tax deferral, but the bulk of their benefit is to the long-term profitability of a project. The step-up tax exclusion system and the tax exemption at point of sale all make projects significantly more *profitable* even if they do not have large effects on the *feasibility* of projects. Projects that are already feasible and decide to take advantage of Opportunity Zones can afford to provide more in affordable housing because they are feasible (as discussed above) and they are significantly more profitable. The California Legislative Analyst's Office indicated that QOZs will not on their own incentivize affordable housing construction.⁴¹ The City of Berkeley has a responsibility to capture some of the foregone federal tax revenues resulting from the Trump tax cuts to promote affordable housing.

FINANCIAL IMPLICATIONS

Will reduce contributions to the Affordable Housing Trust Fund.

REVIEW OF EXISTING PLANS

As discussed above, this item conforms to the draft Adeline Corridor Specific Plan, which streamlines zoning in exchange for more inclusionary onsite units. Zoning in the Downtown Plan, West Berkeley Plan, and CSA (the other zones covered by Qualified Opportunity Zones) do not have any such incentives or requirements, though they will all receive the same tax benefits under federal QOZ legislation.

³⁸ "Adeline Corridor Plan – Multifamily Financial Feasibility Modeling." Item 3. January 29, 2020. Planning Commission Adeline Corridor Specific Plan Subcommittee.

³⁹ *Ibid.* Table 3.

⁴⁰ Tracking the flow of investment in QOZs is very difficult; there is no centralized tracking mechanism for these funds. The tracking mechanism for activities and holdings in the funds and socio-economic impacts of the funds originally suggested by Senator Booker was removed from the tax code. See SAJE, page 9.

⁴¹ <https://lao.ca.gov/Publications/REport/4038>

Berkeley policy has required 20% of all new units in buildings 4 units or more be affordable for many years, established after the 2015 Affordable Housing Nexus Study identifying that 25.55% of new rental households would require assistance⁴². To ensure project feasibility, the Council set a slightly lower rate of 20%. However, projects were given the option to pay a fee instead of building the affordable units. This item does not change this policy of 20% but rather ensures that the City actually receives the 20% affordable units that we have theoretically been receiving for years.

ALTERNATIVES CONSIDERED

One alternative is to simply let the Adeline Corridor Plan with its various incentives provide more affordable housing. However, when this QOZ legislation provides tax relief in more locations beyond the Corridor, we may see development flee the Corridor in favor of one of these other Zones, which do not have the same affordability protections built in. Projects in all five of these census tracts will be hugely profitable and we have a responsibility to gain community benefits from all five.

Another alternative is to wait for more data on the effects of QOZs. However, the program will be short-lived (until 2027); the fear is that by the time we understand their full effect, it will be too late to regulate them. We are currently in the window to take advantage of this tax relief. Waiting to understand the full effects of gentrification will do nothing to protect the Berkeley residents experiencing it.

ENVIRONMENTAL SUSTAINABILITY

The Qualified Opportunity Zones in Berkeley are along major transit corridors (Shattuck, Adeline, and San Pablo). Last year, Berkeley researchers concluded that infill housing along transit corridors is one of the most impactful policies municipalities can adopt to combat climate change.⁴³

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

- 1: Berkeley Municipal Code 22.20.065
- 2: 2019 Housing Pipeline Report, highlighted with projects that are in Qualified Opportunity Zones as currently defined
- 3: Comparative map of Qualified Opportunity Zones and the Adeline Corridor
- 4: Heat map of nonprofit affordable units and private below market rate units in Berkeley

⁴² "Affordable Housing Nexus Study." Item 1 at July 14, 2015 Berkeley City Council meeting

⁴³ <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

AMENDING CHAPTER 22.20.065 OF THE BERKELEY MUNICIPAL CODE TO
REQUIRE ON-SITE INCLUSIONARY HOUSING UNITS IN QUALIFIED
OPPORTUNITY ZONES

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

Section 1. That Berkeley Municipal Code Section 22.20.065.B is hereby amended to read as follows:

22.20.065.B. Definitions.

1. "Density Bonus Project" means a Development project that receives a density bonus pursuant to Government Code Section 65915.
2. "Density Bonus Units" means additional units to which an applicant for a Density Bonus Project is entitled and constructs pursuant to Government Code Section 65915.
3. "Income" means combined annual gross income from all sources.
4. "Low-income Household" shall mean a household whose income is no more than 80% of AMI.
5. "Low-income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Low-Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 80% of AMI.
6. "Qualifying Units" means those below market-rate units in a Density Bonus Project that entitle the applicant to a density bonus pursuant to Government Code Section 65915.
7. "Qualified Tract" means a census tract designated as a Qualified Opportunity Zone under Internal Revenue Code §1400Z-2.
87. "Very Low-Income Household" shall mean a household whose income shall be no more than 50% of AMI.
98. "Very Low-Income Unit" means any dwelling unit that is rented, for the life of the Development project in which it is located, at a price affordable to a Very Low Income Household of an appropriate size for the dwelling unit, and restricted to households with an income not exceeding 50% of AMI.
109. For purposes of this Section, affordable rents shall be determined in accordance with the provisions of Health and Safety Code section 50105, 50052.5(b)(2), and 50052.5(h), and California Code of Regulations Chapter 25 Section 6918.

110. Tenant-paid utility costs will be deducted from gross rent to determine the rent paid by the tenant. Utility costs will be based on the Berkeley Housing Authority Section 8 utility allowance, or future equivalent standard.

124. Minimum bedroom size will be 70 square feet, consistent with Berkeley's Housing Code (19.40.010.A, Uniform Housing Code Chapter 5, Section 503.2).

Section 2. That Berkeley Municipal Code Section 22.20.065.C is hereby amended to read as follows:

The City Council may by resolution adopt an affordable housing impact fee ("Fee"), which shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution. All such Fees shall be managed consistent with Government Code Sections 66000 et seq. Up to 10 percent of Fees may be used to pay for administration of the Fee or the Housing Trust Fund or any successor fund with the same purpose, and the remainder shall be deposited in the City's Housing Trust Fund or any successor fund with the same purpose.

1. All Fees shall be paid, at the issuance of a Certificate of Occupancy, except as set forth in this subdivision or in the City Council Resolution that adopts the Fee.
2. No later than the date the first building permit is issued for a Development project that is subject to the Fee, the applicant may elect to avoid the Fee by providing, for the life of the project, a number of units equal to 20% of the total units in the project at rental rates affordable to Low-Income and Very Low-Income Households and pay a proportionately reduced Fee as calculated in Section 22.20.065.D. Subject to administrative regulations promulgated pursuant to subdivision H, 40% of the Very Low-Income units in Development projects that have not obtained final approval under Title 23 as of September 20, 2016, shall be reserved for holders of Berkeley Housing Authority Section 8 vouchers and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates. In all such cases the applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units.
3. In making its election under the preceding paragraph, an applicant for a Development project subject to this Section may provide less than 20% of the

total units in the project as Low-Income and Very Low-Income Units and pay a proportionately reduced Fee as calculated in Section 22.20.065.D.

4. The fee shall not apply to projects in Qualified Tracts of 10 or more units. All such projects shall provide a number of units equal to 20% of the total units in the project at rental rates affordable to Low and Very Low households and shall not pay the in-lieu Fee. The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all such dwelling units and other information as required for determining compliance with this Section. All such units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the market rate units in the project; and be comparable with the design or use of market rate units in terms of appearance, materials and finish quality. The owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the units. Notwithstanding the regulations of this paragraph, the applicant may pay the fee to satisfy the requirements of this chapter with respect to fractional units.

54. In projects providing more than one below market rate unit (meaning the combination of Low-income Units and Very Low-Income Units), at least 50% of the units shall be affordable to Very Low-income Households. When there is an uneven number of units provided under this ordinance, the majority of the below market rate units shall be Very Low-Income units.

65. Units that meet the criteria established for affordable housing rents in the City's Housing Trust Fund guidelines, as amended shall be exempt from the Fee.

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

Table 1 – Projects with more than 5 units submitted and pending approval by ZAB or Council.					
#	Street Name	Zoning	Total Units	Submittal Date	Project Status as of 6/19/2019
3031	Adeline	C-SA	42	7/24/18	Incomplete
2590	Bancroft	C-T	87	6/5/19	Incomplete
2015	Blake	R-4	155	12/20/18	Incomplete
2000	Dwight	R-4	126	4/24/19	Incomplete
1155	Hearst	R-2A	11	2/2/16	Under Appeal, Council tbd
2176	Kittredge	C-DMU	165	2/7/19	Incomplete
2099	MLK	C-DMU	72	5/2/19	Incomplete
2425	Prospect	R-3(H)	17	7/6/18	Incomplete
1835	San Pablo	C-W	95	11/19/18	Incomplete, ZAB & DRC Previews Pending
2371	San Pablo	C-W	14	5/15/19	Incomplete
2720	San Pablo	C-W	40	1/20/16	Complete May 2019; ZAB Preview Fall 2019
1951	Shattuck	C-DMU	156	6/29/18	ZAB Hearing June 2019
2023	Shattuck	C-DMU	48	3/5/19	Complete; ZAB & DRC Previews Fall 2019
2352	Shattuck	C-DMU	237	6/28/18	ZAB Preview May 2019, DRC June 2019
2701	Shattuck	C-SA	57	12/13/16	Under Appeal, ZAB June 2019
2650	Telegraph	C-1	45	4/18/19	Incomplete
1110	University	C-1	36	3/3/17	Incomplete; on hold per applicant
1486	University	C-1	45	10/28/16	Complete December 2017, then on hold per applicant until May 2019. ZAB & DRC Previews Pending
Total:			1,448		

Note: Proposed #s of affordable units are not reported at this pre-approval stage, as they tend to change significantly.



Table 2 - Approved projects with more than 5 units: No Active Building Permit.															
#	Street Name	Zoning	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Applied For?	Subtotals		
2009	Addison	C-DMU					0	44	44	2018/2019	ZAB	No	Units in Approved projects, no BP yet applied for: 1,289		
2902	Adeline	C-SA & R-4		4	4	1	9	41	50	2017	Council				
3051	Adeline	C-SA		0	0	0	0	11	11	2016	ZAB				
2028	Bancroft	C-DMU		2			2	35	37	2019	ZAB				
2012	Berkeley Way	C-DMU	53	54	17		124	1	125	2018	SB35				
2211	Harold	C-DMU		0	0	0	0	302	302	2015	Council				
1601	Oxford	R-3		13	21	0	34	3	37	2018	SB35				
1200	San Pablo	C-W		5			5	52	57	2018	ZAB				
1201	San Pablo	C-W		0	0	5	5	22	27	2006	Council				
1740	San Pablo	C-W		4			4	48	52	2018	ZAB				
2100	San Pablo	C-W		0	0	0	0	96	96	2017/2019	ZAB				
2198	San Pablo	C-W		5			5	52	57	2019	ZAB				
2720	San Pablo	C-W		0	3	0	3	15	18	2007	ZAB				
2190	Shattuck	C-DMU		0	0	0	0	274	274	2019	Council				
2701	Shattuck	C-SA		0	0	4	4	20	24	2007	Council				
3000	Shattuck	C-SA		2	2	0	4	19	23	2018	Council				
1040	University	C-W & R-3		27	0	0	27	0	27	2012	ZAB				
1717	University	C-1		3	0	0	3	25	28	2017	ZAB				
2072	Addison	C-DMU					0	55	55	2018/2019	ZAB			10/26/18	Units in Approved projects, BP applied for: 284
2542	Durant	C-T		0	0	0	0	32	32	2018	ZAB			4/4/19	
2527	San Pablo	C-W		6	5	0	11	57	68	2018	Council	8/17/18			
3020	San Pablo	C-W		2	2	0	4	25	29	2007	ZAB	2/11/15			
2628	Shattuck	C-SA					0	78	78	2019	ZAB	5/9/19			
2556	Telegraph	C-T					0	22	22	2018	ZAB	12/19/18			
Totals:			53	127	54	10	244	1,329	1,573						

Table 3 – Approved projects with more than 5 units: Building permit issued.												
#	Street Name	Zoning	VL 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Est. Completion Date
1950	Addison	C-DMU	5	0	0	5	106	111	2016	ZAB	11/17/17	2019
2126	Bancroft	C-DMU	5	0	0	5	45	50	2016	ZAB	11/6/17	2019
2580	Bancroft	C-T	11			11	111	122	2018	ZAB	5/21/19	2020
2035	Blake	C-SA	4	0	0	4	78	82	2016	Council	8/10/17	2020
739	Channing	MU-R				0	10	10	2018	ZAB	6/12/18	Unknown
2510	Channing	C-T	3			3	37	40	2018	ZAB	4/5/18	2020
2631	Durant	R-SMU	0	0	0	0	56	56	2016	Council	12/1/17	2020
1500	San Pablo	C-W & R-1A	16	0	0	16	154	170	2016	Council	12/21/17	2020
2747	San Pablo	C-W	3	3	0	6	33	39	2007	ZAB	8/18/17	2020
2748	San Pablo	C-W	23	0	0	23	0	23	2014	ZAB	5/17/18	2019
2539	Telegraph	C-T	6	0	0	6	64	70	2016	ZAB	10/20/17	2019
2597	Telegraph	C-T & R-2	1	0	0	1	9	10	2017	Council	8/9/18	2020
1698	University	C-1	3	0	0	3	33	36	2014	ZAB	10/19/18	2020
2067	University	C-DMU	4	0	0	4	46	50	2016	ZAB	10/10/18	2020
2111	University	C-DMU	6	0	0	6	62	68	2013	ZAB	6/27/18	2020
2131	University	C-DMU	2	0	0	2	19	21	2013	ZAB	6/27/18	2020
2145	University	C-DMU	3	0	0	3	33	36	2013	ZAB	6/27/18	2020
1900	Walnut	C-DMU	7	0	0	7	73	80	2013	ZAB	6/27/18	2020
Totals:			102	3	0	105	969	1,074				




Table 4 – Approved projects with more than 5 units: Building Permit Issued after 2014 and now occupied.												
#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Complete Date
1935	Addison	C-DMU	0	0	0	0	69	69	2013	Council	10/17/14	5/26/17
2002	Addison	C-DMU	0	0	0	0	6	6	2016	ZAB	2/1/18	8/28/18
2024	Durant	C-DMU	0	0	0	0	78	78	2013	Council	7/8/14	12/7/15
2526	Durant	C-T	0	0	0	0	44	44	2014	ZAB	2/18/14	6/30/17
2532	Durant	C-T	0	0	0	0	7	7	2016	ZAB	6/23/17	1/30/19
2107	Dwight	C-DMU	9	0	0	9	90	99	2012	ZAB	12/1/17	3/24/17
2201	Dwight	R-S	7	0	0	7	70	77	2013	ZAB	6/3/15	11/17/16
2227	Dwight	R-3	0	0	0	0	6	6	2013	Council	9/7/15	5/25/18
2001	Fourth	C-W	12	0	0	12	140	152	2014	ZAB	4/1/16	7/31/18
2441	Haste	C-T	0	0	0	0	42	42	2013	ZAB	5/7/14	6/27/16
3132	MLK	C-SA	0	41	0	41	1	42	2007	ZAB	11/20/15	12/7/17
3015	San Pablo	C-W	8	7	0	15	83	98	2007	Council	3/19/14	2/16/16
2598	Shattuck	C-SA & R-2A	4	3	0	7	25	32	2014	Council	5/1/15	5/31/17
2600	Shattuck	C-SA & R-2A	12	12	0	24	99	123	2014	Council	1/1/14	3/17/17
2711	Shattuck	C-SA	0	0	0	0	18	18	2016	ZAB	9/6/17	9/1/18
800	University	C-W	4	0	0	4	54	58	2013	ZAB	7/15/14	12/2/15
824	University	C-W	4	0	0	4	44	48	2015	ZAB	8/20/15	2/6/18
1812	University	C-1	4	0	0	4	40	44	2014	ZAB	6/25/15	3/7/17
1974	University	C-DMU	8	0	0	8	90	98	2014	ZAB	9/29/15	10/3/17
Totals:			72	63	0	135	1,006	1,141				

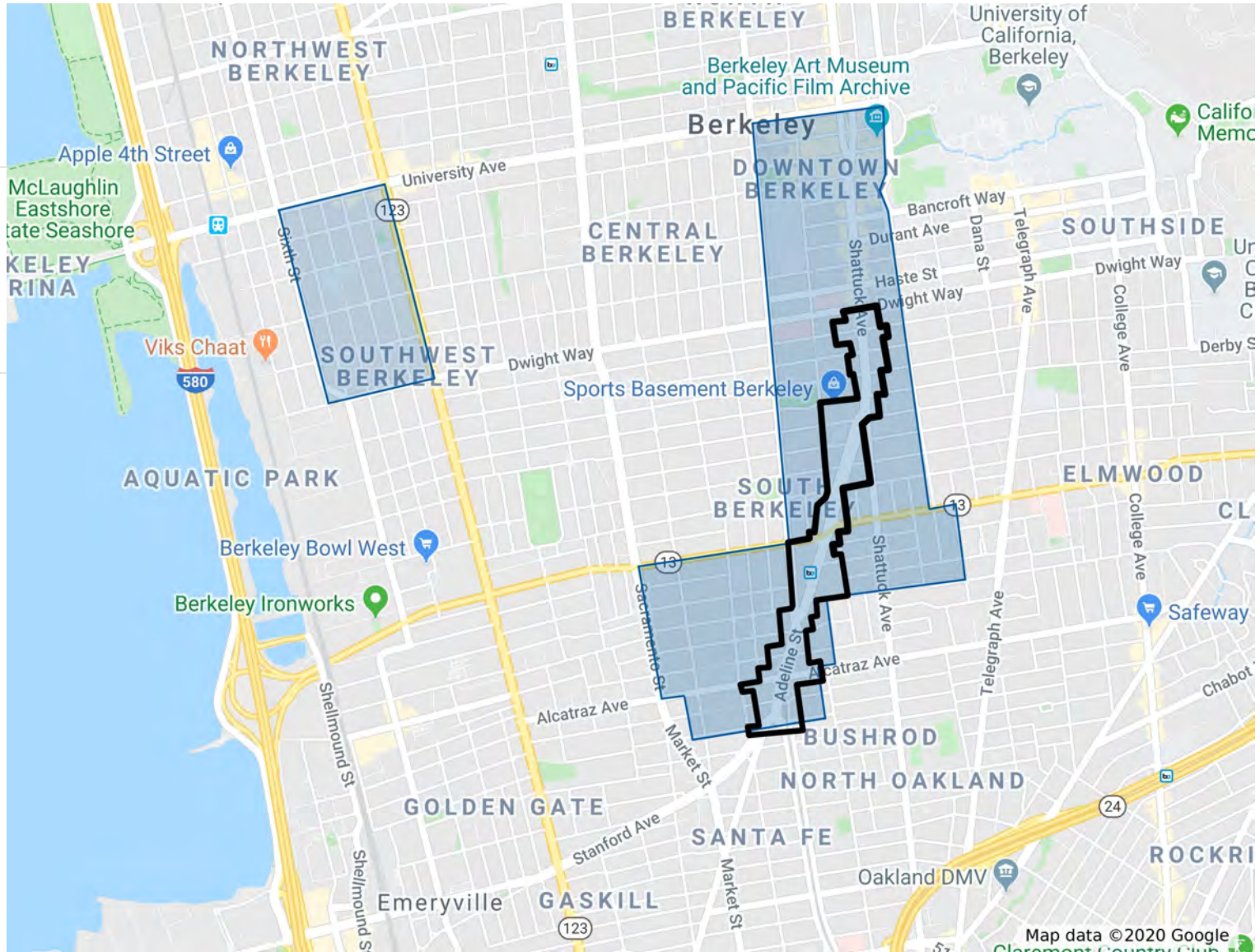
Adeline Corridor vs QOZ

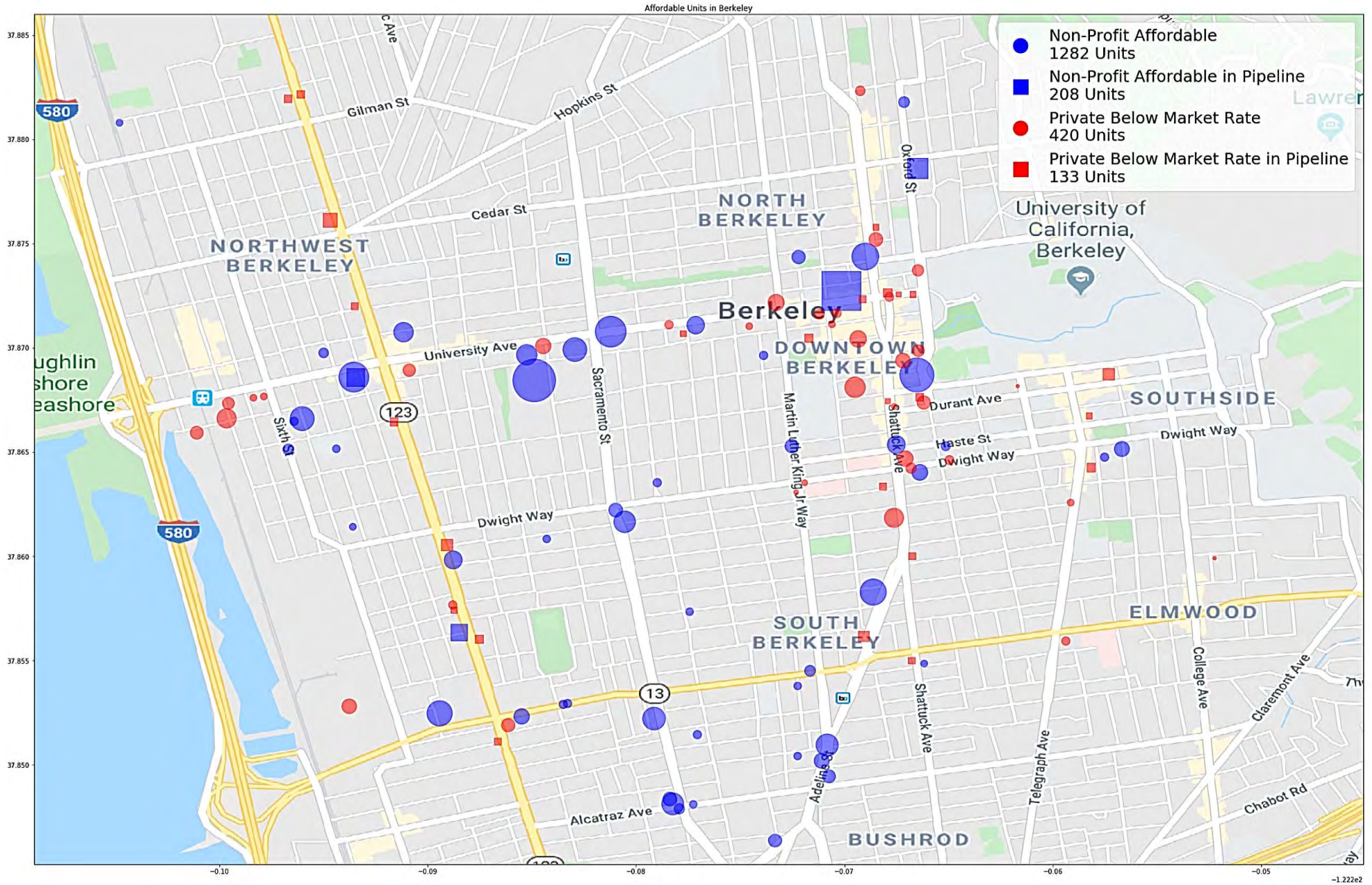
QOZs

-  Polygon 1
-  Polygon 2

Adeline Corridor

-  Line 2
-  Line 3
-  Line 4







Office of the Mayor

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ACTION CALENDAR

April 14, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Amending Tenant Screening Fees Ordinance for Existing Tenancies

RECOMMENDATION

Adopt first reading of an Ordinance to amend Berkeley Municipal Code 13.78 (Tenant Screening Fees) to add subsections to prohibit additional fees for existing tenancies and lease terminations.

POLICY COMMITTEE RECOMMENDATION

On February 6, 2020, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Arreguin/Bartlett) to move the item with a positive recommendation as written. Vote: All Ayes.

CURRENT SITUATION AND ITS EFFECTS

An owner of a residential rental property or their agent can charge an applicant of a rental property a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property. The fee is currently set at \$52.59 and increases to the fee are tied to the Consumer Price Index (CPI). The fee cannot exceed the costs of the services needed to review the application.

Multiple tenants have contacted the Rent Stabilization Board and the Mayor's Office to express concern over the usage of additional fees that have been applied. Specifically, some owners of residential rental property charge fees for tenants who wish to vacate and lawfully surrender possession of their tenancy. In addition, some owners charge fees to existing tenant households when they wish to replace a member of that household. No statute expressly permits the levying of such fees. While tenants who "break" leases are susceptible to incurring damages after they depart per California Civil Code section 1951.2, the imposition of additional fees charged "up front" creates a windfall for property owners/management companies that use such fees as a predatory practice to simply collect additional rent and creates an unnecessary burden for tenants seeking to either surrender possession or replace a roommate. Other than a small administrative burden, for which Civil Code Section 1950.6 already provides relief, owners and management companies should not have to expend a substantial amount of administrative resources to process such routine tenancy transactions. To allow for such fees is to simply transfer what is a standard management transaction from those who own or manage the property to those who rent it.

To the extent that these fees are designed to cover the costs to screen tenants, this is in violation of state law as described in the background section. There is a predatory nature to such fees, as it places additional financial burdens on a tenant's right to move out of the unit they are renting, or for adding or replacing roommates. Updating BMC 13.78 will help clarify and make explicit that such fees are unlawful.

