AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, February 23, 2021
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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

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

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us02web.zoom.us/j/81676274736. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **816 7627 4736**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call:

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

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

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

Consent Calendar

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

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

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

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

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

Consent Calendar

1. Referral Response: Amendments to the Home Occupations Ordinance; Amending BMC Sub-Titles 23C, 23D, 23E, and 23F
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,753-N.S. amending the Zoning Ordinance to streamline the permitting process for Home Occupations and amending Berkeley Municipal Code Chapter 23C.16 Home Occupations, Chapter 23E.84 MU-R Mixed Use-Residential District Provisions, Chapter 23F.04 Definitions, and Use Tables in Applicable Zoning Districts.
First Reading Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Droste.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

2. Minutes for Approval
From: City Manager
Recommendation: Approve the minutes for the council meetings of January 19, 2021 (closed, special and regular), January 21, 2021 (special), January 25, 2021 (closed), January 26, 2021 (closed, special and regular) and January 28, 2021 (closed).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

3. Contract: Mildred Howard Sculpture Commission
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract for an amount not to exceed $210,000, and any amendments thereto, with Mildred Howard for a public art commission of a sculpture for the preferred location at the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way.
Financial Implications: Cultural Trust Fund - $210,000
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

4. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 23, 2021
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 - $400,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

5. Contract No. 104289-1 Amendment: Jackson & Coker for Locums Tenens Psychiatrists
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 104289-1 with Jackson & Coker Locum Tenens, LLC to provide Locum Tenens Psychiatrists through June 30, 2024 in an amount not to exceed $964,480. This amendment will add three years to the contract term and $564,480 in funding.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

6. California Community Housing Agency Middle Income Rental Housing Program
From: City Manager
Recommendation: Adopt a Resolution authorizing the City to become an Additional Member of the California Community Housing Agency (CalCHA), a Joint Powers Authority; supporting CalCHA's issuance of tax-exempt bonds for the production, preservation, and protection of essential middle-income rental housing; and authorizing the City Manager to enter into purchase option agreements with CalCHA for middle-income rental housing created within City limits.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

7. Contract No. 084534-1 Amendment: NextGen Health Care Information Systems Inc. for Electronic Health Records
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 084534-1 with NextGen Healthcare Information Systems, Inc., increasing the amount by $118,610 for a total contract value not to exceed $820,937 and extending the term from September 30, 2010 through June 30, 2022.
Financial Implications: General Fund - $118,610
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

8. Contract No. 32100060 Amendment: RevolutionCyber, LLC for Professional Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 32100060 with RevolutionCyber, LLC for additional professional services to develop the policies and procedures for the City's Data Safety program, for an amount not to exceed $77,050 and a total contract value not to exceed $102,025 from November 13, 2020 through June 30, 2022.
Financial Implications: General Fund - $77,050
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

Consent Calendar

9. Presidio Network Solutions Group, LLC: Using California National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Pricing Agreement for Networking Hardware, Software, and Service Purchase Orders
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with Presidio Networked Solutions Group, LLC ("Presidio") for the purchase of network equipment hardware, software, and installation services, using NASPO ValuePoint's purchasing agreement number CA#7-14-70-04 for the period beginning March 1, 2021 to June 30, 2022 for an amount not-to-exceed (NTE) $530,000.
Financial Implications: IT Cost Allocation Fund - $530,000
Contact: Savita Chaudhary, Information Technology, (510) 981-6500

10. License Agreement: Patpatia & Associates, Inc. for 125-127 University Ave. Office Space
From: City Manager
Recommendation: Adopt a Resolution to execute a short term license agreement with Patpatia & Associates, Inc. to license 2nd floor office space located at 125-127 University Ave from March 1, 2021 through April 30, 2021.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

11. Lease Agreement: Patpatia & Associates, Inc. for 125-127 University Ave. Office Space
From: City Manager
Recommendation: Adopt first reading of an Ordinance executing a lease agreement with Patpatia & Associates, Inc. to lease 2nd floor office space located at 125-127 University Ave. The lease term is anticipated to begin May 1, 2021 and end April 30, 2024.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

12. Contracts: Interface Engineering, Inc. and Salas O'Brien Engineers, Inc. for On-Call Citywide Electrical Engineering Services
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to execute a contract and any amendments with the following firms for On-Call Electrical Engineering Services for City-owned facilities in support of the City's annual Facilities Capital Improvement Program, each for the period April 1, 2021 through December 31, 2024:
1. Interface Engineering, Inc., for an amount not to exceed $150,000.
2. Salas O'Brien Engineers, Inc., for an amount not to exceed $150,000.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

13. Contract No. 112783-1 Amendment: LAZ Parking LLC for Managing City-Owned Off-Street Parking Facilities
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112783-1 (Contract No. 10413A in FUND$) with LAZ Parking, LLC, a parking management company, to provide management services for the Telegraph Channing, Oxford, and Center Street Garages, extending the term to December 31, 2022 and increasing the contract amount by $3,556,756 for a total not-to-exceed of $11,089,951.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

14. Purchase Order: Pape Machinery, Inc. for One (1) John Deere 644L Hybrid Wheel Loader
From: City Manager
Recommendation: Adopt a Resolution satisfying the requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell Contract No.032119-JDC and authorizing the City Manager to execute a purchase order for one (1) John Deere 644L Hybrid Wheel Loader with Pape Machinery, Inc. in an amount not to exceed $468,700.
Financial Implications: Equipment Replacement Fund - $468,700
Contact: Liam Garland, Public Works, (510) 981-6300

15. Purchase Order: National Auto Fleet Group for Four (4) Tractor Trucks and Trailers
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (formerly NJPA) bid procedures, and authorizing the City Manager to execute a purchase order for four (4) Tractors Trucks and Trailers with National Auto Fleet Group in an amount not to exceed $1,200,000.
Financial Implications: Equipment Replacement Fund - $1,200,000
Contact: Liam Garland, Public Works, (510) 981-6300