BACKGROUND

In April 2011, the City Council unanimously approved Ordinance 7171, to add Section 13.78 to the Berkeley Municipal Code relating to tenant screening fees. This was enacted to advance implementation of state law by requiring a copy of California Civil Code Section 1950.6 (the state tenant screening fee law) and information regarding the current maximum allowable fee as set by state law, be given to all applicants who pay an application fee for rental housing. The ordinance also provides a private right of action for individual tenants if an owner is found to be in violation of the ordinance.

Adopted in 1996 by the California Legislature, Civil Code Section 1950.6 set a cap on the amount that can be charged for a screening fee at \$30.00, with increases annually based on the CPI. In October 2014, BMC Section 13.78 was updated to designate the Rent Stabilization Board to calculate the maximum allowable tenant screening fee in accordance to Civil Code Section 1950.6.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

FISCAL IMPACTS OF RECOMMENDATION

None

RATIONALE FOR RECOMMENDATION

As we approach the lease renewal season, these amendments will clarify existing protections for tenants who are targeted by excessive fees.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Ordinance

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.78 TO PROHIBIT NON-REFUNDABLE APPLICATION FEES ASSOCIATED WITH EXISTING TENANCIES AND LEASE TERMINATION FEES

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

Section 1. That Berkeley Municipal Code Chapter 13.78 is hereby amended to read as follows:

Chapter 13.78
TENANT SCREENING AND LEASE FEES

Sections:

- 13.78.010 Notification of state law limitation on tenant screening fees.
- 13.78.015 Calculation and publication of maximum allowable tenant screening fee.
- 13.78.016 Prohibition of non-refundable application fees associated with existing tenancies.
- 13.78.017 Prohibition of lease termination fees.
- 13.78.018 Applicability to existing rental agreements.
- 13.78.020 Remedies – Civil penalty – Not exclusive.

13.78.010 Notification of state law limitation on tenant screening fees.

When an owner of residential rental property or ~~his or her~~ the owner's agent receives a request to rent residential property in the City of Berkeley from an applicant and ~~he or she~~ the owner charges that applicant a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property, ~~he or she~~ the owner shall provide, either in the rental application or in a separate disclosure prior to receipt of the fee, a clear and conspicuous tenant screening fee rights statement and a statement of the maximum fee cap permitted under California Civil Code Section 1950.6(b). The "Tenant Screening Fee Rights Statement" shall mean the following statement or a statement substantially similar to the following statement:

"Pursuant to California law you have tenant screening fee rights, including the right to a copy of your consumer credit report if one is obtained with your screening fee, a refund of any unused portion of the fee and a receipt of the costs of the screening. For more information about your rights, please visit <https://www.codepublishing.com/CA/Berkeley/cgi/NewSmartCompile.pl?path=Berkeley13/Berkeley1378/Berkeley1378.html>~~[URL to be provided by City].~~"

13.78.015 Calculation and publication of maximum allowable tenant screening fee.

Beginning on January 1, 2015, the Rent Stabilization Board shall calculate and publish on an annual basis the maximum allowable tenant screening fee in accordance with California Civil Code Section 1950.6(b).

13.78.016 Prohibition of Non-refundable Application Fees Associated with Existing Tenancies

It is unlawful for an owner of residential rental property or the owner's agent to charge a non-refundable fee to any existing tenant for the purpose of renewing a tenancy, in whole or in part,

including any fee associated with the departure of a roommate or to request to add or replace a roommate in a pre-existing household.

Nothing in this law is intended to disallow a property owner, or the owner's agent, to charge a "tenant screening fee" as permitted under California Civil Code Section 1950.6 to any tenant, including any new or additional roommate who seeks to be added to an existing rental agreement or lease, seeking to rent or lease residential rental property.

13.78.017 Prohibition of Lease Termination Fees

It is unlawful for an owner of residential property, or the owner's agent, to charge any fee for the termination of their tenancy prior to the expiration of a lease. Nothing in this section shall prohibit a landlord from recovering any charges, fees or damages, associated with termination of tenancies that are authorized under California Civil Code Section 1951.2.

13.78.018 Applicability to Existing Rental Agreements

This chapter is applicable to all residential rental agreements regardless of any contractual language in any rental agreement or lease to the contrary. Any provision of an existing rental agreement or lease that violates the provisions of this chapter shall be null, void, and unenforceable.

13.78.019 Reserved

13.78.020 Remedies – Civil penalty – Not exclusive.

A. The remedies provided under this section are in addition to any the City or any person might have under applicable law.

B. Any owner of residential rental property shall be liable to any applicant or tenant harmed for a civil penalty of two hundred fifty dollars (\$250.00) if the owner fails to comply with any part of this Chapter.

C. Any person aggrieved by the owner's failure to comply with this Chapter may bring a civil action against the owner of the residential rental property for all appropriate relief including damages and costs which ~~she or he~~ the applicant may have incurred as a result of the owner's failure to comply with this Chapter.

D. In any action to recover damages resulting from a violation of this Chapter the prevailing plaintiff(s) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Attorney

INFORMATION CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Brown, City Attorney

Subject: Public Health Officer's Order Directing the Placement of COVID-19 Isolation and Quarantine Facilities for Persons Experiencing Homelessness on Public Property

INTRODUCTION

The attached Order was issued by the Public Health Officer on April 2, 2020. Pursuant to the Order, public property in the City of Berkeley, including public parks and open space, may be used to isolate and quarantine persons experiencing homelessness who are infected with or exposed to novel coronavirus, and to provide temporary housing to persons experiencing homelessness who are at elevated risk of being exposed to coronavirus. The Order directs City employees and contractors to install necessary facilities and structures on public property.

CURRENT SITUATION AND ITS EFFECTS

Due to the global spread of a severe acute respiratory illness caused by a novel coronavirus (COVID-19), which is now a pandemic according to the World Health Organization, a public health emergency exists in the City. On March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, issued a Proclamation of Local Emergency, which was ratified by the Council on March 10, 2020.

At this stage of the emergency caused by the pandemic, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. Accordingly, the City's Emergency Operations Center (EOC), which was activated in response to the COVID-19 crisis, is pursuing multiple initiatives to prevent the transmission of COVID-19 citywide, with considerable focus on persons experiencing homelessness. The City has identified City properties located at 1281 University Avenue and 1654 Fifth Street as locations for providing temporary, safe shelter to persons experiencing homelessness who have been infected with or exposed to novel coronavirus, or are at elevated risk of being exposed to and/or becoming serious ill from coronavirus due to their lack of shelter or

medical condition. In addition, the City has identified a location in Aquatic Park that is suitable for locating temporary shelter (tents or trailers) to provide temporary housing for infected or exposed persons experiencing homelessness. In addition, the City is presently evaluating the option of using other City parks for purposes of providing temporary, safe shelter to persons experiencing homelessness.

On April 2, 2020, the Public Health Officer issued an Order authorizing actions necessary to establish temporary shelter for persons experiencing homelessness in City parks and open space areas. The intent of the Order is to ensure that persons who may have been infected with, have been exposed to, or have an elevated risk of exposure to novel coronavirus, including persons experiencing homelessness, have access to safe housing that isolates or quarantines them from other members of the community to prevent the spread of COVID-19.

The Public Health Officer has determined that it is necessary to direct available public property to be used for the purposes of providing temporary housing to isolate and quarantine persons experiencing homelessness who are infected with, have been exposed to, or have an elevated risk of exposure to novel coronavirus in order to prevent the spread of COVID-19 and the occurrence of additional cases in the community. The Order therefore authorizes public parks and open space to be used to isolate, quarantine, and provide shelter for such persons. Additionally, the Public Health Officer's Order directs EOC staff, other City of Berkeley employees, and any necessary contractors to take all necessary measures to acquire emergency shelter for persons experiencing homelessness who are infected with or exposed to novel coronavirus, and place and operate such facilities on public property within the City.

The Order is issued pursuant to California Health and Safety Code sections 101040 and 120175. Section 101040 provides that the Public Health Officer "may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any . . . 'state of emergency,' or 'local emergency.'" Section 120175 provides that in the event of the spread of a disease such as COVID-19, the Public Health Officer "shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases." Because the Public Health Officer is required by state law to take action "necessary to prevent the spread of the disease or occurrence of additional cases," the Public Health Officer's authority to issue this Order supersedes local law restricting the permissible uses of public parks and public open space. (See BMC § 6.42.010.)

BACKGROUND

As a result of the spread of COVID-19 within the City of Berkeley, the Public Health Officer has determined that it is necessary to make public property, including public parks and open space, available when necessary to shelter or quarantine persons experiencing homelessness who are infected with, have been exposed to, or have an elevated risk of exposure to the novel coronavirus.

ENVIRONMENTAL SUSTAINABILITY

The construction of temporary shelter in public parks will temporarily limit the availability of parks to City residents. The parks will be restored to their preexisting condition when the property is no longer need to support the City's COVID-19 response efforts.

FISCAL IMPACT

The Public Health Officer's Order does not change the underlying, and substantial, cost that is being incurred by the City to respond to the COVID-19 pandemic.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998

Attachments:

- 1: Order of the Health Officer of the City of Berkeley Directing the Placement of COVID-19 Isolation and Quarantine Facilities for Persons Experiencing Homelessness on Public Property

**ORDER OF THE HEALTH OFFICER
OF THE CITY OF BERKELEY DIRECTING THE PLACEMENT OF
FACILITIES FOR COVID-19 ISOLATION, QUARANTINE AND SOCIAL
DISTANCING FOR PERSONS EXPERIENCING HOMELESSNESS ON
PUBLIC PROPERTY**


DATE OF ORDER: April 2, 2020

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101475 AND 120175, THE HEALTH OFFICER OF THE CITY OF BERKELEY ("HEALTH OFFICER") ORDERS AS FOLLOWS:

1. This Order is issued based on evidence of increasing occurrence of COVID-19 within the City and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the City places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of COVID-19 in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the City. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed.
2. The intent of this Order is to help ensure that all persons who may have been or may become infected with or have been exposed to SARS-CoV-2 ("novel coronavirus"), including persons experiencing homelessness, have access to safe housing that isolates or quarantines them from other members of the community, or allows for greater social distancing, to prevent the spread of COVID-19.
3. The isolation and quarantine of persons experiencing homelessness who are infected with or exposed to novel coronavirus is necessary to prevent the spread of COVID-19 and the occurrence of additional cases in the community. Further, effective social distancing measures, which may be impossible in existing homeless encampments or shelters, are necessary to prevent the transmission of COVID-19 among individuals who experience homelessness. Therefore, it is necessary to direct available public property to be used for the purposes of providing temporary housing to such persons.
4. City of Berkeley Emergency Operations Center staff, other City of Berkeley employees, and any contractors they deem necessary to comply with this Order are hereby authorized and ordered to take all necessary measures to acquire emergency shelter for persons experiencing homelessness who are infected with, exposed to, or at elevated risk of being exposed to coronavirus, and to place and operate such facilities on public property within the City of Berkeley.

5. Emergency Operations staff and City employees and contractors shall have authority to install and maintain any facilities or structures, including fencing and sanitation facilities, necessary to implement the requirements of this Order.
6. Pursuant to Health and Safety Code sections 101475 and 120175, it is hereby ordered that public parks and open space are necessary for and may be used to isolate and quarantine persons experiencing homelessness who are infected with or exposed to novel coronavirus, and to provide temporary housing to persons experiencing homelessness who are at elevated risk of being exposed to coronavirus which could be reduced by better social distancing. The requirements of Berkeley Municipal Code Chapter 6.42 are superseded to the extent they conflict with this Order.
7. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the City, and the March 10, 2020 Resolution of the City Council Ratifying and the Declaration of a Local Health Emergency.
8. The Order shall be effective for the duration of the Local Emergency and shall terminate upon the cessation of the Local Emergency. A reasonable amount of time after the cessation of the Local Emergency shall be allowed to remove temporary structures and related facilities from City parks and open space areas.
9. Copies of this Order shall promptly be: (1) posted at 2134 Martin Luther King Jr. Way, Berkeley, CA 94704; (2) posted on the City's website at www.cityofberkeley.info; and (3) provided to any member of the public requesting a copy of this Order..
10. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:


Lisa B. Hernandez MD, MPH
Health Officer of the City of Berkeley

Dated: April 2, 2020



Office of the City Manager

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INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David White, Deputy City Manager

Subject: Strategic Plan Performance Measures Pilot

INTRODUCTION

The purpose of this report is to bring to City Council's attention the results of the Strategic Plan Performance Measures pilot.

CURRENT SITUATION AND ITS EFFECTS

The Planning and Development Department (Planning Department) and the Police Department participated in a pilot program to develop performance measures reflective of Strategic Plan goals. Leadership from these two departments, with guidance from the City Manager's Office, used results-based accountability (RBA) as a framework for developing performance measures that indicate: how much do we do, how well do we do it, and is anyone better off. Adopting RBA is part of encouraging a culture of using measurement to inform management, processes, and decision-making.

After collecting, examining, and discussing data on a quarterly basis throughout calendar year 2019, the pilot groups saw many improvements in performance and identified ways to improve moving forward.

The Planning Department developed a baseline for understanding customer satisfaction and saw improvement in processing time for several types of permits. The Police Department created outreach opportunities with the community throughout the city and received more commendations and less complaints. Both departments have also begun to improve their staff turnover rates. As the Planning Department and Police Department continue to work with RBA, they both plan to refine and revise the performance metrics to make them better tools for decision-making and continuous improvement. Additionally, leadership from every City department will be working with the City Manager's Office to develop their own performance measures, which like the pilot itself, advances our City's goal to provide an efficient and financially-healthy City government.

BACKGROUND

City Council approved a citywide Strategic Plan on January 31, 2018. The Strategic Plan articulates nine long-term goals for the City government, on behalf of the

community and includes numerous short-term projects designed to advance these goals. The Strategic Plan helps City Council and staff throughout the organization to prioritize limited time and resources. Currently, the City Manager provides a Strategic Plan [quarterly report](#) on the progress of short-term projects.

Throughout 2019, two departments piloted the development of performance measures looking at the results of the work the City does.

The Planning Department, as part of its customer service improvement initiative, adopted two primary performance measures for the RBA pilot. First, the percentage of customers responding positively in Customer Satisfaction surveys. And second, improving the amount of time customers spend on two parts of the development review process—Zoning approval of Administrative Use Permits, and Building Permit Plan Check processing. As a secondary performance measure, Planning also examined staff turnover rates to better understand the role of staff consistency in influencing performance.

The Police Department addressed building and strengthening community trust through continued community engagement and delivery of quality service. For performance measures, they chose to look at how often the community requests police service and how this service was received. This involved collecting data on how many calls for police service were generated, as this generally relates to how much the community trusts or finds value in a police response for a particular incident. Understanding the volume of calls that the Police Department responds to also provides a framework for giving weight to the data used. The Police Department also examined the number of commendations community members submit to the department as well as the number of complaints both the Police Review Commission and the department's Internal Affairs received. For qualitative indicators of community engagement, they looked at the opportunities the community has to connect with the department, including both Police-led and community-driven events (e.g., Coffee With a Cop, Neighborhood Watch Meetings, and the Barbershop Forum).

The pilot included an introduction to RBA, developing the measures and implementing ways to collect data. Throughout calendar year 2020, the City Manager's Office will work with all other City departments to develop performance measures. Once performance measures are in use citywide, staff will research and seek City Council approval for procurement of a dashboard in order to regularly and transparently report progress

ENVIRONMENTAL SUSTAINABILITY

City Council's commitment to advancing environmental sustainability, including implementation of existing adopted plans, such as the Climate Action Plan, informed identification of the goals and priorities in the Strategic Plan.

POSSIBLE FUTURE ACTION

This report provides the City Council with an update on the Strategic Plan performance measures pilot. Staff will return to Council for direction on software for a public-facing dashboard displaying performance measure results.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

In the Adopted Fiscal Year 2020-2021 Budget, \$228,876 was added in FY2021 for a data dashboard.

CONTACT PERSON

Melissa K. McDonough, Senior Management Analyst, City Manager's Office, 510-981-7402

Attachments:

1: Strategic Plan | Performance Measures

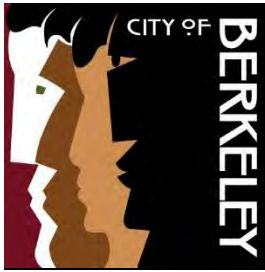


CITY OF BERKELEY STRATEGIC PLAN | PERFORMANCE MEASURES

This report presents data from Planning and Police, the departments that participated in our pilot program to develop performance measures reflective of Strategic Plan goals. Staff used results-based accountability (RBA) as a framework for developing performance measures that indicate: how much we do, how well we do it, and is anyone better off. The next few pages provide a brief, high-level look at some contextual data about each department. The next sections are organized by Strategic Plan goal and display performance measure data.

STRATEGIC PLAN GOALS

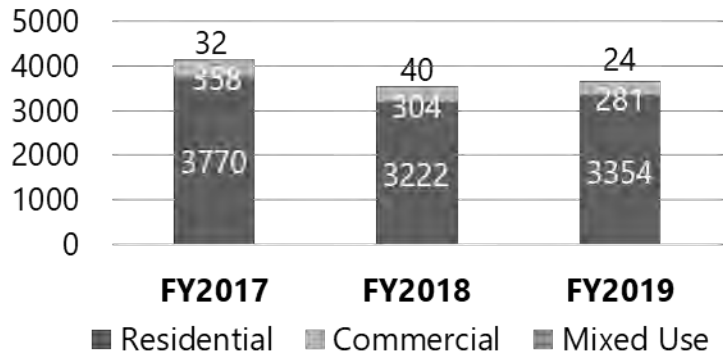
 <p>Provide state-of-art, well-maintained infrastructure, amenities, and facilities.</p>	 <p>Create affordable housing and housing support services for our most vulnerable community members.</p>	 <p>Create a resilient, safe, connected, and prepared city.</p>
 <p>Champion and demonstrate social and racial equity.</p>	 <p>Foster a dynamic, sustainable, and locally-based economy.</p>	 <p>Provide an efficient and financially-healthy City government.</p>
 <p>Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.</p>	 <p>Attract and retain a talented and diverse City government workforce.</p>	 <p>Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.</p>



PLANNING | AT-A-GLANCE

The Planning and Development Department’s mission is to enhance safety, livability and resilience in the built environment and to work together with the community to promote and protect Berkeley’s distinctive neighborhoods, vibrant commercial areas, unique character and natural resources for current and future generations.

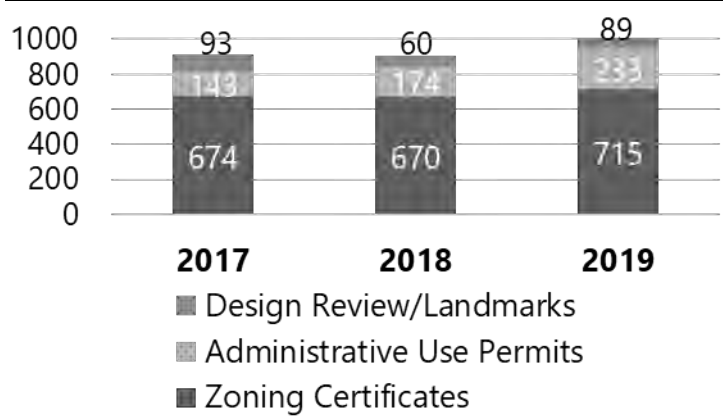
2017-2018 BUILDING PERMITS OUR PARTNERS



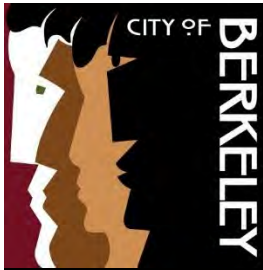
32,500+ customers served

- City Boards and Commissions • Regional Governance Bodies • Professional Organizations • Berkeley Neighborhood Associations • Berkeley Business Associations • State of California • Other City Departments

2017-2019 USE PERMITS



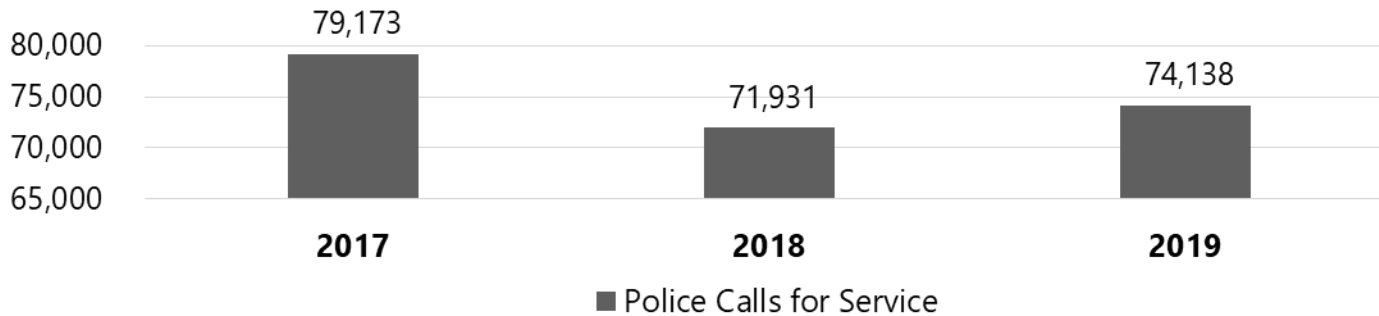
2018 Planning Department Community Open House



POLICE | AT-A-GLANCE

United in service, our mission is to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect.

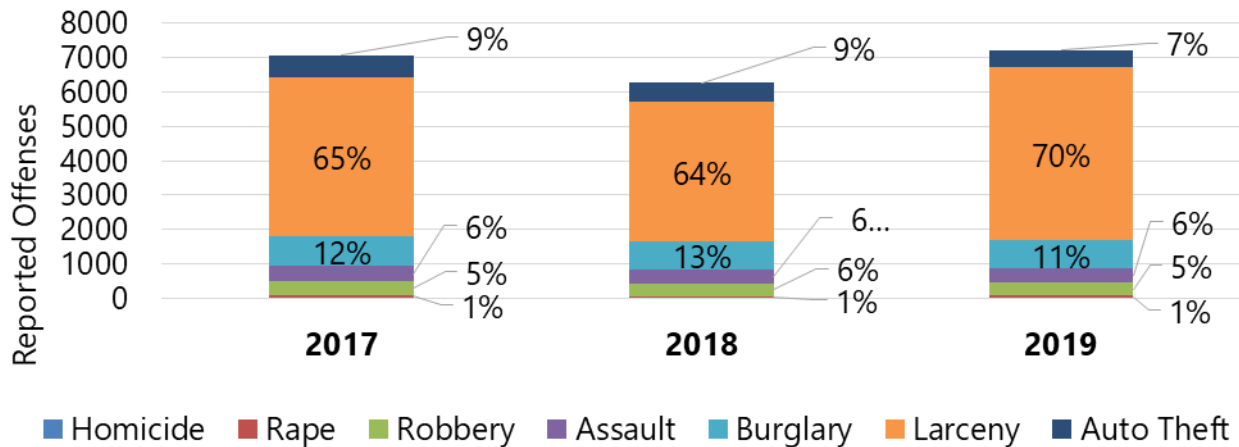
2017-2019 CALLS FOR SERVICE OUR PARTNERS



OUR PARTNERS

Berkeley High School • UC Berkeley • BART • Alameda County Sheriff's Office • Oakland Police Department • Emeryville Police Department • SAFE (Sexual Assault Felony Enforcement Team) • Alameda County Probation Department • California Office of Traffic Safety (OTS) • California Highway Patrol • ICAC (Internet Crimes Against Children) Task Force • Alameda County District Attorney's Office • Fair & Impartial Policing, LLC

2017-2019 PART ONE CRIME



Note: Reported homicides were 1 (2017), 0 (2018), and 1(2019), which represents less than 1 percent of each year's total



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



PERFORMANCE MEASURES

MEASURES SUMMARY

Measure	Description	Target	Actual	Tracking
Customer Satisfaction (from survey)	<ul style="list-style-type: none"> Percent of respondents who visited the City website prior to visiting Permit Service Center Percent who felt the website adequately prepared them for visit Percent who felt they received professional and courteous service 	↑	<ul style="list-style-type: none"> 86% visit website 43% felt adequately prepared 63% received courteous service 	n/a ¹
Turnaround Time: Land Use Permits	Administrative Use Permits (AUPs), complex, medium, or simple: (1) total time to get from application completion to staff approval; and (2) percent that get from completion to staff approval in under two months.	↓	<ul style="list-style-type: none"> Complex AUPs: 2.14 months, with 54% in less than 2 months Medium-complexity AUPs: 1.92 months, with 57% in less than 2 months Simple AUPs: 1.91 months, with 63% in less than 2 months 	🟡
Turnaround Time: Building Permit Plan Check Process	For building permit plan checks, the total amount of time for staff to process, on average, regardless complexity or need for multiple resubmittals.	↓	<ul style="list-style-type: none"> Plan check processing, 21.55 calendar days 	🟢
Commendations	The number of commendations the Police Department receives annually from the community.	↑	<ul style="list-style-type: none"> 86 commendations 	🟢
Complaints	The number of citizen complaints the Police Department receives annually.	↓	<ul style="list-style-type: none"> 28 complaints 	🟢

- Meeting/exceeding target
- Near target
- Not meeting target

- Target is to increase numbers/percentages
- Target is to decrease numbers/percentages

¹ No reference point, first year collecting this data.

Curious why we didn't meet our targets? Learn about our strategy moving forward on page XX.



PLANNING | CUSTOMER SATISFACTION

FACTORS CONTRIBUTING TO CURRENT PERFORMANCE

- Renovated in 2016, the modern Permit Service Center at 1947 Center Street is more welcoming and informative for clients from all ranges of building experience levels
- New and continuing tailored training for staff in delivering quality customer service and handling difficult situations
- Improved, clear informational materials, guides, and submittal checklists to help potential applicants be better prepared for their initial visits
- New PSC queueing software includes new tools for clients to manage their PSC visit time, and better data for management of staff resources
- Open House and Coffee With Inspectors events to help inform clients about City services in a casual, accessible atmosphere

FACTORS RESTRICTING PERFORMANCE IMPROVEMENT

- The nature of being a regulatory agency means there are always instances when staff must inform clients that proposed projects are not allowable, or are more difficult or complex than the clients may have expected
- New building and energy code requirements and other policy changes can add complexity to the process
- Limitations of the current Digital Permitting System, with a new replacement system over a year away
- The survey results trail improvements made to information and service delivery until customers fully experience the customer service improvements that are implemented or underway

2019 PERFORMANCE: CUSTOMER SATISFACTION

86% customers go to the website first before visiting the Permit Service Center.

43% customers feel the website adequately prepared them for their visit.

63% customers reported receiving courteous and professional service at the Permit Service Center.²

²Data summarized from an anonymous online survey of Permit Service Center clients conducted in early 2019.



ZONING PERMITS | TURNAROUND TIME

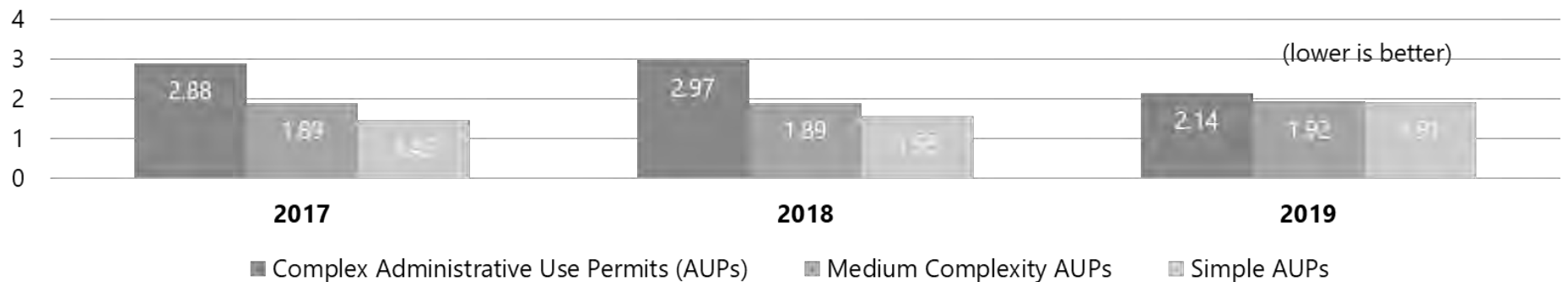
FACTORS CONTRIBUTING TO CURRENT PERFORMANCE

- Land Use Division fully staffed with administrative, technical and professional staff to support customers and commissions
- New staff position dedicated to enforcing Use Permit conditions in coordination with other Code Enforcement teams across city
- Staffing re-arranged as multi-level interdivisional teams for design review, landmarks, zoning updates, and process improvements
- Improved application forms and how-to guides for common development project types
- New ADU regulations and guidelines allowing more types of projects without discretionary review
- Revisions to Zoning Ordinance including amendments to streamline processes for small businesses

FACTORS RESTRICTING PERFORMANCE IMPROVEMENT

- Zoning Ordinance is complex and can be time-intensive to enforce and implement; ordinance revision project is underway
- Training required for new development review staff to learn and administer Berkeley's particular requirements
- Surge in ADU and other home improvement/expansion applications
- Multiple appeals can lead to delays for pending projects and backlogs for new projects

2017-2019 PERFORMANCE: USE PERMITS





BUILDING PLAN CHECK | TURNAROUND TIME

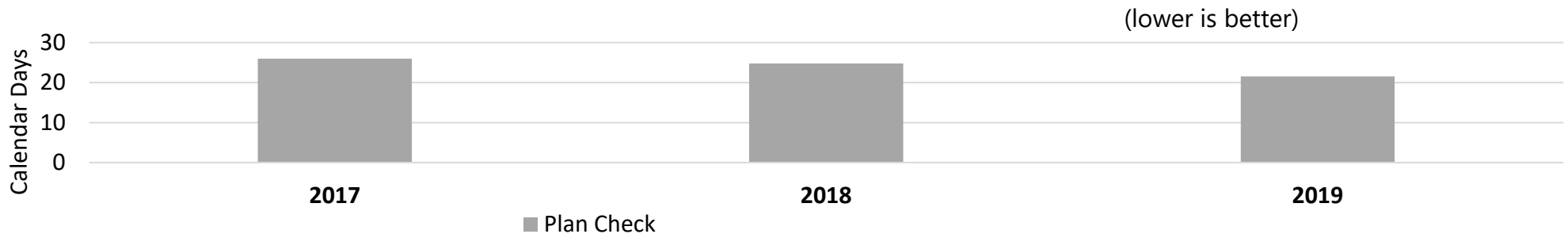
FACTORS CONTRIBUTING TO CURRENT PERFORMANCE

- Increased efficiency through improved electronic plan check tools and hardware; Plan Check meets due dates over 80% of time.
- Elimination of previous plan check queue backlog has improved employee morale and reduced inquiries regarding plan check status
- Establishment of Plan Check performance dashboard and daily plan check queue review to identify and correct processing issues
- Better education of applicants through how-to guides and submittal checklists result in higher quality submittals which require fewer plan check corrections

FACTORS RESTRICTING PERFORMANCE IMPROVEMENT

- Metric has limited utility for public, as it aggregates all project types from bathroom remodels to 16-story hotels.
- Metric has limited utility for staff, as different types of reviews are not segregated by reviewing agency.
- Large parts of the time a client experiences—preparation before initial submittal, and the speed and completeness of responses to City comments—are not within City control and thus are not reflected in data

2017-2019 PERFORMANCE: BUILDING PLAN CHECK





POLICE | COMMENDATIONS

FACTORS CONTRIBUTING TO CURRENT PERFORMANCE

The Berkeley Police Department prides itself on the service they provide the community through law enforcement activities as well as routine community interaction and engagement.

Officers occasionally are stopped on the street and thanked for their service, or receive positive feedback at the end of a call for service. Sometimes the level of service or engagement efforts of the officers prompt people to independently contact BPD to share their praise. These commendations are shared with the PRC and within the department where they become part of the involved officer's personnel file.

CONTEXT

This word cloud shows the most common words found in letters of commendation received in 2019.

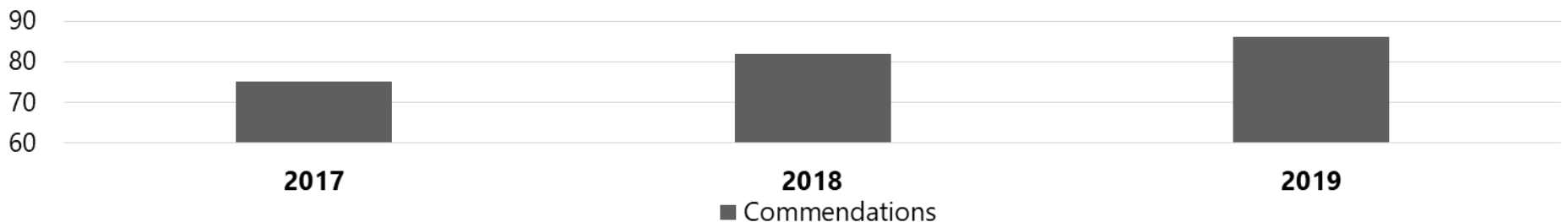


FACTORS RESTRICTING PERFORMANCE IMPROVEMENT

While commendations often speak directly to high levels of trust and happiness with police service, it is challenging to use the number of commendations to speak to overall levels of community trust and satisfaction.

Many positive interactions and good performances may not be recognized by a member of the public taking the time to write about the experience.

2017-2019 PERFORMANCE: COMMENDATIONS





POLICE | COMPLAINTS

FACTORS CONTRIBUTING TO CURRENT PERFORMANCE

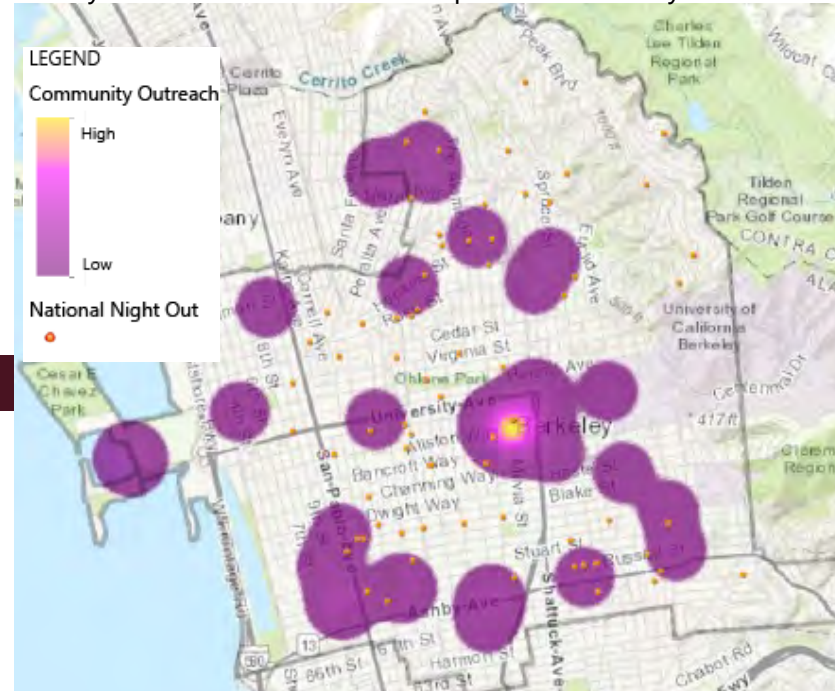
- The Berkeley Police Department considers meaningful and regular community engagement a vehicle to enhancing community trust. Engagement occurs daily, around the clock as officers interact with the citizens we serve. It also occurs through more organized events, ranging from far reaching public events to focused smaller group interactions. Thought and effort is given to reach many groups within our community including and especially those most need of our services or least familiar with us.
- People who are unhappy with the interaction they had with BPD can file a complaint with BPD's Internal Affairs. These complaints are recognized as a reflection of the way individuals feel about their interaction or the service they received.

FACTORS RESTRICTING PERFORMANCE IMPROVEMENT

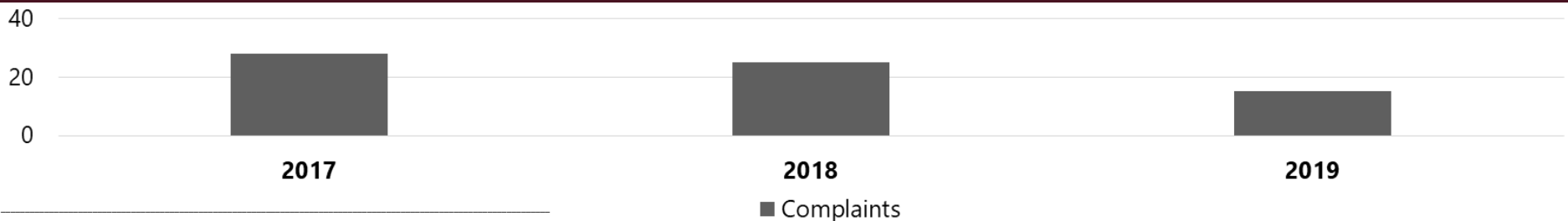
- Perception of "police" and "policing" is strongly influenced by media and culture. While any negative perceptions can be mitigated by good interactions, they are difficult to eradicate.
- An individualized complaint may be tied to factors beyond the police department's control or be a result of a very particular situation or set of facts, and thus may not directly connect to the experiences or level of trust of the greater community.

CONTEXT

The Berkeley Police Department is actively engaging in a variety of outreach activities to improve community trust.³



2017-2019 PERFORMANCE: COMPLAINTS



³ Outreach events included recruiting activities (e.g., participating in career fairs, police-initiated community activities (e.g., Coffee with a Cop), participation in general community activities (e.g., Juneteenth, Eastbay 510K), and presentations at schools.



WHAT'S NEXT?

The City of Berkeley works hard to provide our community with exceptional services. As our Strategic Plan goal states, we are committed to being a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community. By regularly reviewing our performance and adjusting what we do and how we do it, we strive to continually improve our service and meet our Strategic Plan goal.

Measure	Outcome and Analysis	Next Steps
Customer Satisfaction	The Planning Department conducted its first Customer Service survey to better understand the existing levels of satisfaction with the experience of visiting the Permit Service Center. The goal was to create a baseline from which Planning can improve results over time and track trends in client experiences.	In 2017, Planning launched a customer service improvement initiative, touching all facets of department services for all types of clients. The next customer survey will take place after a number of current process improvements are implemented, such as the new PSC queueing software, streamlining of the Zoning Ordinance, and the introduction of the City's new website. The next survey will also expand inquiries beyond the PSC to include customer experiences with the Land Use Planning process and other aspects of the Planning Department's work.
Turnaround Time	Data report above shows overall improvements to the amount of time taken for staff to complete the plan check process, and significantly lessened time to complete the most complex of the three categories of AUP. Time was essentially static for AUPs of medium complexity, while the time taken for the least complex AUPs increased.	Planning will continue to track the AUP timeframes on an annual basis. With upcoming improvements to procedures manuals and interpretation guides for staff, and further Zoning Ordinance revisions to promote clarity, Planning expects that the time from complete application to issued AUP will further improve across all categories.



Attract and retain a talented and diverse City government workforce.



PERFORMANCE MEASURES

MEASURES SUMMARY

Measure	Description	Target	Actual	Tracking
Staff Turnover	Number of staff who have left in a given period, divided by the number of staff who were in place the previous period, expressed as a percentage.	↓	<ul style="list-style-type: none"> Police 8% Planning 5% 	

- Meeting/exceeding target
- Near target
- Not meeting target

- Target is to increase numbers/percentages
- Target is to decrease numbers/percentages



PLANNING & POLICE | TURNOVER

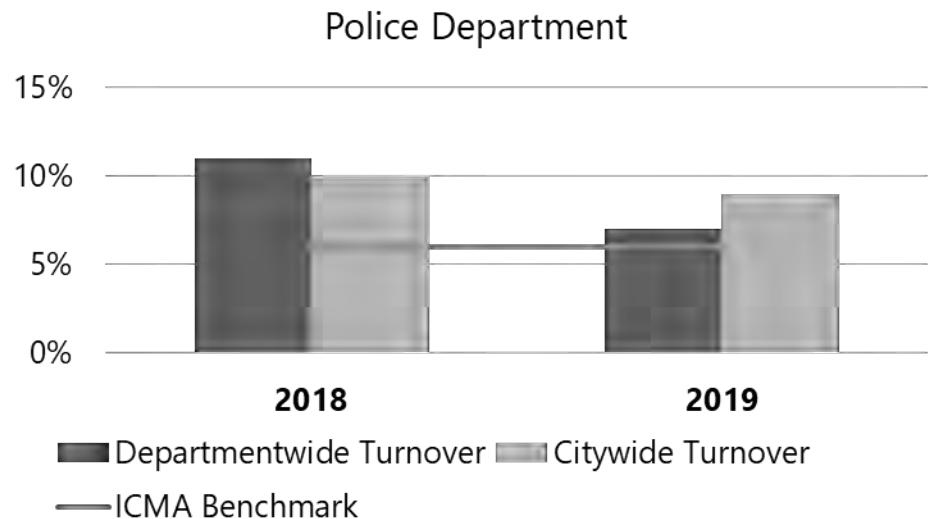
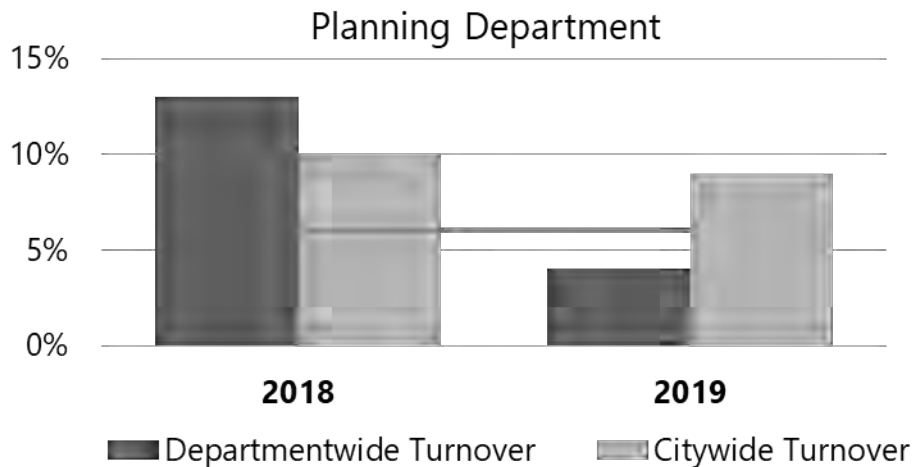
FACTORS CONTRIBUTING TO CURRENT PERFORMANCE

The Police Department formed a recruitment & retention team which worked with a marketing firm to drive strategic online advertising, create a video- and content-rich hiring website, bringing consistent branding and design across all materials, including social media accounts, to serve on-going recruitment goals. This team actively seeks out applicants and engages with them as they move through the hiring process. We are also expanding police employee and resiliency programs, including mental health, fitness, and nutrition resources.

FACTORS RESTRICTING PERFORMANCE IMPROVEMENT

Law enforcement agencies nationwide are experiencing a shortage qualified applicants. Locally we are experiencing a tight labor market in the Bay Area, with very low unemployment. Additionally the cost of living continues to rise, while housing is scarce and increasingly expensive.

2018-2019 PERFORMANCE: TURNOVER



Note: Turnover rate is the sum of employee separations divided by average monthly employment.



Office of the City Manager

43

INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: Summary of Aging Services

INTRODUCTION

The City of Berkeley's older adult population (adults age 60 and over) is expected to double within the next decade and is anticipated to comprise 20% of the population by 2030. This report offers information on the incredible array of services provided to Berkeley's older adult community by the Aging Services Division.

CURRENT SITUATION AND ITS EFFECTS

The Aging Services Division is one of five divisions in the Health, Housing, & Community Services Department. It consists of 27FTE staff and a budget of approximately \$4.9 million, of which 63% is City of Berkeley General Fund.

The Aging Services Division enhances the well-being and independence of older adults age 55 and older by offering social connections, activities, and lifelong learning. The Division operates two vibrant senior centers that provides events, workshops, day trips and thousands of classes. The senior centers also serve almost 32,000 nutritious weekday lunches for our older community members each year. Our shuttle busses pick up seniors every morning to bring them to the centers then takes them back home in the afternoon. Senior service assistants in the senior centers provide approximately 600 face-to-face information and referral sessions to older adults each year. For more intensive consultations, case managers within the Division's Social Services Unit provide comprehensive services and referrals and linkages to community resources for approximately 100 Berkeley adults age 55 or over each year.

Through staff and volunteers, the Division provides over 50,000 nutritious meals annually to home-bound seniors through our Meals on Wheels program. Taxi and van vouchers are offered to older adults and disabled Berkeley residents through the Division's Berkeley Rides paratransit services program to improve quality of life and access to community resources. Last year over \$425,000 worth of taxi and van vouchers were provided to disabled and older adult Berkeley residents through this program. This resulted in over 13,200 taxi and van rides for our clients.

Finally, over 200 volunteers provide more than 11,000 hours of service in Aging Services programs every year.

In 2017 the South Berkeley Senior Center underwent a 6 month \$700,000 interior renovation funded through HUD Community Development Block Grant. Currently, the North Berkeley Senior Center is undergoing an \$8 million seismic retrofitting and interior/exterior renovations funded by FEMA and Measure T1 that will be completed later this year. The renovations allow for multi-functional use of the space and enhanced service delivery to the older adult population, as well as care and shelter facilities in the case of an emergency in the case of NBSC.

Within the past year, the Aging Services Division has increased efforts to collaborate with both internal and external partners through Berkeley's Age-Friendly initiative. Aging Services Division staff are spearheading this initiative and currently collaborating with the divisions within HHCS and other Departments throughout the City. This innovative, inter-departmental collaboration, which currently includes the Parks, Recreation & Waterfront, Planning, and Public Works Departments, is addressing the following four priority areas identified in Berkeley's Age-Friendly Action Plan:

- Housing & Economic Security
- Transportation & Mobility
- Health & Wellness
- Social Participation & Civic Engagement

The collaborative committee is currently identifying performance measures and following a results-based accountability rubric for each of these priority areas.

We are very proud of the incredible work provided through this division. As the need continues to grow so too will the demand on Aging Services staff and volunteers. In order to continue and expand these important programs, the City will need to increase investments in these efforts.

BACKGROUND

Nationally, the fastest growing population is >85, while the 2nd fastest growing population is over age 100 years.

In 2010 in Berkeley, approximately 1 in 8 residents were older adults (age 65 and over). By 2030, **more than 1 in 5 people** will be older adults. In fact, by 2035, there will be more people over 65 than under 18.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

City Council may wish to recommend an increase in capital or financial resources allocated to the Aging Services Division, and/or to the Health, Housing, & Community Services Department, in order to increase the Division's capacity to provide quality services to Berkeley's older adult population. An increased allocation could also enhance the Division's capacity to continue to lead an interdepartmental approach in addressing objectives in Berkeley's Age-Friendly Action Plan, as well as continue our important engagements with Community Partners. Additionally, Council may decide to increase its fiscal support of Age-Friendly community partners in order to sustain collaborative progress.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Greater efficiencies in resources due to prioritization of this work and alignment with the City's Strategic Plan.

CONTACT PERSON

Tanya Bustamante, Aging Services Manager, HHCS, 510-981-5178

Attachments:

- 1: Program Impact Summary – Senior Center Activities
- 2: Program Impact Summary – Meals on Wheels/Senior Nutrition
- 3: Program Impact Summary – Social Services Unit
- 4: Program Impact Summary – Transportation Services

Berkeley Senior Centers

A Hub for Learning, Socializing, & Accessing Resources

Berkeley’s two senior centers enhance the well-being and independence of older adults by offering fun and engaging activities, opportunities for social connection and lifelong learning. In FY19, approximately 2,200 older adults participated in activities and over 100,000 visits were made to the senior centers.

Classes offered include ceramics, drawing, Spanish, and poetry. Line dancing, yoga, and Tai Chi are also available. The center offers a daily, nutritious, low cost lunch for seniors over the age of 60. Staff provide individualized consultation, helping older adults access housing, energy assistance, Social Security and Veteran’s benefits, and food resources.

The South and North Berkeley Senior Centers have recently been renovated through a mix of local and federal funding. Major improvements included seismic upgrades, enhanced accessibility, and a refreshed and inviting reception area.



Human Impacts

Participants rely on the senior centers for a healthy meal, to feel less isolated, and to engage in fun and enriching activities. Senior centers also help connect older adults to resources in the community.

Approximately 100 volunteers assist senior center staff. These volunteer opportunities provide a meaningful way for older adults to give back to the community and younger volunteers to gain hands on learning experiences. By recruiting younger volunteers, the senior centers also encourage positive connections and relationships across generations.



Almost 32,000 lunches provided

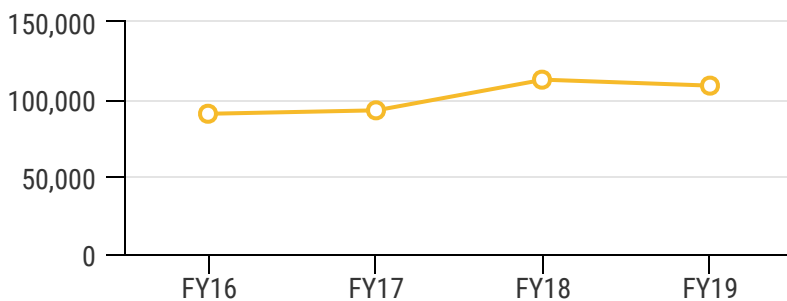


Over 11,000 hours of volunteer service each year



Approximately 600 information & referral consultations

Number of Visits Per Year



Elaine's Story

“In my years of attending the Berkeley Senior Centers I’ve been able to expand my friendships by engaging with a multitude of people with stories, wisdom, health tips, and good advice. I love coming for the comradery, special events, the delicious and healthy lunch program, field trips, and the abundance of resources. Especially resources concerning food, housing, income, and medical issues. I am hoping that the senior centers consider another meal program such as breakfast in the near future. I would immediately volunteer for that!”

Meals on Wheels Page 5 of 7

Helping Older Adults Live Independently

Meals on Wheels helps older adults live independently in their homes for as long as possible. For 45 years, Meals on Wheels has delivered nutritious meals to the doors of homebound older adults that are no longer able to prepare a hot meal for themselves.

The program relies heavily on a corps of over 100 trained volunteers to prep, pack and deliver the meals by foot, car, or cycling. Volunteering with the program provides a meaningful opportunity for those looking to give back to their community. The program has partnered with community organizations that serve adults with developmental disabilities, such as ToolWorks, Inroads, and Ala Costa. Volunteers from these agencies join with others to serve the older adult community and build confidence, skills and relationships in the process.



Human Impacts

In addition to delivering meals, the program conducts wellness checks on homebound seniors. Volunteers spend quality time with older adults that may be isolated or living alone. They can also prevent slips and falls and call 911 in emergency situations. The program operates through challenging conditions such as the recent power outages. The program was able to respond to emergency needs in impacted areas while continuing daily operations, ensuring that all of our seniors could count on their nutritious and delicious meal from the program.