16. Agreements with Union Pacific for Reimbursement for Construction of Safety Improvements for Pedestrians, Cyclists and Vehicular Traffic
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute reimbursement agreements and any amendments with Union Pacific Railroad Company to cause the Pacific Railroad Company to construct all necessary elements of the Gilman Interchange Improvement Project within the railroad easement subject to reimbursement by the City for actual costs incurred in connection with traffic safety improvement work at Gilman Street and at Camelia Street railroad crossings.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

17. Service Animals Welcome Training *(Reviewed by the Health, Life Enrichment, Equity and Community Committee)*

From: Commission on Disability

Recommendation: That the City Council refer to the City Manager a request to implement education and training provisions of the Service Animals Welcome Policy and Program:

a. Work with Business Improvement Districts and Commercial District Organizations to provide opportunities for businesses to learn about their responsibilities regarding service animals in their places of business.

b. Provide information on Service Animals and Access Rights of Persons with Disabilities accompanied by a Service Animal as required staff training on non-discrimination under applicable federal, state and local statutes, regulations and policies.

c. Provide necessary and adequate support to the Disability Compliance Program.

(On January 25, 2021, the Health, Life Enrichment, Equity and Community Policy Committee made a qualified positive recommendation to send the item to Council with the recommendation to take the following action: Refer to the City Manager to review existing information provided to businesses on the Service Animals Welcome Policy and Program as well as other information related to the rights of people with disabilities (pursuant to the Americans with Disabilities Act) and to continue efforts to create an online training.

Further, refer to the City Manager to: (a.) Work with Business Improvement Districts, the Chamber of Commerce, and other business organizations to provide opportunities for businesses to learn about their responsibilities regarding service animals in their places of business and the rights of people with disabilities, using, for example, the business license renewal as an opportunity to communicate to businesses; (b) Provide information on Service Animals and Access Rights of Persons with Disabilities accompanied by a Service Animal as required City staff training on nondiscrimination under applicable federal, state, and local statutes, regulations and policies. (c) Provide necessary and adequate support to the Disability Compliance Program.)

Financial Implications: Staff time

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

Consent Calendar

18. Prohibition on the Use of City Streets for Operating, Parking, or Idling Combustion Vehicles by 2045 *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Community Environmental Advisory Commission
Recommendation: Review and refer to the City Attorney for finalization the attached ordinance prohibiting the use of City-owned streets for the operation, parking, or idling of combustion vehicles beginning in 2045, and establishing an offset-driven fee-based enforcement mechanism.
(On January 20, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to Council with the recommendation that the Council take no action on the item but to provide the item to staff as background for consideration, particularly as the Federal landscape changes under the new administration and to explore whether the City has the legal authority to pursue.)
Financial Implications: See report
Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

19. Prohibition on the Sale of Gasoline, Diesel, and Other Carbon-Based Transportation Fuels by 2045 *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Community Environmental Advisory Commission
Recommendation:
Review and refer to the City Attorney for finalization the attached ordinance prohibiting the sale of gasoline, diesel, and other carbon-based transportation fuels effective January 1st, 2045.
(On January 20, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to Council with the recommendation that Council take no action on the item but to provide the item to staff as background for consideration, particularly as the Federal landscape changes under the new administration and to explore whether the City has the legal authority to pursue.)
Financial Implications: See report
Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

Consent Calendar

20. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12 *(Reviewed by the Agenda & Rules Committee. Item contains supplemental material.)*
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).
(On January 25, 2021, the Agenda and Rules Committee made a qualified positive recommendation to send the item to the City Council with the recommendation that the Council take no action on the item, but to refer the concepts and materials to the Agenda & Rules Committee for discussion with representatives of the commission on the item entitled "Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)".)
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

21. Relinquishments and grants from Councilmembers' office budgets *(Reviewed by the Agenda & Rules Committee)*
From: Open Government Commission
Recommendation: Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.
(On January 25, 2021, the Agenda and Rules Committee made a qualified positive recommendation to send the item to the City Council with the recommendation that the Council take no action on the item, but to designate the Agenda & Rules Committee as the entity to engage with the commission on the item entitled "Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)".)
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950

22. Opposition of New U.S. Base Construction in the Henoko-Oura Bay of Okinawa
From: Peace and Justice Commission
Recommendation: Adopt a Resolution opposing new U.S. base construction in the Hemoko-Oura Bay of Okinawa.
Financial Implications: Minimal
Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

Council Consent Items

23. Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee. Item contains revised and supplemental material.)*

From: Councilmember Davila (Author)

Recommendation: Adopt a resolution taking the following actions:

1) The City of Berkeley shall initiate a citywide, regional and international Just Transition to a Regenerative Economy

2) The City of Berkeley will work with cities, counties, and institutions such as the UC system to form a joint powers authority regional and statewide task force to oversee a justice and public safety-oriented - scientifically grounded - transition to a regenerative economy here in the Bay Area to be sustained until 2050; and

3) The City of Berkeley commits to being regenerative, recognizing that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, governance culture, and resource allocation to improve public and environmental health, be participatory and will invest in a centuries long regenerative whole city culture, infrastructure, policy, development and design process; and

4) The City of Berkeley shall adopt doughnut economics and implement it's associated methodology to assess sustainability which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay Area bioregion; and

5) The City Council directs the City manager to develop a set of ordinances to ensure zero-waste, cradle to cradle, non-toxic, earth friendly non-essential consumer based products are sold within city limits by 2030 with special exception to non-replaceable items for which a sustainable alternative is either unavailable or too expensive for low income residents to afford, critical infrastructure, medical devices and other such life dependent items;

6) The City of Berkeley shall suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; and

7) The City of Berkeley calls for regional agencies, cities, and counties to agree on a shared definition of the Bay Area's bioregion (s), to define the shared limits of our bio-region's carrying capacity and to organize our governance to be bio-regionally regenerative, sustainable, and to define a developmental trajectory that maximizes the health and vitality of the ecosystems, wildlife, and people for generations to come; and

8) The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries of wellbeing and furthers human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainability through a just and regenerative transition to restore a safe climate and adapt to further warming in the near and long term; and