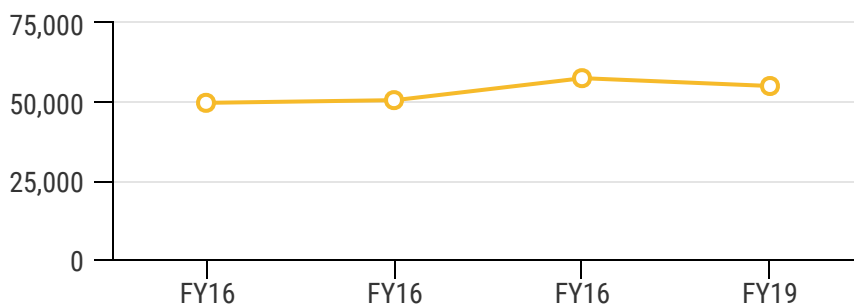


Almost 55,000 meals delivered



Over 100 trained volunteers

Number of Meals Served



Client Appreciation

"I love my Meals on Wheels because they travel and come to my front door always in groups and always smiling...I am 90 years old and some days, they are my only 'happy visitors.'" – Katherine

"It really has helped me to conquer diabetes. The volunteers here are just fabulous...I am just so grateful." – Jerry

"I am pleased with the flexibility of service and I thank Meals on Wheels for a job well done!" - Jack

Social Services Case Management

Helping Older Adults Navigate and Access Resources

Older adults with more complex needs can access support through the Social Services Unit. Case managers work with older adults to address many concerns, including transportation, food access, medical care, health insurance, legal assistance, affordable housing, utilities and energy assistance resources, accessibility and safety issues in the home.

The Unit welcomed a new licensed clinical case manager to address the complex mental health needs of older adults. In FY20, the Social Services Unit will work closely with Shelter Plus Care, a program that provides rental subsidies and supportive services to chronically homeless individuals. Two new case managers will be added to the team to provide support for clients enrolled in the Shelter Plus Care program.



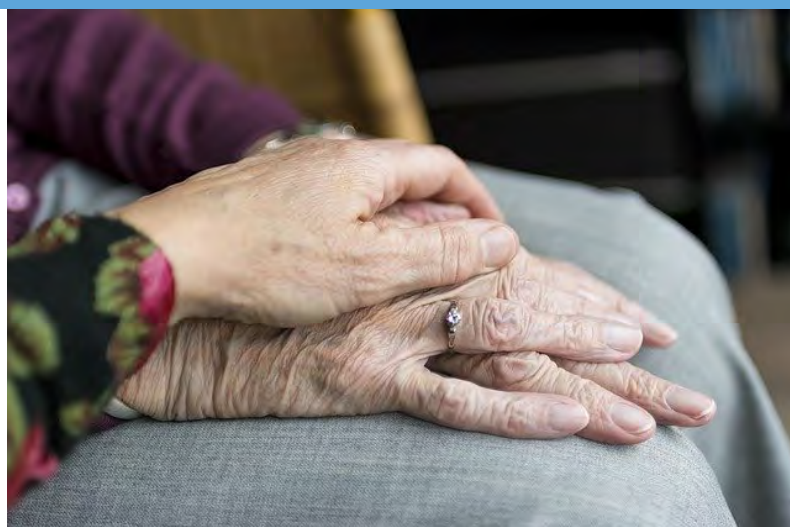
156 older adults served in FY 19



1,305 face to face visits



On average clients received 8 visits per year



Human Impacts

The Social Services Unit helps older adults navigate resources and supports available in the community to improve their quality of life. Case managers meet with older adult clients in their homes, at the senior centers, or at a pre-designated community locations and provide confidential services to comprehensively address their needs.

The Unit fosters ongoing collaborative relationships to better serve clients. For example, the Social Services Unit is an active member of the CARE team, a City of Berkeley collaborative effort that includes representatives from the Fire Department Emergency Medical Services, City of Berkeley Public and Mental Health Divisions, and other local health and community services providers. This group works collaboratively to provide and coordinate care.

Client Appreciation

I am highly appreciative of the services provided by the Shelter + Care program in conjunction with the Aging Services program. After 12 yrs. of homelessness they have provided me with shelter and guided me to services available to aide me in sustaining a livable lifestyle. I thank God for the S+C and Aging Services programs. Without this program and its services I don't know where I would be today or even if I would be here. -00

Page 7 of 7 Transportation Services

Helping Older Adults Get to Where They Need to Go

Transportation is consistently identified as a major concern for older adults. In Berkeley, a number of transportation options are made available that connect older adults to needed services and social activities.

Our mini shuttle buses provides door-to-door pick up and drop off for the Berkeley Senior Centers. Older adults can participate in day trips and organized group outings for shopping, festivals, concerts, museums and other community activities. In addition, programs are available to help with transportation costs. Older adults can access free Taxi Scrip, Wheelchair Van Vouchers and East Bay Paratransit Service tickets. Extra help is available to those with chronic and severe health conditions that require frequent medical appointments.

To broaden the resources available, the Aging Services Division is considering a pilot program with GoGoGrandparent, a call center that arranges rides for seniors through companies such as Uber and Lyft.



Over 13,200 Taxi and Van Rides



Over \$425,000 of Taxi and Van Vouchers Provided



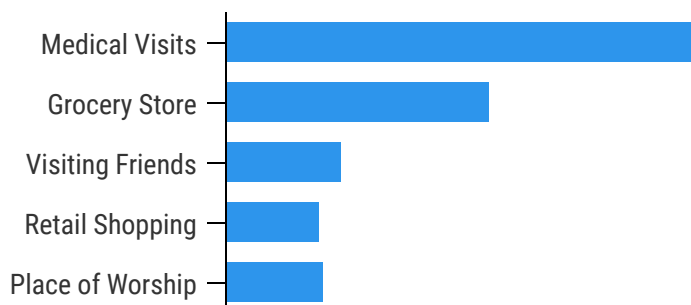
229 Organized Trips



Human Impacts

Reliable, friendly and accessible public transportation is a critical service for older adults who have no other means of transportation. Transportation services through the Aging Services division connect older adults to important services, health and wellness activities, learning opportunities and classes. Organized field trips provide mentally and physically stimulating adventures and socialization that many older adults would not otherwise experience.

Most Frequent Destinations (2019)



Betty's Story

Betty is an 85 year old widow living in Berkeley. She has multiple chronic health conditions that require frequent medical appointments, including: congestive heart failure, atrial fibrillation, severe asthma, osteoporosis and Celiac Disease. Betty had a severe fall several years ago and shattered 14 vertebrae which required multiple surgeries and has rendered her with severe difficulty in walking. She does not have any local family members who can help her with her transportation needs and like many seniors she lives on a fixed income. Betty has frequently stated she does not know where she would be without the city's scrip program, particularly the High Medical Need program.



Office of the City Manager

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INFORMATION CALENDAR

April 14, 2020

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: Pathways STAIR Center: Fiscal Year 2020 – Six Month Evaluation and Results-Based Accountability Dashboard

SUMMARY

On June 27, 2018, the City of Berkeley, in partnership with Bay Area Community Services (BACS), welcomed the first guests into the STAIR Center, the first Navigation Center for people experiencing homelessness in the East Bay. December 31, 2019 marked the end of the first six months of FY20 – the second fiscal year of the program.

This report is part of our effort in the Health, Housing and Community Services Department to increase transparency and accountability about agency performance. Included as an attachment is a dashboard for STAIR using a Results-Based Accountability (RBA) framework, which distills program performance down to three categories: How much did we do? How well did we do it? Is anyone better off?

During the program's first six months of FY2020, 61 individuals entered and accessed a STAIR Center bed, and 69 individuals exited the shelter, including 29 people who received rapid rehousing assistance. All individuals slept in an encampment in Berkeley the night before entering the STAIR Center. Fifty-eight clients (84% of the clients who exited) exited to permanent housing between July 1 and December 31, 2019, including clients that receive rapid rehousing assistance. On average, clients exiting a STAIR Center bed to housing took a little over 3 months (97 days) to do so.

Three clients (4% of all exits) left the STAIR Center back to homelessness. Among those who exited to permanent housing, 9% eventually returned back to homelessness during the first half of FY20. This percentage includes 2 individuals who eventually returned to homelessness after graduating from the rapid rehousing program into permanent housing.

To honor our commitment to provide performance updates on the STAIR Center, attached is a semi-annual performance dashboard. HHCS plans to extend these performance dashboards to other homeless programs in the future.

CURRENT SITUATION AND ITS EFFECTS

The Pathways STAIR Center: An Overview

On any given night in Berkeley in 2019, 1,108 people experience homelessness, with nearly three quarters of them (813) living without shelter in places not meant for human habitation. The City has experienced an increase in the number of people living in encampments, most of whom are unable to access traditional homeless services such as emergency shelters. To address this problem, the City opened the STAIR Center in June, 2018. The STAIR Center is a comprehensive Housing First program with three components:

- A *street outreach* component, with two full-time outreach workers, maintains a consistent presence in Berkeley's encampments, builds relationships with their residents, and offers vacant STAIR Center beds to individuals with the highest-needs.
- A *shelter* component offers 45 beds in a low-barrier, service-rich environment. At the STAIR Center, located on a block of 2nd Street between Cedar and Virginia in West Berkeley, program guests receive intensive housing search and application assistance and live in a shelter environment with no curfews, one meal a day, laundry, showers, and accommodations for pets and possessions.
- A *rapid rehousing* component provides access to flexible funding to help overcome housing barriers. The amount and duration of the funding is tailored to the specific needs of each recipient; while some may need only security deposit assistance to regain housing, for example, others may need several months of partial or full rent subsidy. Rapid rehousing recipients also receive ongoing case management services to ensure their tenancy and transition to housing self-sufficiency is successful. While not everyone will succeed in rapid rehousing, no one is placed into a housing situation that they have no hope of maintaining on their own within one year.¹

Measuring Program Performance with Results-Based Accountability

The Health, Housing and Community Services Department is working closely with staff and community based partners to deepen our positive impact on the community, especially for those most vulnerable. Central to this effort is using a highly regarded framework called Results Based Accountability (RBA). RBA has a proven track record in improving the quality of life for people and communities. The STAIR Center is the City's first homeless program to be included in this effort. This report and the attached dashboard summarize data using this organizational framework.

¹ For more information on rapid rehousing in Berkeley, please see City staff's 2018 Information Report on Rapid Rehousing (https://www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/2018-04-24_Item_39_Rapid_Rehousing_What_it_Can.aspx) and the 1000 Person Plan to Address Homelessness in Berkeley (https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx).

Within the RBA framework, we first define the outcome or results we hope to achieve to have the greatest positive impact in the community. Next we decide how we can measure progress on that result. Data are collected and reported on an ongoing basis to guide our understanding and inform efforts to enhance progress towards those results. Performance measures answer three key questions:

- How much did we do?
- How well did we do it?
- Is anyone better off?

RBA is a new way of accounting for our work. Moving forward, HHCS intends to provide RBA Performance dashboards on the STAIR Center, and eventually extend this to other homeless agencies and programs. Through these reports, we hope to increase transparency and accountability on how public dollars are being spent to serve the City's mission to end homelessness. The ultimate goal is to improve the impact we are having and the quality of our work.

STAIR Center: Summary of First Six Months of FY2020 (July 1, 2019 – December 31, 2019) Performance

How much did we do?

During the first six months of FY2020, 61 individuals entered and spent at least one night in a STAIR Center shelter bed, and 69 exited the shelter. A total of 32 people have received rapid rehousing (RRH) assistance. As of December 31, 2019, 27 were still being supported with a RRH subsidy.

Demographics and characteristics among STAIR bed users are as follows:

- The average client age is 48.
- 62% of clients identify as male, 36% as female, and 2% as transgender.
- 61% of clients identify as Black or African-American; 28% as White; 2% as American Indian or Alaska Native; and 3% as Asian. 5% identified with more than one race. 11% of all clients identify as Latinx.
- 80% of all clients at STAIR report receiving a source of income, for an average monthly income of \$1,071. This includes 18% of clients who report earned income, at an average of \$1,744 per month. 41% of clients at STAIR receive disability income (SSI or SSDI), receiving \$874.50 per month on average. An additional 12% were receiving County General Assistance (\$431/month on average).

How well did we do it?

The STAIR Center is targeted to Berkeleyans living in encampments. All individuals who entered the STAIR Center shelter during the first six months of FY2020 had spent the prior night sleeping in an encampment.

On average, clients who exited the STAIR Center took 96 days to do so. Those who exited to permanent housing took 97 days to do so on average. Clients who are currently active in the program have been in their beds for an average of 161 days.

The STAIR Center has maintained an average nightly occupancy rate of 91% during the first six months of FY2020, but as of this writing it is 48% full. Large vacancy rates have coincided with a large number of residents exiting the shelter to permanent housing destinations, creating bed turnover that sometimes takes time to fill.

Is anyone better off?

Of those who exited the STAIR Center shelter during the first six months of FY2020 (69 total):

- 3 have exited back to homelessness (4%).
- 58 clients have exited to permanent housing (84%). This includes 8 clients who exited to permanent supportive housing, 29 who exited to rapid rehousing programs with an ongoing partial subsidy, and 21 who reunited with family or friends.
- 8 clients exited to institutional or temporary settings, including other homeless programs, jail, or hospitals (10%).

Of the 32 people who have received RRH assistance,

- Seven clients were exited to permanent housing, including:
 - One client that graduated from RRH, taking on the cost of the rental themselves, while an additional 6 transitioned to some other subsidy not funded through the STAIR's budget.
- One client exited to homelessness before rapid rehousing subsidy and case management services ended.
 - Two more eventually returned to homelessness after graduating the program into permanent housing. We will continue to assess how this return rate compares to that of other rapid rehousing programs.

Among everyone who has accessed one or more components of the STAIR Center's programming (outreach, shelter, and/or rapid rehousing) and exited to a permanent housing destination, 9% have returned back to homelessness during the first half of FY20. Among those who received rapid rehousing assistance and exited to a permanent housing destination during this time period, only 2 (29%) returned back to homelessness. Though rapid rehousing assistance is available, we've observed that it has become exceedingly difficult to secure housing placements for individuals due to the price of private market rental units, the price of shared housing and income limitations of clients. We will continue to monitor the number of individuals that return back to homelessness from rapid rehousing, to determine an accurate reflection of the program's true recidivism rate.

BACKGROUND

On April 4, 2017, Council voted unanimously to refer the creation of the STAIR Center, as part of the Pathways Project to Address Homelessness in Berkeley, to the City Manager. Council allocated the funding for the capital creation of the program on June 27, 2017, and the allocated program funds on December 5, 2017. Roughly 7 months later, the City and BACS opened the STAIR Center, on June 27, 2018.

ENVIRONMENTAL SUSTAINABILITY

Some individuals who had been living in encampment areas with considerable environmental impacts have moved into the STAIR Center, but the overall environmental impact of the program overall cannot be quantified with the data available.

POSSIBLE FUTURE ACTION

HHCS staff will continue to provide semi-annual dashboard updates on the STAIR program, and intends to expand this framework to other homeless programs as well.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff time.

CONTACT PERSON

Brittany Carnegie, Community Services Specialist II, HHCS, (510) 981-5415.
Laura Schroeder, Community Services Specialist III, HHCS, (510) 981-5411.

Attachments:

- 1: Pathways STAIR Center Program: Results-Based Accountability FY2020 - First Six Months Performance Dashboard.

PATHWAYS STAIR CENTER PROGRAM

July 1, 2019-December 31, 2019



The City of Berkeley has experienced an increase in the number of people living in encampments, most of whom are unable to access traditional homeless services such as emergency shelters. To address this problem, the City opened the STAIR Center in June of 2018. The STAIR Center has three components: (1) street outreach, (2) a 45-bed, low-barrier, service-rich shelter, and (3) rapid rehousing, which includes time-limited financial assistance (including rent subsidies) to help overcome housing barriers. At the STAIR Center shelter, located on a block of 2nd Street between Cedar and Virginia in West Berkeley, program guests receive intensive housing search and application assistance and enjoy no curfews, one meal a day, laundry, showers, and accommodations for pets and possessions.

How Much Did We Do?

45

NUMBER OF BEDS AT STAIR SHELTER

61

NUMBER OF CLIENTS SERVED AT THE STAIR SHELTER

32

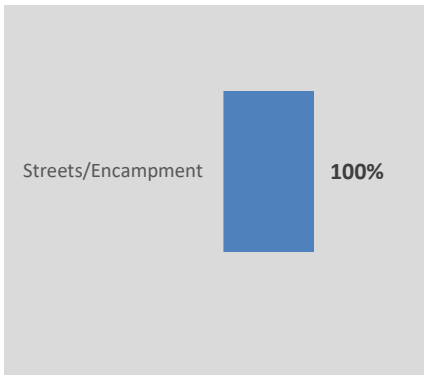
INDIVIDUALS RECEIVED RAPID REHOUSING ASSISTANCE

How Well Did We Do It?

% of STAIR Shelter clients from the Streets/Encampments

100%

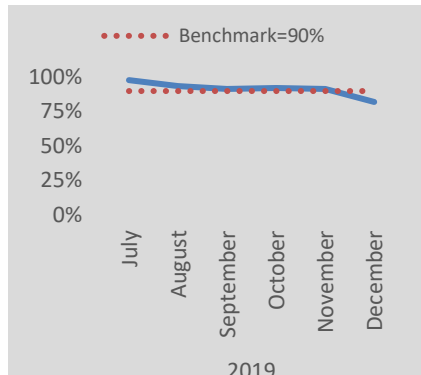
Where Clients Resided Prior to the STAIR Shelter



Average Occupancy Rate of STAIR Shelter

91%

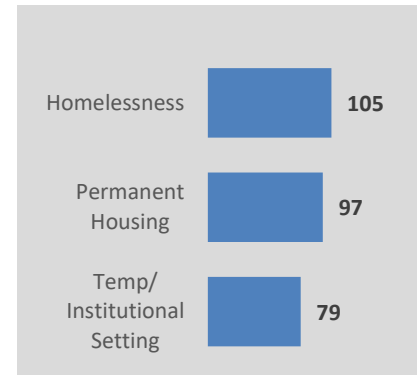
Occupancy Rate of STAIR Shelter by Month



Average Length of Stay at STAIR Shelter To Date in Days

96 days

Average Length of Stay at STAIR Shelter by Selected Exit Destinations



Is Anyone Better Off?

84%

EXIT TO PERMANENT HOUSING FROM STAIR SHELTER

4%

EXIT TO HOMELESSNESS FROM STAIR SHELTER

9%

RETURN TO HOMELESSNESS FROM PERMANENT HOUSING

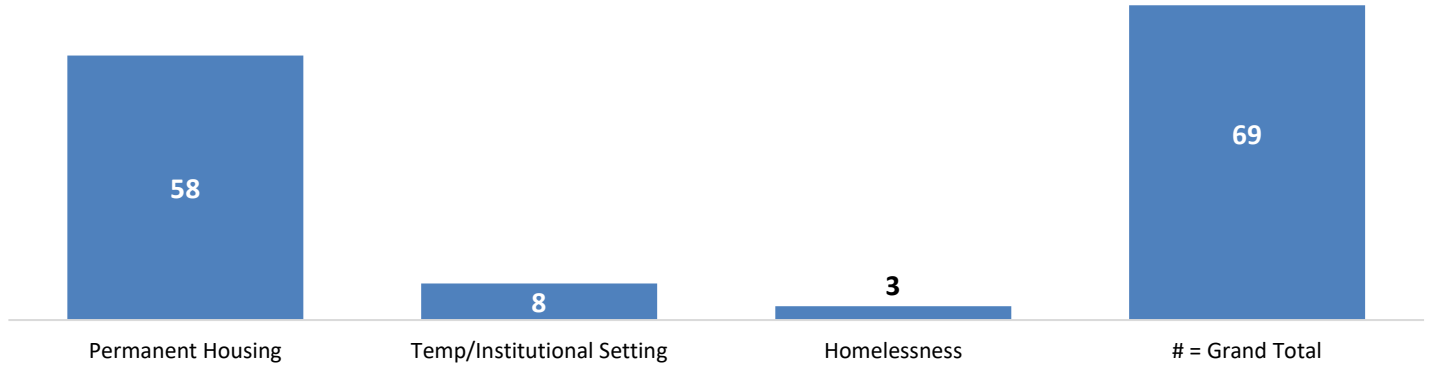
PATHWAYS STAIR CENTER PROGRAM

July 1, 2019-December 31, 2019



Number of Exits by Destination from STAIR Center Program

N:69

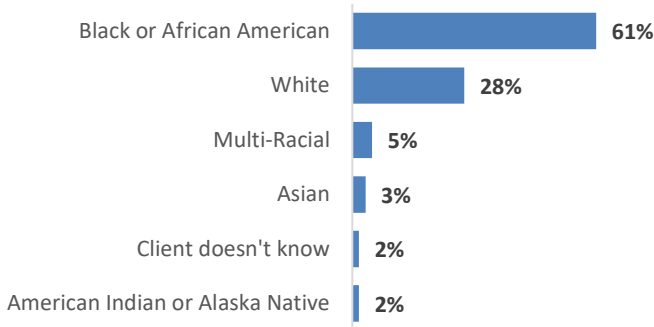


STAIR SHELTER DEMOGRAPHICS

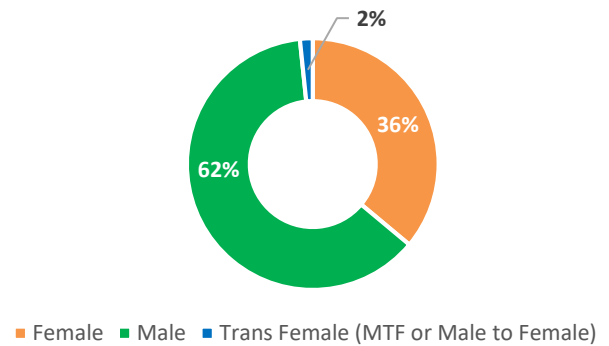
FY2020

N:61

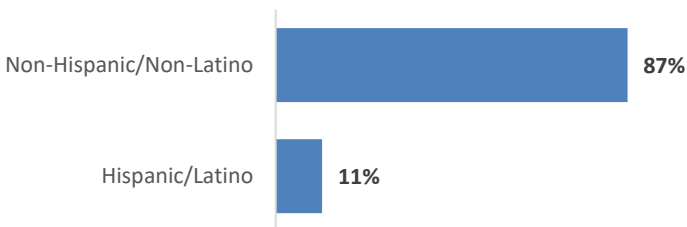
Race



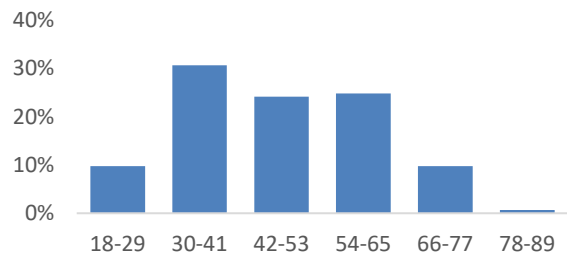
Gender



Ethnicity



Age



Notes

¹ Permanent Housing includes clients that receive rapid rehousing assistance. Rapid rehousing connects individuals to affordable rental units with time limited financial assistance. A full description of our rapid rehousing program can be found at www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/2018-04-24_Item_39_Rapid_Rehousing_What_it_Can.aspx

⁴ Return to Homelessness from Permanent Housing is the % of those that obtained permanent housing but were unable to maintain housing during the time period and returned to homelessness, as indicated by a re-enrollment in another homeless program.



Office of the City Manager

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INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront (PRW) Department

Subject: Parks, Recreation & Waterfront Department Capital Improvement Projects (CIP) Update

SUMMARY

The purpose of this report is to provide an update on funded improvements and current unfunded needs in the City's parks, medians, waterfront and resident camps infrastructure.

CURRENT SITUATION AND ITS EFFECTSCurrent CIP Funding

Parks, Recreation and Waterfront (PRW) capital funding is made up of [Recurring Capital](#)¹ from the Parks Tax, General Fund, Marina Fund and the Camps Fund². This \$1.75 M, along with bond funds from [Measure WW](#)³ and [Measure T1](#)⁴, are being used to address our most critical unfunded needs. [Measure F](#)⁵, the Parks Tax increase approved by Berkeley voters in 2014 has increased parks tax yearly capital by \$750,000, from \$250,000 to \$1,000,000, since FY2016. Additionally, Measure F provides a yearly \$450,000 for minor maintenance projects.

Recently Completed CIP Projects (last 18 months):

- Parks – Becky Temko – 2-5 Play Area Renovations and ADA upgrades (WW/Parks Tax)
- Parks – City Wide Irrigation Software Establishment and Controller Replacement (T1)
- Parks – Glendale – La Loma Basketball Court Reconstruction (Parks Tax)
- Parks – Harrison Park – Turf Renovation (Parks Tax)
- Parks – Conceptual Design of Gillman Fieldhouse/Restroom (T1)
- Parks – San Pablo Park – Restroom Building Renovation (Parks Tax)

¹ https://www.cityofberkeley.info/Parks_Rec_Waterfront/Home/CIP_Capital_Projects_Recurring_Funding_Allocation.aspx

² The Camps Fund has historically contributed \$250,000 to the recurring CIP funding. However, since Berkeley Tuolumne Camp was destroyed in the 2013 Rim Fire, it has been unable to contribute.

³ <https://www.cityofberkeley.info/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=119940>

⁴ <https://www.cityofberkeley.info/MeasureT1/>

⁵ <https://www.cityofberkeley.info/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=128423&libID=127066>

- Parks – Strawberry Creek Park – Courts Replacement and ADA upgrades (WW/Parks Tax)
- Camps – Berkeley Tuolumne Camp (BTC) Administrative Draft Environmental Assessment and Initial Study / Mitigated Negative Declaration (Camps Fund)
- Camps – BTC - Removal of 2000 Hazardous Trees (Camps Fund)
- Camps – BTC - Repairs to Remaining Facilities (Camps Fund)
- Camps – BTC - Removal of Facilities from Archaeological Area (Camps Fund)
- Camps – Echo Lake Camp - Reconstruction of 36 Snow Damaged Cabins (Camps Fund/General Fund)
- Waterfront – Finger Dock Replacement Phase 1 (Marina Fund)
- Waterfront – Rip Rap Replacement at Eastern Side of Cesar Chavez Park (Zero Waste Fund)

Projects under construction or about to start construction:

- Parks – George Florence Park – 2-5 & 5-12 Play Equipment Replacement (T1)
- Parks – Live Oak Community Center – Seismic/Deferred Maintenance (T1/Parks Tax)
- Parks – James Kenney Park – Picnic Area, 2-5 & 5-12 Play Equipment (WW/Parks Tax)
- Parks – John Hinkel Park – Upper ADA Pathway and Picnic Area (WW/Parks Tax)
- Parks – Rose Garden – Pergola Reconstruction, Pathways, Drainage and Site Improvements (T1/Parks Tax/General Fund)
- Waterfront – Bay Trail Extension Segment 3 (Grant/Marina Fund)
- Waterfront – South Cove ADA Accessible Gangway (Grant/Marina Fund)
- Waterfront – South Cove Non-Motorized Boat Dock Replacement (Marina Fund)
- Waterfront - Finger Dock Replacement Phase 2 (General Fund)
- Waterfront - Remodel of four (4) Berther Restrooms (General Fund)

Planning Only Projects Complete in the next 3 months

- Parks – Frances Albrier Renovation Planning (T1)
- Parks – Willard Clubhouse Renovation Planning (T1)
- Parks – Citywide Restroom Study (T1)
- Waterfront – Municipal Pier Structural Assessment & WETA-Scale Ferry Facility Feasibility Study (T1/ WETA/Marina Fund/General Fund)
- Waterfront - Marina Sea Level Rise AB691 Assessment Study (T1/ Marina Fund)

Projects that will be in construction in the next 6 months:

- Parks – Aquatic Park – Central Tide Tubes Maintenance Sediment Removal & Inspection (T1/ Parks Tax)
- Parks – Aquatic Park – South Pathways and Boat Access Parking Lot (Parks Tax/Bayer)
- Parks – Grove Park – Dugout and Field Renovation (T1/Parks Tax)
- Parks – San Pablo Park – 2-5 and 5-12 Play Equipment Replacement (T1/Parks Tax/General Fund)
- Parks – San Pablo Park Tennis Court Renovations (T1)
- Parks – Strawberry Creek Park – Pathways and 5-12 Play Equipment (Parks Tax)
- Parks – Strawberry Creek Park Restroom Replacement (T1)
- Pools – West Campus Filter Replacement (Parks Tax)
- Camps – Berkeley Tuolumne Camp Reconstruction (Camps Fund)

- Waterfront – Marina Corporation Yard Electrical Upgrades (T1)
- Waterfront – University Ave/Marina Blvd/Spinnaker Way Streets Improvement (T1/SB1/Marina Fund)

The following projects are in planning/design and planned for construction in the next 12-18 months

- Parks – Skate Park Fence Replacement (Parks Tax/General Fund)
- Parks – John Hinkel Park – ADA and Play Structure Improvements (Parks Tax)
- Parks – King School Park 2-5 and 5-12– Playground Improvements (Parks Tax)
- Parks – Ohlone Park (Milvia) – 5-12 Playground/Mural Garden Improvements (Parks Tax/General Fund)
- Camps – Cazadero Camp Jensen Dormitory Replacement (Camps Fund/General Fund)
- Camps – Echo Lake Accessibility Improvements Phase 1 (General Fund)
- Waterfront – South Cove West Parking Lot Design (Marina Fund)
- Waterfront – D & E Dock Replacement Project (DBAW Loan/ Marina Fund)
- Waterfront – O & K Electrical Upgrade (General Fund)
- Waterfront – Selective Piling Replacements (General Fund)
- Waterfront – Berkeley Marina Area Specific Plan (BMAASP) (General Fund)

A full list of over 40 funded projects is contained in the [Currently Funded Projects List](#)⁶. More detailed information about each project is provided in the [PRW Detailed Project Summary](#)⁷.

Current Minor Maintenance Projects

The passage of Measure F established a yearly minor maintenance allocation of \$450,000. This allocation is used to fund small maintenance contracts or in-house projects such as court resurfacing, painting, and sports field renovations. Some of the FY2020 projects include the following:

- Pathway improvements at Aquatic, Cedar Rose, Codornices, Willard, Oak, Ohlone, Strawberry Creek, and Willard Parks;
- Infield Renovations at Ohlone and Codornices Softball Fields;
- Turf renovations at Codornices, Cedar Rose, Harrison, James Kenney, Ohlone, San Pablo, and Willard Parks;
- Garbage can replacements (28) at various parks;
- Interior wall replacement at Young Adult Project (YAP);
- Storage Units at James Kenney, Virginia - McGee Park and YAP.

A complete list of projects completed since FY2016 and being undertaken currently can be found at the following link [Minor Maintenance Projects](#)⁸.

⁶ [https://www.cityofberkeley.info/Parks_Rec_Waterfront/Home/CIP_Currently_Funded_Capital_Projects_List_\(8/2017\).aspx](https://www.cityofberkeley.info/Parks_Rec_Waterfront/Home/CIP_Currently_Funded_Capital_Projects_List_(8/2017).aspx)

⁷ https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/FundedCapitalProjects.2017-11-01.pdf

⁸ [https://www.cityofberkeley.info/Parks_Rec_Waterfront/Home/Capital_Improvements_Program_\(CIP\).aspx](https://www.cityofberkeley.info/Parks_Rec_Waterfront/Home/Capital_Improvements_Program_(CIP).aspx)

DISCUSSION

The City of Berkeley has amazing recreation assets, resident camps, skate parks, dog parks, rock parks, community centers, theaters, pools, clubhouses, nature centers, lagoons, Adventure Playground, bay trail, concrete slides, neighborhood parks, and destination parks. For many years, the PRW Department's capital and major maintenance programs have been underfunded, which has accelerated the deterioration of our parks, park buildings, waterfront, and resident camps. In many cases, this has required emergency repairs at a greater cost than would be if regular maintenance had been done. Recent funding sources have helped to address some of these needs. The 2008 East Bay Regional Park District Measure WW Parks Bond Program ("Measure WW"), the 2014 voter approved increase in the Parks Tax by 17% ("Measure F"), and the 2016 voter approved T1 Infrastructure bond program have provided significant resources to start to reverse this trend.

Despite these funds, the unfunded need at Parks, Recreation and Waterfront Facilities is approximately \$203M. Below, the unfunded need is divided into six categories:

- \$42M Parks General – Lighting, Pathways, Courts, ADA, Irrigation etc.
- \$41M Parks Facilities – Buildings in Parks
- \$14M Parks Playgrounds – Ages 2-5 and 5-12 Play Structures
- \$7.5M Camps – Echo Lake, Cazadero and Tuolumne Camps
- \$94M Waterfront – Includes Infrastructure Needs West of I 80
- \$5.4M Restrooms – Includes existing Park Restrooms

The following [link](#)⁹ includes a general description, location and cost of each identified unfunded project.

Below is a discussion of the PRW Department's three major areas of capital funding need (Waterfront, Parks and Camps), current major projects and a brief discussion of priorities for unfunded improvements in these areas.

Waterfront**Marina Enterprise Fund & Unfunded Capital Project Needs**

The Marina Fund, which is the City's mechanism for managing all Waterfront revenues and expenditures, can no longer accommodate the pressing capital needs in the Waterfront. The City has worked across multiple fronts to improve security and infrastructure at the Waterfront to prevent boaters and customers from leaving the Marina. Those efforts are beginning to pay off, with lease and berth rental revenue beginning to stabilize. However, there remains a significant structural deficit, which means the fund will need to identify external funding sources to address capital projects at the Waterfront in the near future. Current staff projections reserve \$350,000/year from the Marina Fund for capital projects and \$150,000/year for maintenance projects. Yet there is more than \$94.04M in unfunded needs in Waterfront streets, parking lots, docks, electrical systems, underground utilities, bathrooms, buildings, and the Berkeley Pier.

⁹ https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Copy%20of%20Unfunded%20Capital%20and%20Major%20Maint%20list_Feb%202019.pdf

On November 15, 2018, PRW reported \$11.5M in immediate capital needs at the Waterfront. Council responded by committing a total of \$3.45M in the Waterfront capital projects budget, with \$1.5M allocated FY2020 and \$1.945M budget in FY2021. The \$3.45M will address the following previously identified immediate unfunded capital projects:

- O&K Docks Electrical Upgrade (design, permitting, and construction)
- Selective Piling Replacements (design, permitting, and construction)
- Maintenance Projects on finger docks and restroom renovations.

While the \$3.45M budget commitment addresses some critical projects, staff have identified \$6.65M in remaining immediate capital needs, (see Table 1). This is work that needs to be done to address safety concerns and prevent further declines in Marina revenue. These immediate needs include improvements to the Marina's basic amenities – electrical systems, restrooms and parking lots – whose poor conditions have been cited as reasons for boaters leaving Berkeley. They include shoreline stabilization to restore select areas of the Marina where we are already experiencing effects of erosion, and need immediate repairs to forestall more significant damage.

Table 1 – Immediate Unfunded Capital Needs

One-Time Waterfront needs	Project Cost
K Dock Public Restroom Renovation	\$250,000
Cesar Chavez Restroom	\$350,000
D and E Dock Replacement (Supplement to the DBAW Loan)	\$500,000
Additional Selective Piling Replacements	\$750,000
South Cove West Parking lot	\$450,000
Shoreline Stabilization -Virginia- Marina Blvd (Sea Level Rise)	\$2,500,000
Parking Lot at J & K Dock	\$1,500,000
Finger Dock Replacements - Phase 3	\$350,000
Total	\$6,655,000

During the remainder of FY20 and FY21 the following capital improvement projects are the major focus at the Berkeley Waterfront:

Marina Streets Improvement

This project includes the lane reconfiguration of University Avenue (between West Frontage Road and Marina Boulevard), Spinnaker Way pavement rehabilitation and drainage improvements, and Marina Boulevard pavement rehabilitation. This project features a traffic roundabout at the University Ave and Marina Blvd intersection, and pervious pavement on Spinnaker Way. The goal is to alleviate pavement undulation, improve traffic operation and efficiency, promote pedestrian and bicyclist access and safety, and implement storm water green infrastructure improvements. Construction is anticipated to begin in the summer of 2020.

Berkeley Marina Area Specific Plan (BMASP)

The background data gathering part of this project is underway. The goal of the BMASP is to provide a vision and a plan for achieving a financially self-sustainable, publicly-owned Marina with infrastructure and amenities to support current and future community needs, while adapting to climate changes and promoting environmental stewardship. The project will involve extensive community processes and includes a Program Environmental Impact Report (PEIR) to provide the City with overall programmatic environmental guidelines and mitigations that will assist in streamlining subsequent project-based CEQA evaluations

Berkeley Pier - WETA Scale Ferry Facility Feasibility Study

In partnership with San Francisco Bay Area Water Emergency Transportation Authority (WETA), the feasibility study in the planning phase is underway. The majority of the study has been completed and the first of three public meetings is scheduled for March 28, 2020. Staff will seek public feedback on the functionality, location, and amenity needs of the dual-use pier that would serve both as passenger ferry facility for berthing public ferry vessels, and provide public access to the San Francisco Bay, restoring the public amenities that were once offered by the now closed pier.

Outside Sources of Funding for Waterfront Projects

On February 26, 2020, Staff received a funding agreement from the Bay Area Air Quality Management District for a \$50,000 grant funding from the Transportation Fund for Clean Air Regional Fund for the installation of 20 electronic bicycle lockers at the Berkeley Marina Mall area.

On February 14, 2020, California State Parks' Boating and Waterways Commission approved a \$5.5 million loan to replace D&E Docks, which will hold 79 boat slips. These docks are more than 50 years old, and have far outlived their useful life. Staff applied for the loan in early 2018.

On May 9, 2019, San Francisco Bay Area Water Emergency Transportation Authority approved a \$250,000 funding contribution to conduct a feasibility study on public ferry facility at the Berkeley Marina on Seawall Drive.

In July, 2019, Staff applied for a \$2 million grant from the Coastal Conservancy's Priority Conservation Area (PCA) Grant Program for the North Marina Blvd Bay Trail Shoreline Vulnerability & Public Access Improvement Project. In October, 2019, staff was notified that the project was not recommended for funding through this cycle of the PCA grant program.

In April, 2019, staff submitted the final grant application to National Fish and Wildlife Foundation for the Cosco-Busan Oil Spill Settlement Round 2 grant program for the South Cove Boat Dock Staging Area Project. Staff was notified on September, 29, 2019 that the project was not selected.

Staff will continue to apply for grants and other contributions to supplement the capital project needs at the Waterfront.

Camps

Camps Fund and Unfunded Capital Project Needs

Despite the loss of funding from Berkeley Tuolumne Camp (BTC), the Camps Fund has been able to stay in the black due to the reorganization and popularity of Echo Lake Youth and Family Camp. The fund is projected to stay positive through FY22.

With the BTC rebuild and several key projects at Cazadero and Echo Lake funded largely by insurance, the most critical remaining unfunded need at our Camps is the ADA work at Cazadero and Echo Lake. The General Fund (\$600,000) is funding the complete ADA design and the construction of Phase 1 of these improvements. Phase 2 of the Echo Lake ADA improvements and ADA work at Cazadero is estimated to be just under \$5M. There is no identified funding source for these improvements.

BTC

In August of 2013, the California Rim Fire destroyed Berkeley Tuolumne Family Camp (BTC). The fire was declared a federal disaster, which means the rebuilding of Camp qualifies for funding from the Federal Emergency Management Authority (FEMA) and the California Office of Emergency Services (CAL OES). While FEMA and CAL OES will contribute a portion of the funding, it is anticipated that the City's insurance policy will cover the majority of the rebuild costs. The estimate for the total project is approximately \$60M, which includes the necessary staff, design, permitting, and construction costs. On April 4, 2017, the City Council funded the estimated shortfall of \$3.3 M not covered by Insurance, FEMA, and CAL OES funds by using the City's Catastrophic Reserve Fund.

In early February of 2020, after almost seven years of public process, environmental analysis, negotiation for funding, and permitting, the City published the invitation for bids (IFB) for the Berkeley Tuolumne Camp Project. These bids will be opened on Thursday, March 12, 2020, five days prior to this work session. Staff are hoping to award the construction project at the April 14, 2020 City Council meeting. Some of the planning and design efforts that have taken place since the Camp was destroyed include the following:

- Site Hazard Mitigation and Stabilization (2013);
- Public Outreach and Project Scoping (2014-2015);
- Environmental Analyses and documentation, including compliance with the California Environmental Quality Act (CEQA) (2015 -2018);
- Detailed Existing Conditions and Code Analysis and Documentation (2018);
- United States Forest Service 30-year Special Use Permit (2019);
- Environmental Permits from California Department of Fish and Wildlife, Regional Water Quality Control Board, United States Army Corps of Engineers (2019); and

- Detailed Project Design (2019).

Monthly meetings with Insurance representatives to determine coverage and funding are ongoing. In February, 2020, FEMA approved the City's request for a consolidated improved Project Worksheet for the Project. It is anticipated that construction will begin in May or June 2020 and be finished by the summer of 2022.

Cazadero

In April of 2016, a landslide occurred at the City-owned Cazadero Camp which caused irreparable damage to the existing Jensen dormitory structure. The cost to rebuild the damaged dormitory and fix the landslide, which included the repair of Austin Creek Road, exceeded \$2M, the bulk of which was covered by insurance. In 2016, the City completed an emergency removal of 15 large hazardous trees in the slide area that threatened existing structures and demolished the damaged Jensen Dormitory, and in 2017, completed the permanent landslide repair. The City awarded the Jensen Dormitory design contract to Siegel & Strain Architects at its January 22, 2019 meeting. Construction of the Jensen Dormitory Replacement Project is anticipated to begin in FY 2021.

The City has most recently spent over \$400,000 on hazardous tree removals throughout the 18 acre camp. After the flooding in February, 2019 (a federally declared major disaster), staff completed inspections and mitigation work at the Camp. Additionally, City staff are working towards finalizing a new lease with the long time non-profit, Cazadero Performing Arts Camp that has been operating the Camp since 1957. This new lease should be presented to City Council late spring or early summer.

Echo Lake

During the summer of 2018, the City completed analysis of the Echo Lake Camp leach field system and the repairs needed to restore the full capacity of the system. In October, 2018, the City completed the conceptual design for Echo Lake ADA improvements. Detailed design and environmental clearances for the ADA improvements is underway, with construction of phase 1 anticipated to be completed in FY2021.

Parks

Parks Tax Fund and Unfunded Capital Project Needs

With [Measure F¹⁰](#), the Parks Tax increase approved by Berkeley voters in 2014, the yearly Parks Tax contribution to capital funding has increased by \$750,000, from \$250,000 to \$1,000,000, since FY2016. Parks Tax funding, in many cases during the last several years, has been used to supplement a variety of other funding sources including grants and Measure T1 to complete projects. Despite the new funding sources and the recent progress in funding Live Oak and James Kenney Community Center renovations, facilities in South Berkeley such as Frances Albrier Community Center, Martin Luther King Junior Youth Services Center and the Willard Clubhouse and many of our play structures and the tide tubes at Aquatic Park make up a big part \$97M of unfunded need in Parks.

¹⁰ <https://www.cityofberkeley.info/WorkArea/linkit.aspx?LinkIdIdentifier=id&ItemID=128423&libID=127066>

In 2010, the City conducted a process to allocate \$4,876,584 from the EBRPD Measure WW funds to sixteen parks for improvement projects. From that original list of 16 projects, 14 have been completed. The final two projects are currently in construction. John Hinkel Park picnic area and ADA improvements will be completed in April 2020, and James Kenney Park Playground Renovation project is currently in construction. With the completion of these projects, the EBRPD Measure WW funds will be exhausted. All other upcoming planned park improvement projects are funded by a combination of Parks Tax, General Funds, Insurance and/or Measure T1.

Measure T1 is now a significant source of funding for Park improvement projects. The projects receiving funding from Measure T1 include, but are not limited to: the Live Oak Community Center renovation, George Florence Park play area renovations, the San Pablo Park tennis courts and play area renovations, the Frances Albrier Community Center Renovation Planning, the Willard Park Clubhouse Renovation Planning, the Strawberry Creek Park restroom replacement and play area renovation, and the Grove Park ballfield renovation, and the Rose Garden Tennis Courts and Pathways renovation projects.

Rose Garden Phase 2

The Rose Garden Pergola Reconstruction and ADA Site Improvements project is planned to start construction this May using Parks Tax funds, General Funds, and Measure T1 Bond funds. This project will complete the reconstruction of the remaining 85% of the historic redwood pergola structure and provide ADA access improvements to the park.

Aquatic Park Tide Tubes

Aquatic Park Central Tide Tubes Sediment Removal and Inspection project is the first phase of restoring the existing operating capacity of the tide tubes by cleaning out the accumulated sediment and conducting an inspection and assessment of the tide tubes and slide gate. The lagoon at the park receives both storm water from the City and tidal water from the San Francisco Bay. The tide tubes that connect the Aquatic Park Lagoon to the San Francisco Bay are clogged with sediment. On December 24, 2019, permit applications have been submitted to the U.S. Army Corps of Engineers, San Francisco Bay Regional Water Quality Control Board, CA Department of Fish and Wildlife, San Francisco Bay Conservation and Development Commission, and CA Department of Transportation. Staff have been in consultation with these regulatory agencies with the anticipation of getting the approved permits by May. Construction is anticipated to start in the summer. Once the cleanout is finished, we will have an estimate of the cost and scope of the reconstruction.

FY21 Projects

Anticipated FY21 improvements include improvements at King School Park, funded by Insurance and supplemented with Parks Tax; Ohlone Park improvements and the West Campus Pool filter replacement, funded by Parks Tax; and Playground, amphitheater and picnic improvements at John Hinkel Park, and the Skate Park fence replacement funded by Parks Tax and General Funds.

BACKGROUND

Summary of facilities and infrastructure inventory

The Parks, Recreation & Waterfront Department (PRW) is responsible for managing, maintaining, and upgrading an extensive portfolio of community-serving parks and parks facilities.

PRW operates, maintains and manages 54 parks, 4 community centers, 1 clubhouse, 2 pools, 3 resident camps, 15 sports fields, 49 sports courts, 63 play areas, 35 picnic areas, 40,000 street and park trees, 152 landscaped street medians and triangles, 263 irrigation systems, and 29 restrooms and out buildings. In addition, PRW operates and maintains the Berkeley Waterfront and its related facilities, including the docks, parking lots, parks and trails and other infrastructure, Adventure Playground, and the marina basin with 1,000 rentable boat slips.

Prior Council communications

Capital and major maintenance needs have been presented to Council in a number of recent reports:

In an informational memo on January 21, 2020, Parks, Recreation & Waterfront and Public Works provided a bi-annual report on the Measure T1 City Infrastructure Bond Program.

In a [December 10, 2019 off-agenda report](#)¹¹, Parks, Recreation & Waterfront detailed the planning and public input process for the selection of projects for Phase 2 of the Measure T1 infrastructure bond program.

In an Informational memo on July 23, 2019, Parks, Recreation & Waterfront and Public Works provided a [bi-annual report on the Measure T1 City Infrastructure Bond Program](#)¹².

The Council-adopted [FY20-FY21 Capital Improvement Program](#) provides an overview of planned projects and unfunded needs in June 2019.¹³

In a [report to Council on March 26, 2019](#)¹⁴, Parks, Recreation & Waterfront and Public Works provided recommendations to close the funding gap to complete Measure T1 City Phase 1 Projects.

In an [Off-Agenda memo on March 5, 2019](#)¹⁵, the City Manager provided Council with an update on Cazadero Camp.

At a work session on December 6, 2018, Parks, Recreation & Waterfront and Public Works provided a [bi-annual report on the Measure T1 City Infrastructure Bond Program](#)¹⁶.

¹¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Measure%20T1%20Update%20on%20Phase%202_121019.pdf

¹² https://www.cityofberkeley.info/Clerk/City_Council/2019/07_Jul/Documents/2019-07-23_Item_43_Update_on_Measure_T1.aspx

¹³ <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-CIP-budget.pdf>

¹⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/03_Mar/Documents/2019-03-26_Item_20a_Providing_direction_on_closing_funding_gap.aspx

¹⁵ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Cazadero%20Camp%20Update%20030519.pdf

¹⁶ https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Semi-Annual%20Update%20Council%20December%202018.pdf

At a work session on November 15, 2018, Parks, Recreation & Waterfront and Public Works provided an overview of current capital projects and unfunded needs.

In an Off-Agenda memo on October 5, 2018¹⁷, the City Manager provided Council with a detailed update on the Berkeley Tuolumne Camp Project.

At a work session on May 8, 2018, Parks, Recreation & Waterfront and Public Works provided an overview of current capital projects and unfunded needs; as well as a bi-annual report on the Measure T1 City Infrastructure Bond Program¹⁸.

In an Off-Agenda memo on April 12, 2018¹⁹, the City Manager provided Council with a detailed update on the Waterfront and Marina Fund, describing financial concerns related to safety and infrastructure challenges.

At a work session on November 7, 2017, Parks, Recreation & Waterfront and Public Works provided an overview of current capital projects and unfunded needs; as well as a bi-annual report on the Measure T1 City Infrastructure Bond Program²⁰.

The Council-adopted FY18-FY19 Capital Improvement Program provides an overview of planned projects and unfunded needs in June 2017.²¹

At a work session on April 4, 2017²², Parks, Recreation & Waterfront and Public Works provided an overview of current capital projects and unfunded needs.

At a work session on October 18, 2016, Parks, Recreation & Waterfront and Public Works provided an overview of current capital projects and unfunded needs.²³

In an April 5, 2016 off-agenda report, Parks, Recreation & Waterfront detailed capital and major maintenance projects and unfunded needs.²⁴

¹⁷ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Berkeley%20Tuolumne%20Camp%20100518.pdf

¹⁸ https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Bi-Annual%20Update%20Council%20Report%20%205-8-18.pdf

¹⁹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Marina%20Fund%20Update%20041218.pdf

²⁰ https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Update%20-%20Worksession%20-%202017-11-07.pdf

²¹ <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY%202018-2019%20Adopted%20CIP%20Budget%20Book.pdf>

²² https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/Documents/2017-04-04_WS_Item_02_Update_on_Parks_Capital_Improvement_Projects.aspx

²³ http://www.cityofberkeley.info/Clerk/City_Council/2016/10_Oct/Documents/2016-10-18_WS_Item_01_Update_on_Capital_Improvements.aspx.

²⁴ http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Parks%20CIP%20Plan%20FY16-FY19%20040516.pdf

A January 19, 2016 report to Council on City care and shelter sites described \$16.8M in needs at senior centers and community centers for seismic upgrade & deferred maintenance repairs.²⁵

The Council-adopted FY16-FY17 Capital Improvement Program provides an overview of planned projects and unfunded needs.²⁶

On March 24, 2015, two work session reports, Parks, Recreation & Waterfront and Public Works, presented capital improvement and major maintenance needs and 5-year plans.²⁷

Capital & Major Maintenance Prioritization Process

Project prioritization occurs in the following way: 1) staff prioritizes needs according to the following criteria: protect life safety; fix and maintain existing infrastructure; provide community-wide benefits; promote geographic and racial equity; and leverage existing funds; 2) Commissions and the public provide feedback; and 3) Council approves the proposed work plan for capital projects during the biennial budget process.