9) The City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.
(On January 20, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to Council with the recommendation that Council take no action on the item.)
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

24. Create and Support an Adopt an Unhoused community program *(Reviewed by the Health, Life Enrichment, Equity and Community Committee)*
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a resolution to create and support neighborhood volunteers and community groups adopting an encampment, street campers, RV / Vehicle community, located along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and other areas throughout the City.
2. Short term referral to the City Manager and/or designee(s) to present to the City Council in 90 days: how to implement the program modeled after the City of Oakland Adopt a Spot Program, identify a community based organization to oversee the volunteers, know what is needed to adequately implement these efforts, including different organizational structure options.
(On January 25, 2021, the Health, Life Enrichment, Equity and Community Committee made a qualified positive recommendation to send the item to Council to take the following action: Refer to the City Manager to consider inclusion of homeless encampments in the existing "Adopt a Spot" referral to the Public Works Commission and Parks, Recreation, and Waterfront Commission once the "Adopt a Spot" program has been established.)
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

25. Amend Berkeley's Property Tax Measures and Restore Tax Equity by Changing the Square Footage Tax Imposition through a Comprehensive Verification Process *(Reviewed by the Budget and Finance Policy Committee)*
From: Councilmember Bartlett (Author)
Recommendation: In order to correct inequitable and inconsistently applied rates of property tax assessments, and to ensure that outstanding revenues due to the City are paid, the Finance Department should conduct a comprehensive verification analysis. This process will update and bring the city's taxable square footage database into alignment with Planning's building area database. Through this verification, the City shall also reconcile with the Alameda County Assessor's Public Roll to ensure that the City's tax database is up-to-date and accurate. This reconciliation will restore tax equity, which has been desired by Berkeley voters, while also unifying standards, protocols and terminology between departments. The City should adopt the following habitability criteria for taxation purposes:
1. Taxable space must have manufactured flooring. If the understory has dirt base, it shall not be taxed (Uniform Building Code R502 – floor material requirement). (Acceptable proof: photo)
2. Taxable basement space must be of required height clearance. If understory has proper flooring and is of limited height, 6' 8" or less, with 6'4" allowance for ducting, then it shall not be taxed (Uniform Building Code R305 – basement height requirement) (Acceptable proof: photo with measuring tape)
3. Taxable attic space must have required height clearance. If finished attic, only areas of 6'4" height or more is taxed for city assessments (Acceptable proof: photo with measuring tape)
4. City of Berkeley shall post the property's taxable square footage in at least 12 point font on the City's Parcel Viewer page. City of Berkeley shall disclose the potential increase to taxable square footage liability for the taxpayer when application for building addition is made.
5. City of Berkeley shall make public the taxable square footage liability of the proposed finished building to the community when a Zoning Adjustments Board application is made.
6. City of Berkeley shall disclose a property's taxable square footage in writing to a property owner or interested buyer, upon request.
7. If the taxpayer requests a correction on the square footage assessments, and the space in question does not align with the above taxability requirements, the taxpayer shall be entitled to a refund on all 9 city and schools assessments for the previous four full years of taxes (Civil Code 5097). Requests for correction shall be allowed at any time.
(On January 28, 2021, the Budget and Finance Committee made a negative recommendation to send the item to Council with the recommendation that Council take no action and for Councilmember Harrison to work with Councilmember Bartlett on another item addressing the broader policy issues surrounding this item.)
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Council Consent Items

26. "Step Up Housing" Initiative: Allocation of Measure P Funds to Lease and Operate a New Permanent Supportive Housing Project at 1367 University Avenue *(Reviewed by the Budget and Finance Committee)*
From: Councilmember Bartlett (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt a resolution allocating approximately $900,000 per year for 10 years, as well as a one-time allocation of approximately $32,975 from Measure P transfer tax receipts to support the lease and operation of a new permanent supportive housing project for the homeless at 1367 University Avenue. This resolution is put forward out of consideration that the City Council has already approved in its FY 2020-21 budget—on June 30, 2020—an allocation of $2.5 million for permanent housing subsidy, a portion of which is available to be spent on the 1367 University Avenue project.
Refer to the next meeting of the Budget and Finance Policy Committee to confirm the availability of requested funding for the 1367 University project and to set priorities for other Measure P-funded programs and services as part of the mid-year budget process.
(On January 28, 2021, the Budget and Finance Policy Committee made a qualified positive recommendation to send the item to Council with the recommendation to confirm the availability of revenues as approved by Council on October 13, 2020, for the 1367 University project and note that the Committee will discuss Measure P allocations in the FY 2022 budget development process.)
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

27. Virtual Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds
From: Councilmember Wengraf (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember, including $250 from Councilmember Wengraf, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's discretionary Council Office Budget and all other Councilmembers who would like to contribute allows the City of Berkeley to invite the community to the City's Virtual 19th Annual Holocaust Remembrance Day program, put together by the community with Council support. This year's program will be held on April 8, 2021.
Financial Implications: Councilmember's Discretionary Funds - $250
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.

Action Calendar

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. 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. 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.

28a. Public Hearing: ZAB Appeal: 1850 Arch Street, Use Permit #ZP2019-0212
From: City Manager
Recommendation: Conduct a public hearing on the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2019-0212 to reconfigure the interior of the existing building to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building at 1850 Arch Street.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

28b. Public Hearing: ZAB Appeal: 1862 Arch Street, Use Permits #ZP2019-0213
From: City Manager
Recommendation: Conduct a public hearing on the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2019-0213 to reconfigure the interior of the existing building to add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building at 1862 Arch Street.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – Public Hearings

28c. ZAB Appeals: 1850 and 1862 Arch Street, Use Permits #ZP2019-0212 and ZP2019-0213
From: City Manager
Recommendation: Upon conclusion of the agendized public hearings, adopt two Resolutions affirming the Zoning Adjustments Board (ZAB) decisions to approve Use Permits #ZP2019-0212 and ZP2019-0213 to reconfigure the interiors of the existing buildings to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building at 1850 Arch Street, to add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building at 1862 Arch Street, and dismissing the appeals.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Council Action Items