ENVIRONMENTAL SUSTAINABILITY

The City aims to provide safe, green, accessible and efficient facilities and infrastructure. Staff evaluates the environmental impacts of all proposed projects and seeks to integrate energy and water efficiency improvements in all capital and major maintenance projects.

CONTACT PERSONS

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Christina Erickson, Parks, Recreation & Waterfront, 510-981-6703

²⁵ <http://www.ci.berkeley.ca.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=114427>

²⁶ <http://www.ci.berkeley.ca.us/uploadedFiles/Manager/Budget/FY%202016%20and%20FY%202017%20Final%20Adopted%20OCIP%20Book.pdf>

²⁷ http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/03_Mar/Documents/2015-03-24_WS_Item_01_Parks_Recreation.aspx and http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/03_Mar/Documents/2015-03-24_WS_Item_02_Public_Works.aspx



Office of the City Manager

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INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation and Waterfront
Phil Harrington, Director, Public Works

Subject: Measure T1 Update

INTRODUCTION

This is an update on the implementation of the \$100 million Measure T1 bond program to renovate existing City facilities and infrastructure. This progress report provides the City Council with an update on key issues and upcoming challenges, non-project specific milestones, and the progress of each project.

CURRENT SITUATION AND ITS EFFECTS

The Measure T1 team is made up of Parks, Recreation, & Waterfront and Public Works staff that meets bi-weekly to discuss and solve T1 related general and project-specific issues. The team receives guidance from the T1 Joint Subcommittee of the Parks & Waterfront and Public Works Commissions. The upcoming challenges for the program in the next six months are detailed below.

KEY ISSUES AND UPCOMING CHALLENGES*1. Phase 2 Public Process*

Phase 2 started on January 29, 2020 with a joint Parks & Waterfront and Public Works Commission meeting to kick off the process. The timeline for this process is summarized in Table 2 below. For detailed information on this process, see the December 10, 2019 Off-Agenda report to Council¹ titled "[Measure T1 Phase 2 Public Input Process](#)".

¹ See https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Measure%20T1%20Update%20on%20Phase%202_121019.pdf

Table 1 – Timeline for Phase 2 Public Input Process

July – September 2019	The Measure T1 Joint Subcommittee and staff planned the public input process and structure.
October 2019	Met with the Lead Commissions (Public Works and Parks, Recreation and Waterfront) during their regularly scheduled meetings to discuss the public process for Phase 2.
November 2019 – January 2020	Annual update to 11 Participating Commissions ²
January 29, 2020	Lead Commissions Phase 2 Public Process Kick-Off
February – April 2020	Attend 20 neighborhood group meetings to present information on Phase 2 public process and obtain feedback on potential projects.
May – September 2020	Host 5 large geographic-based meetings to gather feedback on potential projects (5 meetings)
October 2020	Online survey on Berkeley Considers
November – December 2020	Annual update to Participating Commissions (11 Meetings)
November 2020 – February 2021	Staff and commissions' development of recommended Phase 2 project list (3 to 4 meetings)
March - May 2021	Council Work Session to discuss Phase 2 project list
June 2021	Council approves Phase 2 projects

2. *Completing Phase 1 Projects*

Phase 1 is expected to run through June 2021. Staff are continuously monitoring expenditures to ensure that the program will meet the goal of spending 85% of bond proceeds by November 2020. Based on current projections, we are on track to meet this goal.

Projects that are bidding now or set to be awarded soon are the following:

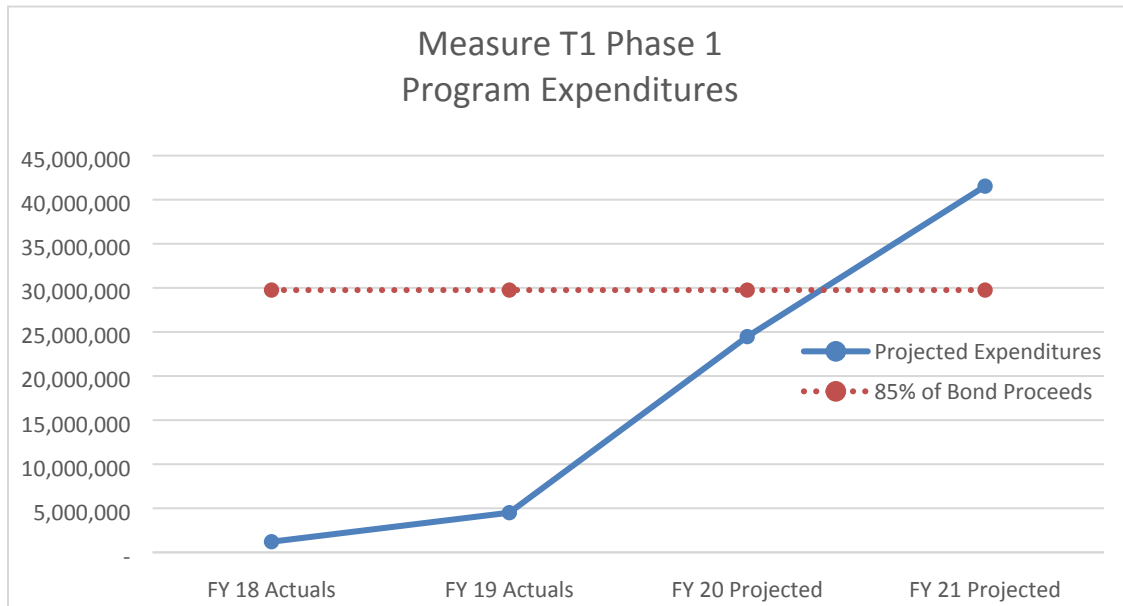
- Rose Garden Pathway, Drainage, Tennis Courts and Pergola
- San Pablo 2-5 and 5-12 Play Structures
- San Pablo Park Tennis Courts
- Strawberry Creek Restroom and 5-12 Play Structure
- Corporation Yard Electrical Upgrades

² Children, Youth, and Recreation Commission; Civic Arts Commission; Community Environmental Advisory Commission; Commission on Aging; Commission on Disability; Disaster and Fire Safety Commission; Energy Commission; Housing Advisory Commission; Landmarks Preservation Commission; Transportation Commission; and Zero Waste Commission.

- Marina Corporation Yard Electrical Upgrades
- Tide Tube Clean Out
- Grove Park Sports Field Improvements
- Green Infrastructure Projects at Page Street, Channing Way, Dwight Way, Grayson Street, and Piedmont Avenue Traffic Circle
- Complete Streets on 2nd Street, Monterey Street, Ward Street, University Avenue, Marina Blvd. and Spinnaker Avenue

As of December 16, 2019, a total of \$7.67 million of T1 funds have been expended. With multiple projects currently under construction, staff estimates that an additional \$16 million will be expended by the end of FY 2020. Additionally, it is estimated that \$ 30.5 million (87% of bond proceeds) will be expended by September 2020 (See Chart 1).

Chart 1 – Measure T1 Phase 1 Projected Expenditures



3. Allocation of remaining bond funds

Staff discussed possible options to allocate the remaining funds with the T1 Joint Subcommittee (See Table 3). Over the course of Phase 2, staff will further consider and evaluate these options based on project priorities and update Council.

Table 2 – Possible Allocation Options for Remaining T1 Funds

Option	Description	Pros	Cons
Four Year Phase 2, Four Year Phase 3	Split funds between two bond issuances (every 4 years).	-Can be accomplished with existing staff	-Two public processes -Will take another 8 years to complete bond program, which will result in increased construction cost -Phase 3 may not have enough funds for significant projects
Six Year Phase 2, No formal Phase 3	Split funds between two bond issuances (every 3 years).	-One robust public process -Accelerated opportunity/ability to deliver more infrastructure improvement sooner. -Saving 2 years of construction cost increases	-Potential staff capacity issues -May not meet 85% use of funds requirement
Four Year Phase 2, No formal Phase 3	One bond issuance.	-One robust public process -Accelerated opportunity/ability to deliver more infrastructure improvement sooner. -Saving 4 years of construction cost increases	-Requires additional staffing -May not meet 85% use of funds requirement

KEY MILESTONES

Staff have accomplished the following:

1. Staff contracted with the City's current external financial auditor to perform an audit on Measure T1 bond expenditures to ensure that expenses are in accordance with bond measure requirements. Audits are planned for every two years and approximately six financial audits are expected to be performed during the life of Measure T1. An audit of the first two years of Phase 1 (ending June 2019) is in progress and an audit report is expected from the Auditor by March 2020.
2. Met with the T1 Joint Subcommittee to develop a public process for Phase 2. Staff and committee members established a thorough process identify and vet an extensive public process for determining potential projects for Phase 2. This process includes multiple opportunities for community members to provide feedback including up to 20 Council-recommended neighborhood group meetings, 5 large geographic-based public meetings, e-mail, and an online survey for those who would not be able to attend the scheduled public meetings.
3. Provided an annual update to the 11 Participating Commissions in November 2019- January 2020. This is the third update to these commissions. This update addressed the progress of Phase 1 and information on the Phase 2 public process.
4. Staff and Commissioners have met with 9 of 20 neighborhood/friends groups thus far and have received great feedback on potential small and large projects for T1 Phase 2.

5. Continued the public input process and held events on specific projects.³
- **May 2, 2019:** North Berkeley Senior Center Groundbreaking Ceremony
 - **July 13, 2019:** San Pablo Park Community Meeting
 - **August 6, 2019:** Frances Albrier Community Center Outreach
 - **August 9, 2019:** Willard Clubhouse Outreach
 - **August 23, 2019:** Frances Albrier Community Center Outreach
 - **September 9, 2019:** Joint Subcommittee Meeting: Civic Center Project
 - **September 26, 2019:** Strawberry Creek Park Community Meeting
 - **October 2, 2019:** Willard Clubhouse Community Meeting
 - **October 16, 2019:** Citywide Restroom Study Community Meeting (South Berkeley Senior Center)
 - **October 20, 2019:** Willard Clubhouse Outreach
 - **October 22, 2019:** Citywide Restroom Study Community Meeting (Main Library)
 - **October 23, 2019:** Frances Albrier Community Center Community Meeting
 - **November 4, 2019:** Live Oak Groundbreaking Ceremony
 - **November 5, 2019:** Citywide Restroom Study Community Meeting (Telegraph area)
 - **November 6, 2019:** Citywide Restroom Study Community Meeting (West Berkeley)
 - **November 7, 2019:** Grove Park Community Meeting
 - **November 21, 2019:** Joint Subcommittee Meeting: Civic Center Vision and Implementation Plan
 - **December 12, 2019:** Civic Center Community Meeting
 - **January 29, 2020:** Joint T1 Commission Meeting- Phase 2 Kick off
 - **March 21, 2020:** Willard Clubhouse Community Meeting # 3
 - **March 25, 2020:** Frances Albrier Meeting # 2

PROJECT-SPECIFIC UPDATES

All 46 Measure T1 projects are in progress. The Mental Health Services Center, North Berkeley Senior Center, Live Oak Community Center, Adeline Street, Hearst Avenue and George Florence Park are under construction. The Rose Garden (Pathways, Tennis Courts, Pergola, and repair of erosion), San Pablo Park (ages 2-5 and 5-12 play area and tennis courts), Strawberry Creek Park and Grove Park will be in construction in the next six months. Additionally, all of the “planning only” projects have started, including the Old City Hall/Veterans Building/ Civic Center Park, the Citywide Restroom Assessment, the Frances Albrier Community Center and the Willard Park Clubhouse. This [link](#) provides a list of the 46 approved [Phase 1 Projects](#)⁴, including project description, budget, project manager, and status update. This [link](#) provides a timeline by month for each T1 project through the remainder of Phase 1.

³ For full list of meetings and events, visit <https://www.cityofberkeley.info/MeasureT1Events/>

⁴ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20Phase%201%20Revised%20List%20of%20Projects%2012-10-19.pdf.

BOND PROGRAM MANAGEMENT

The T1 Management Team continues to meet regularly to review the T1 budget, expenditures, project progress, and to prepare detailed reports for Council, Commissions and the community.

T1 Manual

Staff are using the T1 Policies and Procedures Manual⁵ as a guideline to implement the T1 program and will update the manual as needed.

Financials

As shown in Table 2, \$7.67 million of T1 funds have been expended as of December 16, 2019. We continue to be on track to spend 85% of T1 Phase 1 bond proceeds by November of 2020.

Table 3 – Phase 1 Expenditures to date as of 12/16/19

Category	Sub-Category/ Project	Allocated	Spent	Remaining
Art		\$350,000	\$50,431	\$299,569
Staff/ Project Management ⁶		\$4,200,000	\$2,117,481	\$2,082,519
Facilities, Equipment, Supplies, Services ⁷		\$400,000	\$221,230	\$178,770
Projects ⁸	Facilities/ Buildings	\$18,172,060	\$2,945,715	\$15,226,345
	City Wide Safety Improvements	\$979,208	\$58,153	\$921,055
	Park Improvements	\$6,660,144	\$1,487,448	\$5,172,697
	Green Infrastructure	\$821,984	55,342	\$766,642
	Complete Streets	\$10,217,625	\$730,535	\$9,487,090
Total		\$41,801,021	\$7,666,334	\$34,134,687

Communication

Staff will continue to provide semi-annual updates to the Parks & Waterfront and Public Works Commissions and to City Council. Staff continues to use the City's [Measure T1 website](#)⁹ to update the community on the bond program. This includes an updated [story](#)

⁵ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Policies%20and%20Procedures%20Manual%20January%202019.pdf

⁶ *Staff/Project Management* costs include City staff to plan, manage, and supervise T1 projects; and a full-time analyst to provide direct administrative support for T1 projects. This does not include costs for other supervision and administration, such as other managers, departmental administrative staff, and other support functions like IT, Human Resources, and Finance.

⁷ *Facilities, Equipment, Supplies, and Services* includes the cost to lease T1's share of office space on the 5th Floor of 1947 Center St., T1-related office furniture, computers, printers, office supplies, copier lease, staff trainings, communication materials, and audits.

⁸ *Project costs* will include all direct project expenses.

⁹ See <https://www.cityofberkeley.info/MeasureT1/>

[map](#)¹⁰, providing photos, mapping and summaries of each approved T1 project. Community members can visit the [Measure T1 Phase 1 Project Updates](#)¹¹ page for project updates, community meeting dates, and quarterly updates. For questions or information about Measure T1, community members are encouraged to email T1@CityofBerkeley.info.

BACKGROUND

In November 2016, Berkeley voters approved [Measure T1](#)¹² – 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.

After the passage of Measure T1, the City Manager proposed a [three phase implementation plan](#)¹³ and a list of possible Phase 1 projects to be considered by the Council, the City’s commissions, and the general public.

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](#)¹⁴ detailing their recommendations. The City Manager incorporated this input and submitted a [final recommended list of projects](#)¹⁵. Council adopted this list and proposed plan for implementing Phase 1 of the T1 bond program on June 27, 2017.

On January 23, 2018, Council adopted [resolution 68,290-N.S.](#)¹⁶ allocating \$2 million from T1 Phase 1 for the Adult Mental Health Clinic located at 2640 Martin Luther King Jr. Way.

At the December 6, 2018 [Council worksession](#)¹⁷, staff notified City Council of a funding gap for the T1 program due to the cost of approved projects exceeding bond proceeds, an increase in energy upgrades included in the facility projects, and soaring escalation.

¹⁰ See

<https://berkeley.maps.arcgis.com/apps/MapTour/index.html?appid=6a32f8ecb2924aebbb952bd59cb8b7f7c>

¹¹ See <https://www.cityofberkeley.info/MeasureT1Updates.aspx>

¹² See <https://www.cityofberkeley.info/MeasureT1/>

¹³ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20GO%20Bonds%20Recommendations.pdf

¹⁴ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20-%20Joint%20Commission%20Report%20-%20June%202017%20w%20attachments.pdf

¹⁵ See https://www.cityofberkeley.info/Clerk/City_Council/2017/06_June/Documents/2017-06-27_Item_49_Implementing_Phase_1.aspx

¹⁶ See [https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2018-01-23%20Allocating%20\\$2m%20of%20T1%20To%20COB%20Adult%20Mental%20Health.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2018-01-23%20Allocating%20$2m%20of%20T1%20To%20COB%20Adult%20Mental%20Health.pdf)

¹⁷ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/T1%20Semi-Annual%20Update%20Council%20December%202018.pdf

After receiving construction bids and an engineer’s estimate on three major projects, staff was able to more accurately estimate the funding gap and met with the Measure T1 Joint Subcommittee to discuss options on addressing this funding gap. On February 7th and 13th, 2019 respectively, the Public Works and Parks & Waterfront Commissions voted to recommend additional funding to complete Phase 1 projects including additional escalation.

On March 26, 2019, Council adopted [resolution 68,802-N.S.](#)¹⁸ authorizing \$5.3 million in Measure T1 Phase 2 funds to be used to complete Measure T1 Phase 1 projects.

On July 23, 2019, Council approved Resolution No. 69,051-N.S¹⁹., 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.

On December 10, 2019, Council adopted Resolution No. 69,221²⁰ authorizing adjustments to the Measure T1 Phase 1 project list with no additional funding to reflect changes made to the project list to provide community members with an accurate and [up-to-date list of projects](#)²¹.

The current budget for 46 Measure T1 Phase 1 projects is approximately \$41.8 million (See Table 1 for the breakdown of this funding).

Table 4 – Measure T1 Funding

Funding	Amount
2017 Bond Proceeds	\$35,000,000
Estimated additional interest	\$1,500,000
3/26/19 Council approved additional funding	\$5,300,000
Total Funding	\$41,800,000

ENVIRONMENTAL SUSTAINABILITY

Measure T1 provides potential opportunities to advance the City’s environmental sustainability goals. For example, facility upgrade projects are being designed to not only improve safety and address deferred improvements, but also to increase resource efficiency and access to clean energy. The renovations of the North Berkeley Senior Center, Live Oak Community Center, and the Mental Health Services Center will incorporate as many energy efficiency upgrades as feasible within the allotted budget such as a rooftop solar system, an HVAC system that incorporates heat pumps, and

¹⁸ See [https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2019-03-26%20Reso%2068802%20Authorizing%20\\$5.3%20Million%20in%20Measure%20T1%20Phase%20%20Funds%20to%20be%20used%20to%20complete%20Measure%20T1%20Phase%20%20Projects.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2019-03-26%20Reso%2068802%20Authorizing%20$5.3%20Million%20in%20Measure%20T1%20Phase%20%20Funds%20to%20be%20used%20to%20complete%20Measure%20T1%20Phase%20%20Projects.pdf)

¹⁹ 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

²⁰ See https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-10_Item_14_Modification_of_Measure_T1_Phase.aspx

²¹ See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Measure%20T1%20Phase%20%20Revised%20List%20of%20Projects%2012-10-19.pdf

energy efficient windows and lights per the Berkeley Resilience Strategy and Climate Action Plan.

FUNCTIONAL ART

In [Resolution 67,795-N.S.](#)²², Council resolved that 1% of bond proceeds shall be available for functional art integrated into Measure T1-funded projects. The bond proceeds for Phase 1 of Measure T1 were \$35 million, resulting in a 1% functional art contribution of \$350,000. The total amount of \$350,000 has been deducted from Phase 1 Measure T1 projects.

Berkeley-based artist, Masayuki Nagase, was selected to create artwork for the entry plaza of the North Berkeley Senior Center. The artist will create a variety of carved stone pavers to be integrated into the plaza's paving, two carved stone wall pieces to help with wayfinding at the plaza entry ramps, and a large carved stone table-bench element to be located in the plaza's seating area, which will provide additional seating or a table top while plaza users gather in the area.

Michael Arcega was selected to create a series of functional artwork elements for San Pablo Park. The artwork includes six colorful sculptural benches depicting native flowers to replace the existing benches at the park and dozens of brightly painted wildflower silhouettes that will be mounted on fences, posts, gates, and directional signage, as well as integrated into the seating wall next to the children's play area.

CONTACT PERSON

Scott Ferris, Parks, Recreation & Waterfront, 510-981-6700
Phil Harrington, Public Works, 510-981-6300

²² See https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/Resolution%20No%2067,795.pdf



Office of the City Manager

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INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: A.R. Greenwood, Chief of Police

Subject: Audit Recommendation Status - 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

INTRODUCTION

On April 25, 2019, the City Auditor's Office issued its audit, *911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale*¹ with recommendations to reduce overtime and vacancies, and further support dispatcher needs. The purpose of this report is to update City Council on the Police Department's progress on implementing the City Auditor's recommendations.

FINANCIAL IMPLICATIONS

Staffing costs will depend on the outcome of the staffing analysis the City Auditor recommended we complete to determine appropriate staffing levels. That work is in progress. Our efforts to reduce overtime by filling budgeted vacancies has a net zero fiscal implication. The funds currently used to pay overtime come from budgeted funding meant for the vacant positions.

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included 14 recommendations. As of the date of this report, 9 recommendations have been implemented, 4 are in progress, and 1 will not be implemented. Please see Attachment 1 for detailed information on the status of each recommendation. This is the first report to City Council with the next update planned for September 24, 2020.

BACKGROUND

The Berkeley Police Department (BPD) Communications Center serves as Berkeley's 911 public-safety answering point, receiving all emergency and non-emergency police, fire, and medical calls and dispatching public-safety personnel. BPD faces challenges in its efforts to recruit and fill vacancies. Staffing shortages negatively impact all police operations, including dispatch. In September of 2018, the BPD developed a team of five staff dedicated to all facets of recruitment, retention, and expediting processing of hiring,

¹ City Auditor's Office Dispatcher Audit (04/25/19): <http://bit.ly/2DvbCpv>

while maintaining quality standards. This team's focus includes recruiting dispatcher applicants.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Captain Jen Louis, 510-981-5815

Attachments:

1: Dispatch Audit Recommendations Status Table

Attachment 1

Finding 1: It is taking longer to answer 911 calls and there are not enough call takers.	
1.1	<p><u>Recommendation:</u></p> <p>Conduct an annual staffing analysis of required minimum staffing levels and budgeted dispatchers to ensure budget staffing requests and scheduling efforts meet demand and limit the use of overtime where possible (see also Finding 2). Use the staffing analysis to communicate to Council and the public during the annual appropriations process:</p> <ul style="list-style-type: none"> • Service level demands • The full-burdened cost of budgeting for additional staff • Whether there is sufficient funding available to budget for the additional staff or a shortfall (quantified in dollars) • Additional staffing requests, if needed
	<p><u>Implementation Date:</u></p> <p>Initial expected implementation date: We will research other available analysis options to determine if we are using best practices by June 2019.</p>
	<p><u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u></p> <p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. A monthly and yearly analysis of staffing is helpful when determining best use of the current employees in terms of scheduling. We recognize that our current use of a manual scheduling process is not optimal and that we would be better served by an automated scheduling program.</p> <p>The Department has already begun to consider several automated scheduling programs to replace our current manual method.</p> <p><u>1st Status Update (11/12/2019):</u> Implemented</p> <p>Current employees continue to be staffed during days and times that mirror call volume reports (ECats). Data on service level demands continues to be reviewed monthly. Current budget does not support additional staff, however analysis of overtime expenditures was conducted as part of Call Taker recommendation. This revealed that additional positions could be funding via overtime savings.</p>

Finding 1: It is taking longer to answer 911 calls and there are not enough call takers.		
1.2	<u>Recommendation:</u>	Use the staffing analysis performed in response to recommendation 1.1, to determine future resource needs of the Communications Center, including staffing, equipment, and physical space. Take into account planned changes to services and factors that may influence call volume.
	<u>Implementation Date:</u>	Initial expected implementation date: Decide on Communications Center expansion versus relocation by December, 2019.
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. We will need to increase our staffing levels to meet NENA staffing recommendations. Future enhancements to the 911 system such as text to 911 and Next Generation 911 will increase our call times and further hinder our ability to meet NENA standards on call answer times. The Communications Center will need to either expand the space it currently occupies in the Public Safety Building, or relocate to a separate building in order to increase the number of consoles needed to accommodate additional required staff.</p> <p>The Department has already begun discussion on the Communications Center's spatial needs. In 2018, we implemented a new Computer Aided Dispatch system in order to enable us to receive 911 calls via the upcoming Next Generation technology. The Call Taker proposal will be submitted to Human Resources and the Personnel Board.</p> <p><u>1st Status Update (11/12/2019): Partially implemented</u></p> <p>First step identified as evaluating expansion possibilities within the existing space. BPD met with a communications center console vendor and requested a review of current Communications Center configuration. The vendor conducted an onsite evaluation and review by their design team. Evaluation revealed that even with streamlined furniture and reconfiguration, the existing space can only accommodate eight consoles. Current staffing levels necessitate 5-7 available consoles, and audit recommendations include adding 1-2 call takers per shift. Any real increase in staffing levels will require expansion. Initial conversations held regarding using available space</p>

Finding 1: It is taking longer to answer 911 calls and there are not enough call takers.	
	<p>within Public Safety Building (PSB) as well as with BFD regarding potential expansion into BFD offices in PSB. Implementation date intentionally delayed until after Call Taker proposal process to ensure that space requirements will be met. Initial planning on this recommendation will continue.</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.	
2.1	<p><u>Recommendation:</u> Open all dispatcher positions to continuous recruitment.</p> <p><u>Implementation Date:</u> Initial expected implementation date: We hope to obtain approval from HR by September, 2019.</p> <p><u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u> Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Open and continuous recruitment of all dispatcher positions has long been the desire of Management. There are several factors that make hiring dispatchers challenging. The hiring process itself is lengthy due to required testing of applicants, background investigation and physical exam. Because of our limited resources in terms of floor trainers, we cannot hire more than three dispatchers at one time or the trainer's become overburdened. The Public Safety Dispatcher training program generally takes 9-10 months to complete. Often, it is not until the latter months of training that deficiencies that will not allow a trainee to complete the program are discovered. Allowing for open and continuous recruitment would give us the ability to create a pipeline of applicants to "plug in" once a trainee either completes or is released from the training program.</p> <p>Human Resources has already agreed to open and continuous hiring for Lateral Public Safety Dispatcher II classification and Management has requested the same for both the non-lateral and Public Safety Dispatcher I classifications.</p> <p><u>1st Status Update (11/12/2019): Partially implemented</u></p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.