29. Resolution to End Exclusionary Zoning in Berkeley
From: Councilmember Droste (Author), Councilmember Taplin (Author), Councilmember Bartlett (Author), Councilmember Robinson (Author)
Recommendation: Adopt a resolution to state Berkeley City Council's intent to end exclusionary zoning in Berkeley by December of 2022.
Financial Implications: None
Contact: Lori Droste, Councilmember, District 8, (510) 981-7180

Information Reports

30. FY 2022 Budget Development
From: City Manager
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000

31. City Council Short Term Referral Process – Quarterly Update
From: City Manager
Contact: Mark Numainville, City Clerk, (510) 981-6900

32. Partnership for the Bay's Future and Current Anti-Displacement Initiatives
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

33. FY2021 Public Art Plan and Budgets
From: Civic Arts Commission
Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

34. Community Environmental Advisory Commission 2021 Work Plan
From: Community Environmental Advisory Commission
Contact: Viviana Garcia, Commission Secretary, (510) 981-7460

Information Reports

35. 2021 Housing Advisory Commission Work Plan
From: Housing Advisory Commission
Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Public Comment – Items Not Listed on the Agenda

Adjournment

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

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

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

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

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

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



Captioning services are provided at the meeting, on B-TV, and on the Internet.
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I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 10, 2021.



Mark Numainville, City Clerk

Communications

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

Item #22: Opposition of New U.S. Base Construction in the Henoko-Oura Bay of Okinawa

1. Diana Bohn and Igor Tregub
2. Wesley Ueunten
3. Scott Tshchitani
4. Ronald Nakasone
5. Travis Seifman
6. Vanessa Peixoto de Souza
7. Risako Sakai
8. Betty Kano
9. Diana Bohn
10. Hideki Yoshikawa
11. Leanne Isley
12. Marisa Kanemoto
13. Gwendolyn Andrews
14. Cristian Izquierdo
15. Lyn Ishizaki
16. Maya Adachi
17. Blythe Nishi
18. Maxwell Ho
19. Erica Ishijima
20. Joseph Tsuboi
21. Mark Fujiwara
22. Jane Yamashiro
23. Yumi Kobayashi
24. Elena Harumi Nielsen
25. Kelsey Ichikawa
26. Hisayo Kinjo
27. Gwyn Kirk
28. Miya Sommers
29. Jean Yonemura Wing
30. Sherry Schafer

Quadplex Zoning
31. Alfred Twu

Elimination of Racially Restrictive Covenants from Alameda County Property Deeds
32. Richard Valle, Board of Supervisors, District 2

COVID-19//Vaccinations//Masks
33. Anne McClintock
34. Jeannette MacMillan
35. Katy Love
36. Ben Gerhardstein
37. Megha Charalambides
38. Sylvia
39. Paola Laverde
40. Ginger Ogle
41. David Lerman (2)
42. Councilmember Hahn (2)
43. Niki
44. City of Berkeley COVID-19 Information Services
45. Margot Smith
46. Carol Denney
47. Julia Lang, on behalf of Street Teams

Reorganization of Commissions
48. Janice Schroeder (2)
49. David Schroeder
50. MJ Baumann
51. Ellen Brotsky
52. Bernard Marszalek
53. Thomas Luce
54. Alex Mabanta
55. George Lippman
56. Lee Bishop
57. Michael Goldhaber
58. Elisabeth Watson

More Homes at the North Berkeley BART
59. Sandy Emerson
60. Adam Rogers
61. Jenny Johnston
62. Franklin Lei
63. Mel Weitsman
64. Forest Kaser
65. Barry Fike
66. Reynaldo Santa Cruz

67. Oren Cheyette
68. Phil Soffer
69. Mark Rhoades
70. David Mar
71. Phyllis Orrick
72. Andrea Altschuler
73. Mary Nash
74. Paul Bickmore
75. Laura Magnani
76. Mary Behm-Steinberg
77. 14 similarly worded form letters (I live in)
78. 6 similarly worded form letters (6 points)

Horse Fatality at Golden Gate Fields
79. Joe Kaplan

TOPA (Tenants Opportunity to Purchase Act)
80. Ilona Clark
81. taptango@
82. George

School Reopening
83. Laura Babitt
84. Nick Zahariadis
85. Shelene Stine and Rohini Haar

Systemic Racism
86. Aimee Baldwin
87. WD Flient

Eucalyptus Grove at 1120-1140 Cragmont Avenue
88. Vadim Shapiro and 25 neighbors

Vision 2025
89. Nilang

Weapon Trucks Blocked in Canada
90. Russbumper

1915 Berryman
91. Brenda O'Sullivan

Lung Cancer in Non-Smokers
92. Norm Harrison

Police Accountability Board
93. Friends of Adeline
94. David White, Deputy City Manager

City Budget
95. Blair Beekman

Civic Center Redesign and Measure T-1
96. Christopher Adams, Chair, Landmarks Preservation Commission

Unhoused Pooping on Sidewalk in Front of Restaurant
97. Phatcharin Teerapatanaporn, Manager of Tuk Tuk Thai Café

URL's Only
98. Vivian Warkentin (3)
99. Russbumper (9)
100. Barbara Gilbert

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

- **Supplemental Communications and Reports 1**
  Available by 5:00 p.m. five days prior to the meeting.

- **Supplemental Communications and Reports 2**
  Available by 5:00 p.m. the day before the meeting.

- **Supplemental Communications and Reports 3**
  Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,753-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23C.16 AND AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23E.84.090, 23D.16.030, 23D.20.030, 23D.28.030, 23D.32.030, 23D.36.030, 23D.40.030, 23D.44.030, 23D.48.030, 23D.52.030, 23E.64.030, 23E.84.030, AND 23F.04.10 TO MODIFY THE HOME OCCUPATIONS ORDINANCE.

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

Section 1. That Berkeley Municipal Code Chapter 23C.16 [Home Occupations] is amended as follows:

Chapter 23C.16: Home Occupations

Sections:

23C.16.010 General Requirements
23C.16.020 Permit Requirements
23C.16.030 Findings
23C.16.040 Complaints and Imposition of Conditions

23C.16.010 General Requirements

A. The establishment of a Home Occupation in compliance with this Chapter shall not be considered a Change of Use of a primary residence, but rather shall be considered a lawful Incidental Use thereof.

B. Home Occupations are subject to the following requirements:

1. A Home Occupation is allowed as an incidental use within a Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room.
2. No Firearm/Munitions Business may operate as a Home Occupation.
3. Customer visits are not allowed in the ES-R District.
4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the Dwelling Unit, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room from which it operates.
5. Only residents of the subject Dwelling Unit, Accessory Dwelling Unit or Group Living Accommodation room, who live in the unit or room full time, may operate a Home Occupation business.
6. Customer visits may occur only between the hours of 10 a.m. and 8 p.m.

7. Storage, services, repairs and other business activities, other than permitted arrival and departure of customers and goods in transit, may not be conducted outdoors.

8. A Home Occupation shall not involve hazardous materials or waste as defined by Section 15.08.060, or any other materials or waste that is deemed by the Hazardous Material Manager (or their designee or successor) to be inappropriate or unsafe for a residential setting.

9. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt, or electrical or other disturbance perceptible by the average person beyond the unit in which the Home Occupation is permitted.

10. No on-site signs identifying or advertising the Home Occupation, are allowed.

11. The operator of a Home Occupation shall pay gross receipts taxes pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

12. A lessee in possession of a property may apply for a Permit without the property owner's signature; however Home Occupations are not exempt from conditions in rental and lease agreements which may limit or prohibit Home Occupations.

23C.16.020 Permit Requirements (See 23F.04 for Home Occupation definitions.)

A. A Class I Home Occupation is allowed subject to a Zoning Certificate.

B. A Class II Home Occupation is allowed subject to issuance of an Administrative Use Permit.

C. A Class III Home Occupation is allowed subject to issuance of a Use Permit (Public Hearing).

23C.16.030 Findings

In addition to the findings set forth in Section 23B.28.050 and Section 23B.32.040, in order to approve an Administrative Use Permit for a Class II Home Occupation or a Use Permit (Public Hearing) for a Class III Home Occupation, the Zoning Officer or Board must find, based on the circumstances of the specific use and property:

1. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the Home Occupation; and

2. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation; and

3. If the proposed Home Occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the Home Occupation.

4. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshal.

23C.16.040 Complaints and Imposition of Conditions

Home Occupations are subject to review, the imposition of conditions, or revocation.

A. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.

B. The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing Class I and II Home Occupations, and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit in the event adequate conditions of approval are not available.

The Zoning Adjustments Board shall review documented complaints, business operations, and other factors when reviewing Class III Home Occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit in the event adequate conditions of approval are not available.

Section 2. That Berkeley Municipal Code Section 23E.84.090 [Findings] is amended as follows:

23E.84.090 Findings

A. In order to approve any Use Permit under this chapter the Zoning Officer or Board must make the finding required by Section 23B.32.040. The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

B. A proposed use or structure must:

1. Be consistent with the purposes of the District;

2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;

3. Be consistent with the adopted West Berkeley Plan;

4. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses;

5. Be designed in such a manner to be supportive of the character and purposes of the District; and

6. Be able to meet any applicable performance standards as described in Section 23E.84.070.H.

C. In order to approve a Use Permit under Section 23E.84.040, the Zoning Officer or Board must find that the space formerly occupied by the protected use has been replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category:

1. For purposes of this section, such replacement space shall not qualify for exemption under Section 23E.84.040.I or by reason of having been established after July 6, 1989;

2. In considering whether a project will be detrimental, consideration shall be limited to the potential detriment associated with the new use, and dislocation of any specific previous occupant or use shall not be a basis for finding detriment.

D. In order to approve a Use Permit for the establishment or expansion of Live/Work Units in this District, the Zoning Officer or Board must make all applicable findings for approval of Live/Work Units required by Section 23E.20.090 and must also make the following findings:

1. Establishment of Live/Work Unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, and will not impede

the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan;

2. The applicant has recorded with the County Recorder a statement acknowledging that the Live/Work Unit is being established in a District where manufacturers and other industries operate lawfully and that they will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing Live/Work Units to sign and record such a statement;

3. If the applicant is proposing to change one or more dwelling units to Live/Work Units, that the elimination of dwelling unit(s) and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

E. In order to approve a Use Permit for a change of use from manufacturing, wholesale trade, or warehouse space to another use, the Zoning Officer or Board must make both of the following findings:

1. The change of use of the space will not have a materially detrimental impact on the character of the MU-R District as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the District that is contiguous with the site;

2. Appropriate mitigation pursuant to a payment schedule adopted by resolution has been made for loss of the manufacturing space through providing such space elsewhere in Berkeley, through payment into the West Berkeley Building Acquisition Fund, or by other appropriate means as determined by the Zoning Officer or the Board. However, no mitigation shall be required for manufacturing, warehousing, or wholesale trade space which is less than or equal to 25% of the floor area currently or most recently used for manufacturing, warehousing or wholesale trade.

F. In order to approve a Permit for the establishment or expansion of a food service use, the Zoning Officer or Board must find that the establishment of the food service use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial or residential character of the area. In order to approve an Administrative Use Permit for a Food Service Establishment less than 5,000 square feet, the

Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

G. In order to approve an Administrative Use Permit or Use Permit for a Home Occupation with customer visits and/or shipping and handling of goods, the Zoning Officer or Board must make the findings set forth in Section 23C.16.030.

H. In order to approve a Use Permit for the establishment or expansion of a school, 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, 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, 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.

I. In order to approve a Use Permit for the establishment or expansion of a mixed use containing a residential use the Zoning Officer or Board must find that the specific combination of residential and non-residential use proposed by the applicant will not be hazardous or detrimental, either to persons living and/or working on the site, or to persons living or working in its vicinity.