		<p>Internal conversations with BPD Personnel and Training unit uncovered potential issues with moving to open and continuous recruitment for entry level dispatchers. Main issue surrounds the internal and Human Resources work load requirement for regularly reviewing applications, confirming qualifications are met, and then scheduling and administering testing processes for candidates. Entry level positions require a more extensive testing process to allow candidates to meet minimum job qualifications. Personnel and Training discovered through the entry level officer hiring process, that increasing the number of recruitments, and communicating with interested applicants was a more effective approach. Personnel and Training is also considering implementing a variation of the open and continuous strategy that a neighboring agency utilizes. Another potential solution is to allow open and continuous recruitment where applicants have already satisfied testing portions of the minimum qualifications (Criticalll and POST Dispatcher examination). Open and continuous recruitments continue for experienced lateral PSD II candidates.</p> <p>The following tasks are underway to determine next steps: meeting scheduled with Human Resources to discuss workflow, procedure and ability to implement this recommendation; work with Personnel and Training and Human Resources to explore options that achieve the goals of open and continuous recruitment but are also manageable with current workloads. Planned implementation by December 2019.</p> <p>The above tasks were completed prior to presentation of the first status update. As a result, a determination was made to not pursue open and continuous hiring for <i>entry level</i> (PSD I) dispatchers at this time. There were many factors that led to this determination:</p> <ol style="list-style-type: none"> 1. There is a significant workload and timeline that precedes and follows a recruitment period including posting the position, reviewing applications, scheduling an exam date, requesting, receiving and
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Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.

		<p>administering current validated POST PELLET-B exams, staffing and proctoring exams, scheduling and holding oral boards and other necessary testing (Critical and medical/psychological exams for example), conducting a background process, and preparing the training program. Supporting these steps is challenging as they require work from HR, BPD's Personnel and Training as well as the Communications Center personnel.</p> <ol style="list-style-type: none"> 2. HR and BPD have committed to holding at least two PSD I recruitment periods per year. BPD created a Recruitment and Retention Unit that contracted with an outside firm that expanded advertising and recruitment efforts to reach more candidates. The Recruitment and Retention Unit now tracks all interested applicants, follows up with them about testing dates and the overall process, while encouraging and scheduling them to sit-along to experience the PSD position. 3. BPD has streamlined the hiring process from application to background and through to hiring. From reviewing the recruitment cycles from 2019, holding tests more frequently could not be supported from a hiring or training process standpoint. As hiring lists were nearing exhaustion, we found that the next recruitment period was only weeks away. 4. After informally polling other surrounding agencies we found that even those who posted "open and continuous" hiring followed a similar schedule as BPD has implemented. This often left applicants applying and not hearing back for months, until the actual exam date. This process is essentially no different than administering several open recruitments annually. 5. One root cause of the PSD staffing shortage is that a majority of our hires cannot pass the training program. Over the last 12 years we have failed / forced to resign 55% of our Public Safety Dispatcher hires in training. Considering that number in relation to police officer hires, we failed / forced to
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<p>Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p>		
		<p>resign 16% of our police officer hires in training over the same time period. If we had a 55% fail rate of police officers over the last twelve years, we would have only 105 police officers working for us today. If we retained just ten percent more Public Safety Dispatcher hires over that time period (still failed 45%), we would be fully staffed today. In response to this, we are examining and improving the training program to better support the retention of hires.</p> <p>6. In order to expand the applicant pool, we have lengthened the time period for applicants to submit applications to 4-6 weeks. City job openings that are not open and continuous typically are not open longer than 3 weeks.</p> <p>BPD is committed to increasing staffing and has determined that from an efficiency and customer service standpoint, holding set recruitment periods is a more direct and manageable plan, while the benefits of open and continuous acceptance of applications are negligible.</p>
2.2	<u>Recommendation:</u>	Work with Communications Center staff to create a specific recruitment plan for dispatcher positions including recruitment events and marketing material. Use recruitment best practices to reach potential applicants and increase the number of applicants.
	<u>Implementation Date:</u>	Initial expected implementation date: In progress since 2018, the marketing firm is expected to begin work by May of 2019.
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Recruitment of a compassionate, competent, talented and diverse workforce is a priority for the entire department, and has been a challenge over the last several years due to a variety of reasons. Creation of a more specific plan for dispatcher positions can help reach potential applicants and increase the total number of applicants. Management recognizes the importance of both hiring and retaining applicants through the training program as being a key element in overcoming the staffing shortage.</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.

		<p>The Department created a Recruitment and Retention Team in 2018 in order to address the departmental recruitment needs. This was the first step in setting out a concrete plan. This team has developed goals and priorities, with very specific tasks. The goals include better tracking of recruitment efforts, creation of recruitment videos, attending recruitment events, hiring a marketing firm to assist with web design, employment brochures and literature, social media outreach and other advertising avenues.</p> <p><u>1st Status Update (11/12/2019): Implemented</u></p> <p>Recruitment and Retention Team continues to actively recruit and implement new strategies for reaching a diverse and broad group of Communications Center applicants. Communications Center personnel have been included in recruitment materials, interview processes, applicant “sit alongs”, and applicant outreach. On September 24, 2019 BPD launched a recruitment-specific website, www.joinberkeleypd.com, and accompanying social media accounts all specifically designed for BPD by an experienced marketing firm. This included recruitment videos, language, and images specifically targeting potential Communications Center applicants.</p> <p>BPD implemented a program (“Text bpdjobs to (510) 399-1814) that leads applicants through immediate response text conversations where recruiters can gather information on applicants quickly and efficiently, and applicants can be provided testing and job information.</p> <p>Another new strategy implemented during the most recent recruitment period included advertising on a worldwide employment related search engine (indeed.com). One of the Supervising Public Safety Dispatchers personally contacted the more than 600 applicants once the application period was open to inform them of such and to provide them with POST test preparation materials and other test information. She also coordinated sit-alongs with those interested in doing so.</p>
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<p>Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p>	
<p>2.3</p>	<p><u>Recommendation:</u></p> <p>Identify and implement feasible option to improve turnaround time on background checks for dispatcher positions. This can include outsourcing background investigations or working with Human Resources to ensure that the Department is able to complete all background investigations in a timely manner.</p>
	<p><u>Implementation Date:</u></p> <p>Initial expected implementation date: In progress since 2018. In April of 2019 the Department contracted with a background investigation firm that can complete up to three backgrounds at a time with a one month turn around. The Department also hired a retired BPD officer to complete backgrounds on a part time basis. This retiree has extensive experience conducting background investigations for the Department. The Department is experimenting with now assigning multiple categories of backgrounds out at one time, instead of exhausting higher categories before moving on.</p>
	<p><u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u></p> <p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. The long background check process has been an impediment to successful recruitment and hiring for some time.</p> <p>The above described Recruitment and Retention Team has also identified improving the background investigation process as a critical task. Plans were considered to dedicate current employees as background investigators, hire independent background investigation companies or do some combination of the two. The proposed plan to affect change in this area is to hire an independent but highly experienced background investigation firm that can rapidly complete quality background investigations, continue to use Department employees to complete background investigations, and also continually evaluate and adapt practices.</p> <p><u>1st Status Update (11/12/2019):</u> Implemented</p> <p>Two independent background investigation firms are working with BPD to complete backgrounds. Turn-around times have met promised delivery dates, with most being completed within a month. This has relieved pressure on</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.		
		internal background investigators and significantly shortened the time from application period to job offer. Data is being collected and reviewed regularly regarding turn-around times. This current pace will allow BPD to remain swift and competitive while hiring quality applicants and also ensure that we can hold multiple recruitment periods in a single year.
2.4	<u>Recommendation:</u>	Design a way to retain staff that are unable to pass the Police Desk training, for example, keep staff as PSD I and have them work as a call taker or create a new job classification for a call taking position.
	<u>Implementation Date:</u>	Initial expected implementation date: We want to have our final proposal for the call taker and revisions to the PSD classifications by June and implement by fall 2019.
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Historically, many trainees have gained proficiency in call taking, demonstrated excellent customer service skills and professionalism, but could complete the training program due to their inability to pass Police Desk training.</p> <p>Hiring more full time call takers would improve staffing levels, greatly relieve overtime required by dispatchers, significantly reduce overtime costs and allow us to meet NENA minimum staffing requirements. Once the Call Taker classification is approved, it would help Management to potentially retain valuable employees by offering them a position in a different classification they are already qualified to work.</p> <p><u>1st Status Update (11/12/2019): Will Not implement</u></p> <p>Call Taker proposal written and subsequently approved by the Chief. Initial meeting held with affected bargaining unit and Human Resources. Union voiced concerns about separating job duties within the Communications Center and the Call Taker position being misused. Next steps include Human Resources reviewing job classification and conducting comp survey, followed by BPD and HR meeting again with the union. Union is considering submitting counter proposal to Call Taker position, to possibly rewrite</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.

		<p>the existing PSD I position to achieve similar retention goals. Once finalized, updated job classification will then go to the Personnel Board for approval. Estimated completion Spring of 2020.</p> <p>After meeting on August 28, 2019 with HR about the overall process, and the Union about the specifics of the job position, a fresh assessment was conducted by Communications Center leadership to include reviewing more recent years of trainees. It became clear that the majority of those failing the training program were failing due to inability to pass call taking, and that the call taking training was often extending over six months. The most recent trainee who failed due to inability to pass Police Desk who would have been qualified to work in the Call Taker position was in 2011.</p> <p>A determination was made to focus on improving the training program for Call Taker training (and overall training program) to increase the success rate for trainees moving from PSD I to PSD II. This would also alleviate the Union's stated concerns. Additionally, BPD will conduct a review of both the training program as well as the feasibility/benefit of moving forward with a Call Taker position at the next Audit Status Update.</p>
2.5	<p><u>Recommendation:</u></p>	<p>Evaluate the results from dispatcher recruitment routinely (e.g., annually or at the end of a recruitment cycle) to determine areas for improvement. Update recruitment plans.</p>
	<p><u>Implementation Date:</u></p>	<p>Initial expected implementation date: Evaluation and more robust data collection on applications began in late 2018. By the summer of 2019 the Department should begin to have an adequate data set to review.</p>
	<p><u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u></p>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Recruitment has changed over the last several years, and competition for qualified candidates is great among agencies. Continual evaluation of Departmental efforts will</p>

<p>Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p>		
		<p>be critical to staying abreast of best practices and successfully hiring quality candidates.</p> <p>The Department plans to improve tracking and review of the number of applicants, how successful applicants are through the process, and where they most often are "lost" in the process. The Department also plans to review these results in line with testing processes in order to adjust as necessary.</p> <p><u>1st Status Update (11/12/2019):</u> Implemented Personnel and Training, working in conjunction with the Communications Center, now tracks applicant progress through the recruitment, testing, hiring and training process. Data collected includes information regarding where the applicant/employee was "lost" and what steps are in place or required to allow the applicant (or future applicants) to successfully move forward in the process. Data is reviewed at each stage, and at the end of each cycle will be assessed for effectiveness.</p>
<p>2.6</p>	<p><u>Recommendation:</u></p>	<p>Implement an automated scheduling software that has built-in decision-making capabilities to automatically fill shifts based on specified qualifications and staff availability.</p>
	<p><u>Implementation Date:</u></p>	<p>Initial expected implementation date: As of April 2019, there have been presentations by two separate software vendors. There is a plan to research a third vendor's software (Tyler Technology) at an upcoming annual conference. DoIT suggests implementing a scheduling software in line with other technology upgrades surrounding payroll (ERMA). The Department anticipates that review of available products and decisions as to whether to move to Implementation could occur in late Fall of 2019.</p>
	<p><u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u></p>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Implementation of scheduling software could help relieve the current personnel engaged in scheduling, create a feeling of greater fairness and control which would be a morale boost. This would also allow for greater review over how much overtime individuals are working in order to ensure their wellness and that they are taking enough time</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.		
		<p>off. The Department is interested in balancing the above opportunities with the challenges and expense of implementing a new software solution.</p> <p>The Department has been communicating with and working alongside DoIT, union representatives and outside vendors to explore various scheduling software options. Efforts are also underway to identify best practices in other jurisdictions.</p> <p><u>1st Status Update (11/12/2019): Partially implemented</u></p> <p>Project to research, identify and recommend departmental scheduling software is underway. Team is led by a BPD Lieutenant with support from DoIT (including onsite DoIT employee (APA II)) and will include BPD stakeholders and representatives from various potentially affected unions. Vendor demonstrations have been conducted in order to clarify software capabilities and needs in preparation or RFP process. Stakeholder interviews to be conducted to identify the specific needs and concerns of work groups. This project is expected to move to RFP by Spring of 2020.</p>
2.7	<u>Recommendation:</u>	Decrease the concentration of overtime among dispatchers.
	<u>Implementation Date:</u>	Initial expected implementation date: Change in overtime distribution procedures implemented in 2018.
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. For the past five years, the Communications Center's overtime has averaged roughly 300 hours per week in order to meet our minimum staffing requirements. Approximately 100 additional hours would be necessary to meet NENA minimum staffing levels.</p> <p>Although we cannot reduce overtime levels until we hire more dispatchers and they successfully complete either the PSDII or call taking training program, in 2018 the scheduling supervisor was directed by the Communications Manager to re-order the way overtime is assigned in order to more equitably distribute overtime hours between all dispatchers, instead of the majority of hours falling to a portion of staff.</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.		
		<p><u>1st Status Update (11/12/2019): Partially implemented</u></p> <p>The scheduling supervisor continues to make every effort to equally distribute the overtime hours required to meet minimum staffing needs amongst all personnel. Due to the additional burden on staffing due to hiring and training new dispatchers, it will remain impossible to decrease the total number of overtime hours required until trainees successfully complete the training program. Each trainee who completes the training program will cause a reduction to overtime hours of 40-50 hours per week. Scheduling software is also anticipated to help evenly distribute overtime assignments, ensure that safe limits are met and not exceeded, and allow for review of staffing levels. Additional Communications Center personnel to provide relief anticipated to be operational by February 2020.</p>
2.8	<u>Recommendation:</u>	Develop and implement a Communications Center training plan to ensure compliance with POST training requirements. Evaluate training processes and update training plans routinely.
	<u>Implementation Date:</u>	Initial expected implementation date: In progress since January of 2019. The goal is that by end of 2019, all Communications Center Personnel will be on track with POST requirements (nearly half completed with all training hours at the halfway point of the training cycle)
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Ongoing training of employees is a priority for the Department. The Department sees the value and benefit of these training opportunities for the employee's development and wellness, the Department's mission, and the quality of service the community ultimately receives.</p> <p>In January of 2019 the Communications Center leadership team implemented a plan to track POST training requirements along with yearly Performance Appraisal Reviews. At each employee's PAR anniversary date, their supervisor will review the number of hours of training received to date. Additionally, Personnel and Training will conduct an annual review of all Communications Center personnel to track POST training time. Finally, one of the Public Safety Dispatch Supervisors was assigned the job to</p>

Finding 2: The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.

		<p>work as a liaison with Personnel and Training for scheduling POST classes as well as directly with dispatchers to locate and sign dispatchers up for course of interest.</p> <p><u>1st Status Update (11/12/2019):</u> Implemented</p> <p>Communications Center leadership, in partnership with Personnel and Training, now monitor training hour progress annually (tied to PARs) and quarterly with a goal of training hours being completed throughout the training cycle. At the third quarter of year one of the two year cycle, Communications Center personnel have surpassed training hours that were accomplished near the end of the last two year cycle. Plan implemented to approve a minimum of two Communications Center personnel to training each month, and complete at least two hours of online training as well. In an effort to also improve morale and overall health, focus has been placed completing training hours in classes that provide employee wellness and development.</p>
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Finding 3: Working conditions adversely affect dispatcher morale.

<p>3.1</p>	<p><u>Recommendation:</u></p>	<p>Create a comprehensive stress management program specifically for the Communications Center that includes the following:</p> <ul style="list-style-type: none"> • Stress management training for all staff, 8 hours minimum during career • Access to on-site educational resources to help with stress and related risks, e.g., directory of local therapists specializing in treatment of stress and traumatic stress disorders and City programs that provide information on how and where to access help • Procedures assuring participation of staff in critical incidence stress management activities (e.g., debriefing sessions when involved in traumatic call events) • A Peer Support Program • Comprehensive, ongoing training on structured call-taking processes
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Finding 3: Working conditions adversely affect dispatcher morale.		
	<u>Implementation Date:</u>	Initial expected implementation date: All Communications Center Staff to receive 8 hours training by December, 2019.
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. The Department recognizes the negative effects of stress on employees and utilizes Peer Support Counselors, a Crisis Intervention Team as well as the Employee Assistance Program and most recently the Headspace website which promotes mindfulness and meditation.</p> <p>Work with Personnel and Training to Expand current stress management toolset to include a mandatory 8 hour stress management course for all Communications Center staff.</p> <p><u>1st Status Update (11/12/2019):</u> Implemented</p> <p>Multiple courses and online learning materials related to Communications Center/dispatcher stress management have been identified. Communications Center personnel have begun attending this course (goal set of at least two Communications Center personnel attending a class per month) and the department will continue to provide these training opportunities. BPD as a whole continues to aggressively work on improving the overall wellness and improving stress management skills of personnel. All employees have access to a meditation app to support stress reduction, and have access to a fully-equipped gym in the building.</p>
3.2	<u>Recommendation:</u>	Develop and implement plans to address workplace cleanliness and equipment and furniture maintenance and replacement.
	<u>Implementation Date:</u>	Initial expected implementation date: Beginning fall 2018, the Communications Center receives a deep cleaning on a quarterly basis. Standalone Hepa filters will be purchased by July 2019.
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Management recognizes the need for improvement in the cleanliness of the Communications Center.</p>

Finding 3: Working conditions adversely affect dispatcher morale.		
		<p><u>1st Status Update (11/12/2019): Implemented</u></p> <p>BPD has implemented a quarterly deep-cleaning schedule. After reviewing the current Hepa filters, it was determined that purchasing new individual filters for each console was not financially prudent, as we have already identified that the existing console must be replaced within the next year. BPD purchased and will install two wall mounted Hepa filters that can work in conjunction with existing (or replacement systems) and are relocatable once a new location /expansion is decided. Additionally, the carpet was replaced in the last 8 years with a low pile, sound reduction carpet that consisted of individual squares so that dirty/stained or otherwise worn areas or squares could be switched out. Replacement timeline for that product is being monitored. Further, the individual console chairs are regularly replaced and over the last several years we have worked with the COB Occupational Health and Safety Specialist to purchase chairs to conform to the specific ergonomic needs of individual dispatchers.</p>
3.3	<u>Recommendation:</u>	Conduct regular supervisor level meetings to share information about operations and staffing. Use these meetings to improve understanding of the supervisor role, identify problems, discuss changes that may affect operations, and establish communications plans for distributing information to all staff.
	<u>Implementation Date:</u>	Initial expected implementation date: Fully operational by October 2019
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. Management recognizes the need for improved communication across all ranks.</p> <p>The Communications manager is in the process of creating a web based information portal which includes sections for polices, Supervisory blog, Communications Center blog, resources, health and wellness, new dispatcher training, and links to web based training opportunities for tenured staff.</p>

Finding 3: Working conditions adversely affect dispatcher morale.		
		<p><u>1st Status Update (11/12/2019): Implemented</u></p> <p>The Communications Manager and supervisor group now conduct formal weekly supervisor level meetings as well as informal group discussions regarding operational needs, project updates and current issues that need addressing. Information from these meetings is shared out to the entire Communications Center via email from the manager or Lieutenant.</p>
3.4	<u>Recommendation:</u>	Routinely have Police and Fire staff meet with all Center Supervisors to solicit feedback on Center operations and to address any issues. Use these meetings to improve understanding of the dispatcher role and current policies of public safety, identify problems that should be evaluated for further discussion, and discuss known and expected changes that may affect the Communications Center.
	<u>Implementation Date:</u>	Initial expected implementation date: May 2019
	<u>Status of Audit Recommendation, Corrective Action Plan, and Progress Summary:</u>	<p>Status at time of audit issuance (4/25/19): Not Implemented.</p> <p>Agree. The Department recognizes the need and benefit of such meetings. Logistically this has been challenging due to the various shifts and workdays of personnel from other divisions.</p> <p>Invite Police and Fire staff to attend the weekly Supervisor meeting whenever problems are identified or whenever known or anticipated changes may affect the Communications Center.</p> <p><u>1st Status Update (11/12/2019): Implemented</u></p> <p>BFD attends the formal weekly meeting once a month, or more frequently as needed. BFD and BPD leadership conducted a topic specific meeting to discuss potential physical expansion needs, Emergency Medical Dispatching and the opening of the Communications Center Manager position due to retirement.</p>

Audit Recommendation Status
911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

INFORMATION CALENDAR
April 14, 2020



Office of the City Manager

INFORMATION CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Public Works Capital Improvement Projects: Planned Projects for Fiscal Year 2021

SUMMARY

This report provides an update on planned improvements to the City's public facilities and infrastructure for the Fiscal Year (FY) 2021 Proposed Capital Improvement Plan (CIP). No specific action is required of the Council other than to provide comments to staff on the information presented.

CURRENT SITUATION AND ITS EFFECTS

The delivery of high quality capital projects that improve and maintain the City's infrastructure is a central part of the Public Works Department's (Public Works) mission. Public Works matches available funding with needed capital improvement and infrastructure maintenance projects, and also leverages one-time and outside sources of funding, whenever possible. Currently, Public Works is operating at full capacity delivering a robust capital program that addresses road pavement conditions with an emphasis on complete streets; adds green infrastructure; provides sewer system upgrades; makes improvements to the City's transportation network; and improves City facilities and buildings. The Engineering and Transportation Divisions within Public Works are tasked with delivery of the capital projects. This report highlights the capital plan for FY 2021.

Engineering Division

The Engineering Division focuses on the preparation of plans and specifications, and construction delivery of capital assets and infrastructure. The process also involves preparation of feasibility studies, environmental reviews, and public outreach. Most projects and programs fall under one of the following categories: facilities, streets and roads, storm drains, sanitary sewer, and sidewalks.

Facilities:

Public Works maintains 56 facilities with the City of Berkeley. Facility capital projects involve construction of new facilities, or restoration or improvements to existing facilities. Not included in this report are routine maintenance projects which involve repairs to minor components of existing facilities.

The major facilities projects that will be completed in FY 2021 include:

North Berkeley Senior Center (T1) - The North Berkeley Senior Center (NBSC) has been in operation for over 40 years and is in need of comprehensive upgrades. The work includes roof replacement, photovoltaic panels, mechanical and plumbing improvements, electrical improvements, foundation upgrades, restroom improvements, painting, as well as new flooring, walls, doors, and finishes. The work also includes seismic upgrades to the building and the installation of a new fire sprinkler system. Construction started in June of 2019 and is estimated to be completed in August 2020 with full move in by September 2020.

Mental Health Services Building (T1) - The Berkeley Adult Mental Health Services Center will serve Berkeley and Albany community members and their families, living with serious and persistent mental illness. This facility is critical for the Housing & Community Services Department (HHCS) to provide their intended adult services in one location, accessible to community members needing care. The upgrades and renovation of this building comprise of seismic upgrades and tenant improvements to offices, exam and psychiatric rooms. The work also includes roof replacement, photovoltaic panels, mechanical and plumbing improvements, electrical improvements, foundation upgrades and a new fire sprinkler system. Construction of the project started in April 2019 and is estimated to be completed by July 2020 with full move in by August 2020.

Electrical Charging Station - This project will install charging stations at four locations in the City that include the Corporation Yard, North Berkeley Senior Center Building (NBSC), 2180 Milvia Street Building (CCB), and 2640 Martin Luther King Jr. Way Building (Mental Health). Currently, the design is being developed for accommodating four charging stations at the NBSC, two charging stations at the Mental Health building, four charging stations at the CCB, and ten charging stations at the Corp Yard. Construction will start in June 2020, and is expected to be completed in November 2020.

Other Facilities projects that will be completed in FY 2021 include:

- Marina Maintenance Building Electrical and Structural Upgrades (T1)
- Corp Yard Maintenance Building Electrical and Structural Upgrades (T1)
- Public Safety Building Leak Repair
- Telegraph Channing Elevator Replacement

- Fire Station 3 and 4 Roof Evaluation
- Library Interior Upgrades
- Library Stucco Construction
- 125/127 University Building Upgrade
- Police Evidence Storage Upgrade

Streets & Roads:

Engineering manages 216 miles of streets citywide. On average the city rehabilitates 3.2 miles of roadway a year. The street projects which will be underway in FY 2021 include:

FY 2020 Street Rehabilitation - This project includes the pavement rehabilitation, drainage, and concrete work (curbs, gutters, sidewalks, and ramps) of approximately 2.6 miles of various streets throughout the City as identified in the City's 5-Year Street Rehabilitation Plan. The project is currently in the contract award stage. The project is scheduled to start construction in June 2020 and to be completed in December 2020.

FY 2021 Street Rehabilitation – This project includes the pavement rehabilitation, drainage, and concrete work (curbs, gutters, sidewalks, and ramps) of approximately 3.8 miles of various streets throughout the City as identified in the City's 5-Year Street Rehabilitation Plan. The project is currently in the design stage. The project is scheduled to start construction in June 2021 and to be completed in December 2021.