J. In order to approve a Use Permit for the substitution of bicycle and/or motorcycle parking under Section 23E.84.080.F, the Zoning Officer or Board must find that the substitution will not

lead to an undue shortage of automobile parking spaces and that it can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

K. In order to approve a Use Permit for the establishment or expansion of a manufacturing use abutting one or more dwelling units located in the MU-R District, the Zoning Officer or Board must find:

1. The manufacturer is capable of meeting all applicable performance standards; and

2. Conditions of the Use Permit will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.

L. 1. To deny a Use Permit to establish one or more dwelling units the Board must find that the proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the proposed residential use. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District.

2. To deny an Administrative Use Permit for a major residential addition, the Zoning Officer must find that the proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M and/or MM District, or that the existing or reasonably foreseeable adjacent land uses in the M and/or MM District would have a material adverse effect on the use of the proposed addition. The owner(s) of record of the residential property shall also record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the District. (Ord. 7358-NS § 9, 2014; Ord. 7323-NS § 9, 2014; Ord. 7167-NS §§ 25 – 27, 2011; Ord. 6478-NS § 4 (part), 1999)

Section 3. That Berkeley Municipal Code Section 23F.04.010 is amended to revise the definitions of “Home Occupation” and “Home Occupation, Teaching-Related” as follows:

23F.04.010 Definitions

Home Occupation: A business use conducted on property developed with Residential use, which is incidental and secondary to the Residential use, does not change the residential character thereof, is limited so as not to substantially reduce the Residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building, or Group Living Accommodation room and is operated only by the residents of the subject residence. There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

1. **Class I Home Occupation -** Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.

2. **Class II Home Occupation -** Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.

3. **Class III Home Occupation -** Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

Section 4. 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:

23D.16.030 Uses Permitted

Table 23D.16.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08

Table 23D.16.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceed six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	

Table 23D.16.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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.20.030 in Chapter 23D.20 Section 23D.20.030 of the Berkeley Municipal Code is amended to read as follows:

23D.20.030 Uses Permitted

Table 23D.20.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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

Table 23D.20.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required yards
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
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.28.030 in Chapter 23D.28 Section 23D.28.030 of the Berkeley Municipal Code is amended to read as follows:

23D.28.030 Uses Permitted

Table 23D.28.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		

Table 23D.28.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16

Table 23D.28.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
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.32.030 in Chapter 23D.32 Section 23D.32.030 of the Berkeley Municipal Code is amended to read as follows:

23D.32.030 Uses Permitted

Table 23D.32.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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

Table 23D.32.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

Section 8. 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:

23D.36.030 Uses Permitted

Table 23D.36.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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 Daycare Home (Small or Large)	ZC	
Fences		
If six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks

Table 23D.36.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Stables for Horses	AUP	

Section 9. 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:

23D.40.030 Uses Permitted

Table 23D.40.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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.

Table 23D.40.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
		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; Family Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
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

Table 23D.40.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
		or merchandise visible from the street

Section 10. 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:

23D.44.030 Uses Permitted

Table 23D.44.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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	

Table 23D.44.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
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 11. 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:

23D.48.030 Uses Permitted

Table 23D.48.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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 Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	

Table 23D.48.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
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 12. 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:

23D.52.030 Uses Permitted

Table 23D.52.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08

Table 23D.52.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 Daycare Home (Small or Large)	ZC	
Fences		
Six ft. or less in height	ZC	
Exceeding six ft. in height	AUP	In required setbacks
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	

Table 23D.52.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 13. 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:

23E.36.030 Uses Permitted

Table 23E.36.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		
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

Table 23E.36.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations Class I Class II Class III	 ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.36.080
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	

Table 23E.36.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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		Changes of use from an existing dwelling unit
Six or fewer people	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 14. 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:

23E.40.030 Uses Permitted

Table 23E.40.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	

Table 23E.40.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Class III	UP(PH)	
Class III in the Hillside Overlay	Prohibited	
Hospitals	Prohibited	

Table 23E.40.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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 Six or fewer persons Seven or more persons New Construction	 ZC AUP UP(PH)	Changes of use from an existing dwelling unit

Section 15. 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:

23E.44.030 Uses Permitted

Table 23E.44.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		

Table 23E.44.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations Class I Class II Class III	 ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16

Table 23E.44.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
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		Changes of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 16. 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:

23E.48.030 Uses Permitted

Table 23E.48.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations Class I	 ZC	Subject to the requirements of Chapter 23C.16

Table 23E.48.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Class II	AUP	
Class II in the Hillside Overlay	Prohibited	
Class III	UP(PH)	
Class III in the Hillside Overlay	Prohibited	
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		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 17. 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:

23E.52.030 Uses Permitted

Table 23E.52.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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 23E.52.070.E
Home Occupations Class I	ZC	Subject to the requirements of Chapter 23C.16

Table 23E.52.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Class II Class III	AUP UP(PH)	
Hospitals	Prohibited	
Hotels, Residential, including Single Room Occupancy (SRO) Hotels	UP(PH)	
Libraries	UP(PH)	Subject to parking requirements; see Section 23E.52.080
Nursing Homes	UP(PH)	Subject to parking requirements; see Section 23E.52.080
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 Six or fewer people Seven or more people New construction	 ZC AUP UP(PH)	Change of use from an existing dwelling unit

Section 18. 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:

23E.56.030 Uses Permitted

Table 23E.56.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations Class I	ZC	Subject to the requirements of Chapter 23C.16

Table 23E.56.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Class II	AUP	
Class III	UP(PH)	
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 19. 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:

23E.60.030 Uses Permitted

Table 23E.60.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Uses Permitted in Residential Districts		
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)	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	

Table 23E.60.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Class III	UP(PH)	
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		Change of use from an existing dwelling unit
Six or fewer persons	ZC	
Seven or more persons	AUP	
New Construction	UP(PH)	

Section 20. 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:

23E.64.030 Uses Permitted

Table 23E.64.030		
Use and Required Permits		
Use	**Permits Required to Establish, Expand or Change Use (sq. ft.)**	**Special Requirements (if any)**
Residential and Related Uses		
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 Daycare Home (Small or Large)	ZC	
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

Table 23E.64.030		
Use and Required Permits		
Use	**Permits Required to Establish, Expand or Change Use (sq. ft.)**	**Special Requirements (if any)**
Group Living Accommodations	UP(PH)	Subject to Development Standards under Section 23E.64.070
Home Occupations Class I Class II Class III	 ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16
Hospitals	UP(PH)	Subject to parking requirements; see Section 23E.64.080.F
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 23E.64.080.F
Nursing Homes	UP(PH)	
Parks and Playgrounds	AUP	
Public Safety and Emergency Services	UP(PH)	

Table 23E.64.030		
Use and Required Permits		
Use	**Permits Required to Establish, Expand or Change Use (sq. ft.)**	**Special Requirements (if any)**
Religious Assembly Uses	AUP	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	 ZC AUP 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 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

Section 21. That the “Residential and Related Uses” 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:

23E.68.030 Uses Permitted

Table 23E.68.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements**
Uses Permitted in Residential Districts		
Accessory Dwelling Unit in compliance with Section 23C.24.050	ZC	

Table 23E.68.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements**
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	
Child Care; Family Daycare Home (Small or Large)	ZC	
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
Home Occupations Class I Class II Class III	 ZC AUP UP(PH)	Subject to the requirements of Chapter 23C.16

Table 23E.68.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements**
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	AUP	
New Construction	UP(PH)	Subject to Section 23E.68.070

Section 22. 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:

23E.84.030 Uses Permitted

Table 23E.84.030		
Use and Required Permits		
Uses	**Permit Required to Establish, Expand or Change Use (sq. ft.)**	**Special Requirements (if any)**
Residential and Related Uses		
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 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
Child Care; Family Daycare Home (Small or Large)	ZC	
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

Table 23E.84.030		
Use and Required Permits		
Uses	**Permit Required to Establish, Expand or Change Use (sq. ft.)**	**Special Requirements (if any)**
		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		Subject to the requirements of Chapter 23C.16
Class I	ZC	
Class II	AUP	
Class III	UP(PH)	
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

Table 23E.84.030		
Use and Required Permits		
Uses	**Permit Required to Establish, Expand or Change Use (sq. ft.)**	**Special Requirements (if any)**
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 23E.84.090.H
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	 ZC AUP UP(PH)	Changes of use from an existing dwelling unit
Accessory Buildings and Structures with Urban Agriculture	ZC	Subject to 23C.26, 23D.08.010, 23D.08.020, 23D.08.050, and 23D.08.060

Section 23. 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:

Table 23D.24.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
Accessory Uses and Structures		
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: Family Daycare Homes (Small or Large)	ZC	
Fences		
Four ft. or less in height	ZC	
Exceeding four ft. in height	AUP	Subject to Fire Department review and comment
Home Occupations Class I	ZC	Subject to the requirements of Chapter 23C.16
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

Table 23D.24.030		
Use and Required Permits		
Use	**Classification**	**Special Requirements (if any)**
		by a single household as defined in Sub-title 23F is permitted
Stables for Horses	AUP	

Section 24. 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 February 9, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Abstain: Droste.

Absent: None.

02

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

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 January 19, 2021 (closed, special and regular), January 21, 2021 (special), January 25, 2021 (closed), January 26, 2021 (closed, special and regular) and January 28, 2021 (closed).

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:
1. January 19, 2021 – Closed City Council Meeting
2. January 19, 2021 – Special City Council Meeting
3. January 19, 2021 – Regular City Council Meeting
4. January 21, 2021 – Special City Council Meeting
5. January 25, 2021 – Closed City Council Meeting
6. January 26, 2021 – Closed City Council Meeting
7. January 26, 2021 – Special City Council Meeting
8. January 26, 2021 – Regular City Council Meeting
9. January 28, 2021 – Closed City Council Meeting

Attachment 1

MINUTES
BERKELEY CITY COUNCIL
SPECIAL MEETING

TUESDAY, JANUARY 19, 2021

3:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this closed session 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 captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us02web.zoom.us/j/82448498273. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free);** enter Meeting ID: **824 4849 8273.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

Preliminary Matters

Roll Call: 4:02 p.m.

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

Absent: Kesarwani, Bartlett

Councilmember Bartlett present at 4:05 p.m.

Councilmember Kesarwani 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. *Popper v. City of Berkeley, et al., Department of Industrial Relations State Case No. RCI-CM-810610*

   Action: M/S/C (Arreguin/Wengraf) to authorize the City Attorney to settle claims brought by Melanie Popper against the City of Berkeley (including Tort Claim No. 0164BC2021-0001 and California Department of Industrial Relations, State Case No. RCI-CM-810610) for $20,000.
   Vote: All Ayes.

   b. *Loach v. City of Berkeley, et al. Alameda County Superior Court, Case No. HG19041598*

   Action: No reportable action taken.

OPEN SESSION:

Public Reports of actions taken pursuant to Government Code section 54957.1.

The City Council met in closed session and authorized the City Attorney to settle claims brought by Melanie Popper against the City of Berkeley (including Tort Claim No. 0164BC2021-0001 and California Department of Industrial Relations, State Case No. RCI-CM-810610) for $20,000.

Adjournment

Action: M/S/C (Wengraf/Harrison) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 3:34 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on January 19, 2021.

_____
Mark Numainville
City Clerk

Attachment 2

MINUTES
SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Tuesday, January 19, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **843 4290 4842**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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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: 4:04 p.m.

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

Absent: Kesarwani, Droste

Councilmember Kesarwani present at 4:08 p.m.

Councilmember Droste present at 4:11 p.m.

Worksession

1. **2020 Adopted Ballot Measures**
   From: City Manager
   Contact: Dave White, City Manager's Office, (510) 981-7000
   Action: 8 speakers. Presentation made and discussion held. The Council provided direction to staff regarding community involvement in the Measure II implementation and to capture revenues generated by the Measure FF tax from January 1, 2021 through June 30, 2021 on the Fiscal Year 2022 property tax roll.