Ward Street - Acton Street to San Pablo Avenue and Monterey Avenue – The Alameda to Hopkins Street T1 Street Improvements – This project includes the pavement rehabilitation, green infrastructure, drainage, and concrete work (curbs, gutters, sidewalks, and ramps) of approximately 0.9 miles of streets. The project is currently in the bidding stage. The project is scheduled to start construction in July 2020 and to be completed in December 2020.

Storm Drain:

The City's engineered storm drain infrastructure consists of approximately 78 miles of underground pipes, manholes, catch basins and cross-drains. This stormwater infrastructure is over 80 years old and in need of ongoing rehabilitation. The major projects that will be underway in FY 2021 include:

Measure M Low Impact Development (LID) Woolsey Street - This project will provide a cistern and bio-swale on Woolsey Street between Adeline Street and Tremont Street that will provide storm water treatment and flood control benefits as identified

in the Watershed Management Plan. The project started construction in January 2020 and is scheduled to be completed in July 2020.

Kains Trash Rack – This project will restore a section of lower Codornices Creek between Kains Avenue and San Pablo Avenue that includes replacement of a trash rack. The project is currently in the bidding stage. The project is scheduled to start construction in July 2020 and is scheduled to be completed in October 2020.

Green Infrastructure – Installation of Low Impact Development (LID) improvements; multi-benefit GI project at the Piedmont median and traffic circle at Channing, and at various other locations throughout West Berkeley. These improvements will provide storm water treatment as identified in the City's recently adopted Green Infrastructure (GI) Plan.

Storm Water Master Plan - This project will develop a comprehensive Storm Water Master Plan, incorporating the recent GI Plan, and Watershed Management Plan. The Master Plan will also include updates to the City's existing hydraulic model for the storm drainage infrastructure, condition and capacity assessments, and prioritization of future capital improvement rehabilitation needs for the City's storm drainage program

Sanitary Sewer:

In September 2014, the City entered into a Consent Decree with EPA along with EBMUD and its other satellite agencies. The Consent Decree requires the City to rehabilitate an average of 4.2 miles of sewer pipeline annually based upon a three-year rolling average, and rehabilitate maintenance holes, perform acute defect repairs within 12 months, perform 15 miles of CCTV inspection annually, and perform routine cleaning of hot spot areas.

The major sewer projects that will be completed in FY 2021, to assist in meeting the Consent Decree requirements include:

MLK, Cedar, et al. – This project will construct improvements to the sanitary sewer system that rehabilitate approximately 6,000 linear feet (LF) of sanitary sewer main and associated lower laterals and maintenance holes.

Walnut, Spruce, et al. – This project will construct improvements to the sanitary sewer system that rehabilitate approximately 6,500 LF of sanitary sewer main and associated lower laterals and maintenance holes.

Parker, MLK, et al – This project will construct improvements to the sanitary sewer system that rehabilitate approximately 8,600 LF of sanitary sewer main and associated lower laterals and maintenance holes.

Sanitary Sewer Master Plan – This project will develop a comprehensive Sanitary Sewer Master Plan. The Master Plan will include updates to the City’s existing hydraulic model, prioritization of future sewer capital improvement rehabilitation, development of 5-year and 15-year CIP programs, and a financial analysis to assess the health of the sewer fund. This work is in progress with completion anticipated by the end of summer 2021.

Other Sanitary Sewer projects that will be worked on in FY 2021 include:

- Urgent Sewer Repair Project FY 2021
- FY 2021 Maintenance Hole Rehabilitation Project
- Animal Shelter Lift Station

Sidewalks:

The major sidewalk projects that will be completed in FY 2021 include:

FY 20 Sidewalk Project – This project will use concrete sidewalk shaving as an alternative to concrete sidewalk replacement. The locations for sidewalk shaving will be established based on the existing 50%-50% sidewalk program wait list. Concrete shaving utilizes a technique that removes a sidewalk uplift (from approximately one-half to three inches in height) to mitigate potential tripping hazards without replacing the entire concrete section. This results in significant cost savings for areas that are applicable for this type of mitigation. The locations for sidewalk shaving will be established based on the existing 50%-50% sidewalk program wait list. Bids for these services opened in fall 2019. Construction is expected to start in April 2020.

FY 21 Sidewalk Project – This project will replace concrete sidewalk in locations that were not suitable for shaving. The locations for sidewalk replacement will be established based on the existing 50%-50% sidewalk program wait list and the FY20 Sidewalk Shaving project. The project is currently in the preliminary design stage. The project is scheduled to start construction in January 2021 and to be completed by end of year 2021.

Other:

Underground Utility District (UUD) No. 48 Project – This project will underground the overhead utilities in the Grizzly Peak area of Berkeley within UUD No. 48. UUD 48 includes 175 parcels along Grizzly Peak Boulevard. between Hill Road and the southeastern City limit, Summit Road between Atlas Place and the southeastern City limit; Summit Lane, Senior Avenue, Harvard Circle, Fairlawn between Avenida Drive and Senior Avenue, and Avenida Drive between Queens Road and Grizzly Peak Boulevard. Currently, the City is in the process of acquiring easements, and PG&E is finalizing design. Construction of the project is expected to bid in July 2020 and start construction in November 2020.

American Disabilities Act (ADA) Transition Plan - This plan provides for a path forward to achieve a uniform level of physical access to the City's buildings, streets, parks, and facilities, and consistent program access for the public and people with disabilities. The City of Berkeley developed its existing ADA Transition Plan in 2001 in accordance with statutory requirements in place at that time. Now, that original plan will be expanded and updated to become more comprehensive and conform to current federal/state legislative standards and requirements. Accordingly, the City released an Request for Proposals (RFP) to produce a new ADA Transition Plan, and awarded a contract for this work to Disability Access Consultants (DAC), at the December 11, 2018 City Council meeting. Disability Access Consultants (DAC) will lead surveys and reviews of City ADA policies and procedures; conduct surveys of City buildings and public right-of-ways and parks to determine ADA compliance. The results of this surveying along with public input, will be used to develop a final ADA Transition Plan Document. DAC is currently scheduled to accomplish this scope of work by end of summer, 2020.

Transportation Division

The mission of the Transportation Division is to make effective use of available resources to provide services, projects, and policies that support safe and effective movement of people and goods throughout the City of Berkeley. The values are focused on safety, equitable mobility, and sustainability. As such, the goals are to improve transportation safety; encourage transit use, bicycling, and walking; and address a variety of transportation issues. Capital projects in support of these goals include; street improvements; traffic calming measures such as signs, markings, striping, and traffic circles; and bicycle and pedestrian infrastructure improvements such as pathways, on-street facilities, and bicycle parking. The work of the division generally falls into the following categories: Traffic Engineering, Parking Services, Transportation Planning, and Transportation Capital Project Design.

In FY 2019, after delivering baseline services, including operations and maintenance, approximately 10% of staff time in the division, roughly 3.3 full-time employees (FTE), remained for management of consultants and contractors used to design and deliver capital projects. As part of the FY 2020 budget Council approved four new engineering and administrative positions in Transportation and a fifth in engineering to support planning, funding, design, and delivery of the existing capital program. Three of those positions have been filled, and the remaining two are in the recruitment process.

Traffic Engineering:

Traffic Engineering oversees installation and maintenance of traffic control devices, signs, roadway markings, traffic calming and overall operation of existing transportation facilities. Projects that will be completed, continuing, or beginning in FY 2021 include the following:

Gilman Street/I-80 Interchange and Pedestrian Overcrossing - Traffic Engineering serves as a key stakeholder and design partner to the Alameda County Transportation Commission in preparation of the Environmental Impact Report (EIR) for the interchange improvement project. The EIR was completed in spring 2019. Currently efforts are on the way to complete construction plans and right of way acquisitions. Construction is projected to start in winter 2021 and is expected to last 24 months.

San Pablo Avenue at Ashby Avenue Intersection Signal Improvements - Design for this project (funded largely by mitigation funds from Bayer) to widen the westbound approach to the intersection in order to accommodate a left-turn lane should be complete in spring 2020. Permitting from Caltrans is expected in autumn 2020 with construction anticipated to begin in early 2021

Projects completed in or expected to be completed in FY 2020 include John Muir Safe Routes to School project to improve pedestrian crossing of Claremont Avenue and *Ashby Avenue/Tunnel Road Corridor Bike and Pedestrian Safety Improvements* funded by approximately \$2,000,000 in one-time funding from Caltrans, augmented by approximately \$300,000 in mitigation funds from Safeway.

Parking Services:

Parking Services manages all on-street meters and City owned off-street public parking lots and garages, as well as the Residential Shared Parking and goBerkeley programs. The parking projects include:

Center Street Garage Reconstruction – Working with Facilities Engineering, Parking Services is pursuing a Parksmart Gold sustainable garage certification (similar to LEED Platinum). Parking Services has completed installation of charging capacity for up to fifty-seven (57) electric vehicles and secured approvals from PG&E to begin using the photovoltaic panels on the roof of the garage.

Transportation Planning:

Transportation Planning is responsible for developing and updating the Bike and Pedestrian Master Plans every five years to maintain City eligibility for both grants and pass through funding for Local Streets and Roads and Bike and Pedestrian Capital Projects. Transportation Planning also produces various policies and programs and updates the Berkeley Strategic Transportation Plan every two years to track and prioritize the hundreds of Council supported projects valued at close to \$500,000,000 in order to seek grant funding and plan for their delivery over the course of 30 years. Major Transportation Planning projects include:

Southside Complete Streets - This is the first of a series of complete streets projects to be incrementally developed and implemented on Bancroft Way, Telegraph

Avenue, Dana Street, and other streets in the area south of UC-Berkeley Campus. The City will be working in partnership with AC Transit and local stakeholders and has been awarded approximately \$7.1 million in grant funding for design and construction of these improvements which will be ongoing in FY 2021.

Vision Zero Action Plan - Expected to be adopted by Council in FY 2020 this will join the Bike Plan and Pedestrian Master Plan in identifying and prioritizing capital projects, which along with education and enforcement efforts are intended to reduce fatal and sever traffic related collisions in Berkeley to zero by 2028.

Shared Mobility – This is primarily a program related to private operators providing shared transportation devices for the public to use for short trips. The Bike Share system which includes Berkeley, Emeryville, Oakland, San Francisco, and San Jose launched at the beginning of FY 2018 is planned for expansion in FY 2021. The current fleet of 400 bikes in Berkeley is planned to expand by adding 850 dockless ebikes in quarterly increments over FY 2021. As part of this expansion the City will receive \$63,750 to spend on installation of new public bike racks. An Electric Scooter share program is planned to launch in FY 2020 with up to three operators, pending resolution of legal concerns related to similar programs in other cities. By FY 2020 electric moped providers will be able to provide services through the existing one-way car share program which will be revised to be a one-way vehicle share program open to vehicles that have a license plate and require a driver license to operate. Revel Scooters is proposing to provide electric moped service under this program and City staff will evaluate the need to adding metered motorcycle parking zones around the City to help manage this new service.

Transportation Capital Project Design:

The Capital Project Design group is tasked with turning concepts from Transportation Planning, Traffic Engineering, Master Plans, and other sources into construction ready Plans, Specifications, and Estimates and putting the projects out to bid. Capital Project Design staff then continue to support the project through construction so that the design objectives and funding requirements are achieved. Significant Transportation capital projects being developed include:

Shattuck Avenue Reconfiguration – This project addresses pedestrian safety needs by changing traffic flow on Shattuck Avenue between University Avenue and Allston Way is funded by a combination of federal grants, SOSIP and other fees paid by private developments, UC LRDP mitigation funds from UC Berkeley, and State gas tax funds. The project solicited construction bids in the autumn 2018 and began construction in early 2019, with completion scheduled in summer 2020.

Milvia Bikeway Project – Using \$350,000 in Measure B grant funds awarded for FY 2018, the City will prepare the preliminary design for improvements to the Milvia Bike Boulevard through downtown as designated in the 2017 Bicycle Plan. Conceptual

design was completed in late 2019, and detailed design is scheduled to begin in early spring 2020.

9th Street Pathway and Crossing of Ashby - This \$1,600,000 project funded by a State Active Transportation Program grant and a County Vehicle Registration Fee grant is currently under design and is planned to commence construction in the second quarter of 2020. This project will complete the last remaining gap in the Ninth Street mixed-use path connecting Berkeley and Emeryville.

Railroad Crossing Safety Improvements and Quiet Zone - The City has been awarded \$1.5 million in Measure BB grant funding for environmental planning and design of this project in FY 2019 and 2020. The City will then seek approximately \$10 million in grant funds to construct safety improvements at the seven at-grade railroad crossings in Berkeley. This is intended to also establish a railroad-quiet zone where trains in West Berkeley will not continuously sound horns. The project is currently in the conceptual design stage.

Sacramento Street and North Berkeley BART Pedestrian Crossing Improvements – Using an Active Transportation Program Cycle 3 Augmentation grant for design and construction, the City is commencing design in FY 2009 and will complete construction in FY 2021 to improve pedestrian crossings of Sacramento Street between Virginia and Addison.

Recently completed projects include the grant funded *LeConte Elementary Safe Routes to School* project to build pedestrian crossing improvements on Shattuck near Sylvia Mendez School, and the grant funded *Gilman Street Railroad Crossing and Sidewalk Safety Improvements* to add sidewalks on Gilman Street across the railroad crossing. This project has received an American Public Works Association award.

BACKGROUND

Public Works manages the construction and maintenance of public buildings, streets, sewers, sidewalks, the storm drain system, and other structures in the public-right-of-way. The City is responsible for maintenance of ninety-five facilities, not including Library facilities and facilities leased to other entities. These ninety-five facilities include thirty-nine facilities in the Parks Recreation and Waterfront inventory and fifty-six facilities in the Public Works inventory. There are 216 miles of streets, 3,200 City-owned streetlight poles, 78 miles of storm drain system, 254 miles of sewer, and 325 retaining walls, bridges, tunnels, and miscellaneous non-building structures.

Every spring, staff presents to City Council the capital plan for the coming fiscal year. This report highlights the capital plan for FY 2021.

ENVIRONMENTAL SUSTAINABILITY

The City aims to provide safe, green, accessible, and efficient facilities and infrastructure to its residents and business owners. Staff considers the environmental

performance of all capital and major maintenance projects, and seeks to integrate energy and water efficiency improvements into those endeavors.

FISCAL IMPACT

In June 2019, Council adopted the FY 2020-2024 Capital Improvement Program (CIP). The five year CIP sets appropriation and project priorities for the first two fiscal years (FY 2020 and FY 2021) while communicating planned capital projects for the final three years of the plan. The amounts in the table below show the new appropriations planned in FY 2021 to Public Works Capital Projects by capital program from the budget adoption. Some of these amounts may change a bit due to project cost estimates and schedule changes to FY 2020 projects, new funding availability, changing project priorities, and staff capacity. Such changes to the Adopted FY 2021 CIP will be reflected in updates to the Mid-biennial budget for FY 2021, and Amendments to the Annual Appropriation Ordinance throughout FY 2021.

FY 2021 Public Works Adopted CIP	
CIP Program	FY 2021 Adopted
Facilities	\$5,400,000
Sanitary Sewer	\$19,525,412
Storm Drains	\$1,785,000
Sidewalk Repair	\$2,535,000
Street Repair	\$6,975,303
Transportation	\$8,183,116
Other Infrastructure	\$1,032,964
Total	\$45,436,795

CONTACT PERSONS

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 Farid Javandel, Transportation Manager (510) 981-7061
 Nisha Patel, Manager of Engineering (510) 981-6406



Children, Youth, and Recreation Commission

INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Children, Youth, and Recreation Commission
Submitted by: Elizabeth Echols, Chairperson
Subject: Children, Youth and Recreation Commission FY2020 Work Plan

INTRODUCTION

The Children, Youth, and Recreation Commission has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes making recommendations to City Council to further the goals of 2020 Vision; identify the needs and gaps in services for Berkeley Youth; provide support regarding outreach and marketing of programs; and examine out of school time/afterschool resources for Berkeley youth.

CURRENT SITUATION AND ITS EFFECTS

At a regular meeting on November 18, 2019, the Children, Youth, and Recreation Commission approved the Commission's FY2020 Work Plan, which will be used to guide the Commission's work throughout the year.

M/S/C (Freeman/Capitelli/U) to approve the work plan and submit an Information Report to City Council.

Ayes: Batista, Capitelli, Echols, Freeman, Richards

Noes: None

Absent: Taylor

Leave of Absence: None

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public input, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No fiscal impacts identified at this time.

CONTACT PERSON

Steph Chu, Secretary, Children, Youth, and Recreation Commission, 981-5146
Elizabeth Echols, Chairperson

Attachment: 1: Children, Youth, and Recreation Commission FY20 Work Plan

CHILDREN, YOUTH, AND RECREATION COMMISSION ANNUAL WORK PLAN FY20 (Approved on November 18, 2019)

MISSION STATEMENT

The Children, Youth, and Recreation Commission shall be an advisory board and shall seek to achieve equity in policies, programs, planning efforts, activities, and funding associated with youth, families, early childhood education, recreation, and other related City-sponsored activities. The Commission shall advise the City Council on these matters.

- 1. Make recommendations to City Council to further the goals of the 2020 Vision for Berkeley's Children and Youth to close the opportunity gap and ensure that all young people in Berkeley grow up with equitable opportunities to achieve high outcomes and realize their full potential.**
- 2. Identify needs/gaps in City's community and recreation services for Berkeley's youth.**
 - a. Invitations for public input at regular Commission Meetings and report to Council on findings.
 - b. Review program data including, but not limited to, demand, utilization, demographics, and funding for existing programs.
 - c. Make recommendations to Council.
- 3. Examine out-of-school time/afterschool resources throughout community for Berkeley youth.**
 - a. Engage with 2020 Vision staff to document current successes and potential gaps in educational offerings in out-of-school time programs, including afterschool and summer programs.
 - b. Provide recommendations to Council regarding academics in afterschool programs.
- 4. Provide support to Recreation Division staff and make Council recommendations regarding the outreach and marketing of programs to the Berkeley community.**
 - a. Make recommendations to Council regarding approaching outreach through equity lens (entire community), particularly access to scholarships, free programs, and youth employment opportunities.
 - b. Make recommendations to Council regarding city-wide communication (which can include City of Berkeley, Community Agency contractors, and BUSD).
 - c. Review data on outcomes of outreach strategies.
- 5. Coordinate with Parks & Waterfront Commission regarding alignment of future T1 facility improvement and program provision.**
 - a. Develop a tool/rubric to recommend to Council for staff to use when determining alignment for:

**CHILDREN, YOUTH, AND RECREATION COMMISSION
ANNUAL WORK PLAN FY20 (Approved on November 18, 2019)**

- i. Equity/Access
 - ii. Adaptability for program shifts in the future
 - b. Identify opportunities for synergy with other projects.
- 6. Review and recommend revisions to Community Agency Grant application and review process.**
 - a. Document current successes and potential gaps/inconsistencies in scoring and report to Council.
 - b. Develop a process to work closely with 2020 Vision staff to evaluate the progress of grantees.
 - c. Receive quarterly updates on grantees from 2020 Vision staff.
 - d. Make recommendations to City Council regarding RFP outreach to new organizations.



Civic Arts Commission

50

INFORMATION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Civic Arts Commission

Submitted by: Lisa Bullwinkel, Chair, Civic Arts Commission

Subject: Civic Arts Grants Program

INTRODUCTION

In the recently updated Arts & Culture Plan, 5 primary goals were identified:

- Goal 1: Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations
- Goal 2: Increase Investment in a Vibrant Arts Community
- Goal 3: Expand High Quality and Equitable Arts Education
- Goal 4: Produce More Public Art Throughout Berkeley
- Goal 5: Expand the City of Berkeley's Organizational Capacity to Better Serve the Arts Community

The Civic Arts Grants Program is a tool to meet the Arts & Cultural Plan goals. Several additional grant categories have been or are being created to further this process. Funding is still needed to support the newer grants and the additional number of new applicants.

The Cultural Planning process also foregrounded a commitment to Cultural Equity and the Civic Arts Commission is promoting this in its grant-making process by including cultural equity as a scoring criteria in the guidelines for all grant categories and in the evaluation of potential grants panelists.

At the Civic Arts Commission meeting on January 22, 2020, the following motion was approved: Action: M/S/C (Covarrubias/Passmore) to approve the Report to Council on Civic Arts Grant with noted corrections. Vote: Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Slattery, Tamano; Nays — None; Abstain — None; Absent — Ross.

CURRENT SITUATION AND ITS EFFECTS

- The Civic Arts Grants Program, under the auspices of the Civic Arts Commission is working to achieve all of the Goals listed above.
- The program has successfully allotted funding to **Arts Organizations** since 1991 and to **Individual Artists** since 2016, achieving Goal 2 which is to *Increase Investment in a*

Vibrant Arts Community. The current allotment from the General Fund for these combined grants currently has a funding baseline of \$500,000. In 1999 Grants were awarded to 54 organizations and 12 individuals as follows:

17 Large Art Organizations	\$171,687
20 Mid-Size Art Organizations	\$171,747
17 Small Art Organizations	\$105,488
12 Individual Artists	\$44,411

- In 2018, a **Festival Grant** program was created, specifically allocating prior General Funds budgeted for 17 festivals at \$158,315. In 2019 grants were awarded to 24 festivals as follows:

2 Large Festivals	\$15,062
21 Mid-Size Festivals	\$139,985
1 Small Festival	\$1,189

- At the Council's request, the Commission is creating a fourth category, a **Creative Spaces Capital Improvement Grant**. Funding will need to be appropriated from the General Fund, as these substantial grants will be in the \$50,000–\$100,000 range for three to five applicants annually.

- The Commission is also working on an **Arts in Education Grant** that is currently unfunded. However, this program initially will only require approximately \$50,000 to make a large impact quickly.

- In 2019, for the first time, the grant application review panel was comprised entirely of outside Arts professional who were compensated using a portion of the grants budget. Prior to this, members of the Civic Arts Commission Grant Committee, along with professional grant readers, were scoring the grants. This new method is more equitable and transparent and is in line with best practices as noted in other grant programs.

BACKGROUND

These grant programs have been established to provide equity, transparency, and accountability throughout the art community.

Before the Festival Grant category existed, event producers lobbied individual Council members for funding for their events. This resulted in General Funds in the amount of \$158,315 being distributed annually to only 17 festivals. The process was opaque and inequitable. Furthermore, there was little oversight of the funding. The new Civic Arts Festival Grant category resolved these issues. However, more festivals than before are now applying for the same funding. The need for a larger budget in this category is apparent.

The Creative Spaces Capital Improvement Grant will work to solve Goal 1 above: *Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations*. In the past, when an organization suddenly discovered a leak in the roof or needed to be brought into ADA compliance, or was given the opportunity to purchase its building, it came directly to Council to ask for a large sum of money. The Council has been quite generous and has helped many organizations with these problems. However, that funding was usually unbudgeted and resulted in unanticipated expenditures from the existing General Fund. In addition, many arts organizations did not realize they could ask the Council for this type of funding. Establishing an equitable, transparent, and accountable program will resolve this. The Civic Arts Commission is hoping to fund it with a base amount from the General Fund of \$250,000 annually plus the staff resources to manage the additional category.

The Civic Arts Commission is currently developing an Arts in Education Grant. Its aim is to achieve Goal 3 above: *Expand High Quality and Equitable Arts Education*. To maintain the City of Berkeley's thriving arts scene and "grow our own" art makers and art patrons, exposure and education in the arts should begin when the population is very young (0–5) and continue through adulthood. An Arts Education Grant category could pair teaching artists with teams of classroom teachers to develop integrated units incorporating visual and performing arts to deepen learning in science, math, English, and social studies.

Arts education can be a powerful equity tool to address disproportionate achievement, for example, the urgent challenge of African American student underperformance on the Vision 2020 indicators. Targeted strategies like arts integration and STEAM (science, technology, engineering, arts, and math) can increase students' academic engagement and performance, attendance, and reduce disciplinary referrals.

Furthermore, when an Arts Education grant category is created, additional funding can be tapped, as the California Arts Council requires a one-to-one local funding match.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The Council will need to approve the new grant programs created by the Civic Art Commission.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The Council will need to designate additional funding annually:

Festival Grants	\$91,685 (to bring it up to \$250,000)
Creative Spaces Capital Improvement Grant	\$250,000

Arts in Education Grant	\$50,000
Staffing Resources to Administer	Approximately 0.5 FTE

CONTACT PERSON

Lisa Bullwinkel, Chair, Civic Arts Commission
Jennifer Lovvorn, Secretary, Civic Arts Commission, 981-7533



Parks and Waterfront Commission

INFORMATION CALENDAR
April 14, 2020

To: Honorable Mayor and Members of the City Council
From: Parks and Waterfront Commission
Submitted by: Jim McGrath, Chairperson
Subject: Council Referral – Commemorative Tree Program

INTRODUCTION

On October 17, 2017, the Council approved the following referral: Refer to the City Manager and the Parks and Waterfront Commission the creation of a policy to establish a Commemorative Tree Program, similar to the city’s Park Bench Donation Policy.

CURRENT SITUATION AND ITS EFFECTS

At a regular meeting on February 12, 2020, the Parks and Waterfront Commission approved a motion stating that the commission believes the existing Expanded Parks Donation policy is currently sufficient. M/S/C (McGrath/Kamen/U). Ayes: Cox; Diehm; Kamen; Kawczynska; McGrath; Raghavan; Skjerping; Wozniak; Noes: None; Absent: None; Leave of Absence: None.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

None

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None

CITY MANAGER

The City Manager concurs with the content of the Parks and Waterfront Commission’s report.

CONTACT PERSON

Roger Miller, Secretary, parks and Waterfront Commission, 981-6704
Jim McGrath, Chairperson, (510) 848-8071



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