Adjournment

Action: M/S/C (Droste/Robinson) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 5:42 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on January 19, 2021.

_____
Mark Numainville
City Clerk

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

- None

Supplemental Communications and Reports 3

Item #1: 2020 Adopted Ballot Measures

1. Barbara Gilbert (2)
2. Steve Martinot

Attachment 3

MINUTES

BERKELEY CITY COUNCIL MEETING

Tuesday, January 19, 2021
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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

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Preliminary Matters

Roll Call: 6:03 p.m.

Present: Kesarwani, Taplin, 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 claims brought by Melanie Popper against the City of Berkeley (including Tort Claim No. 0164BC2021-0001 and California Department of Industrial Relations, State Case No. RCI-CM-810610) for $20,000.

Ceremonial Matters:

1. Adjourn in memory of Tom Guarino, PG&E Governmental Affairs Representative
2. Adjourn in memory of Harry Brill, Labor Activist
3. Adjourn in memory of Ted Edlin, City Commissioner
4. Adjourn in memory of Margaret “Gogi” Hodder, City Employee
5. Adjourned in memory of victims of COVID-19

City Manager Comments:

The City Manager provided an update on the City’s Reimagining Public Safety Process

Public Comment on Non-Agenda Matters: 9 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 34 speakers.

Action: M/S/C (Arreguin/Kesarwani) to add an item to the agenda entitled “Letter to Governor Newsom Calling for Improvements and Additional Funding for State's Vaccine Rollout” from Councilmember Kesarwani pursuant to Government Code Section 54954.2(b)(2).
Vote: All Ayes.

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

Consent Calendar

1. Amendment: FY 2021 Annual Appropriations Ordinance *(Item contains revised material.)*
From: City Manager
Recommendation: Adopt a new first reading of Ordinance No. 7,748-N.S. amending the FY 2021 Annual Appropriations Ordinance No. 7,724–N.S. for fiscal year 2021 based upon recommended re-appropriation of committed FY 2020 funding and other adjustments authorized since July 1, 2020, in the amount of $197,890,469 (gross) and $193,471,132 (net).
Financial Implications: See report
Contact: Teresa Berkeley-Simmons, Budget Manager, (510) 981-7000
Action: Adopt first reading of Ordinance No. 7,748–N.S. Second reading scheduled for February 9, 2021.

2. Minutes for Approval
From: City Manager
Recommendation: Approve the minutes for the council meetings of December 1, 2020 (closed and regular), December 3, 2020 (closed), December 8, 2020 (4pm-special and 6pm-special) and December 15, 2020 (closed, special and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved the minutes as submitted.

3. Temporarily Suspending Certain Provisions of the Commissioners' Manual that Apply to Meetings of Subcommittees
From: City Manager
Recommendation: Adopt a Resolution temporarily suspending the provisions of the Commissioners' Manual and Resolution No. 69,063-N.S. that ad hoc subcommittees of City boards and commissions follow State open meeting procedures, thereby enabling ad hoc subcommittees to meet and conduct work while allowing City staff to continue emergency response efforts related to the COVID-19 pandemic.
Financial Implications: No direct fiscal impact
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Adopted Resolution No. 69,681–N.S.

4. Annual Commission Attendance and Meeting Frequency Report *(Continued from November 10, 2020. Item contains supplemental material.)*
From: City Manager
Recommendation: Review and accept the annual Commission Attendance and Meeting Frequency Report.
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900
Action: Approved recommendation.

Consent Calendar

5. Authorized Agent Update for FEMA Public Assistance for COVID-19
From: City Manager
Recommendation: Adopt a Resolution authorizing the Deputy City Managers and AG Witt, LLC to engage with the Federal Emergency Management Agency and the Governor's Office of Emergency Services regarding grants applied for by the City of Berkeley for the FEMA-4482-DR-CA California COVID-19 Pandemic.
Financial Implications: See report
Contact: Dave White, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 69,682–N.S.

6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 19, 2021
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 - $4,235,362
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.

7. Rescinding Housing Trust Fund Guidelines and Adopting New Guidelines
From: City Manager
Recommendation: Adopt a Resolution rescinding the City's current Housing Trust Fund Guidelines (Resolution No. 64,394-N.S.) and adopting new Housing Trust Fund Guidelines that preserve essential components while updating the process to award funds and certain requirements.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,683–N.S.

8. Authorization to Execute a Revised Programmatic Agreement with the California State Historic Preservation Officer
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a revised Programmatic Agreement (PA) with the California State Historic Preservation Officer (SHPO) to clarify which rehabilitation activities would not require SHPO's review.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,684–N.S.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Hahn; Absent – None.

Consent Calendar

9. Predevelopment and Acquisition Loan for 2527 San Pablo Avenue
From: City Manager
Recommendation: Adopt a Resolution: 1. Authorizing the execution of a $5,500,000 loan to Satellite Affordable Housing Associates (SAHA) for costs related to acquisition and predevelopment of the proposed affordable housing development at 2527 San Pablo Avenue (2527 San Pablo), utilizing existing reserved funds previously allocated by Council. 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, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,685–N.S.

10. Revenue Contract: Community Services Block Grant for Calendar Year 2021
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 21F-4001 for the amount of $275,106 to provide services for low-income people for the period January 1, 2021 to December 31, 2021, with the option to extend the contract period through May 31, 2022.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,686–N.S.

11. 2021 Health Plan Changes
From: City Manager
Recommendation: Adopt two Resolutions:
1. Approving rates for the Kaiser Health Maintenance Organization (HMO) health plans as follows: (a) 15.58% increase for Kaiser S1 Group #60 (Active Group); (b) 15% increase for the HSA-Qualified Deductible HMO Plan (Active Group) (c) 1.89% increase for Pre-Medicare Eligible Retirees (Retiree Group); and (d) -4.00% decrease for Post-65 Senior Advantage (Retiree Group)
2. Approving rates for the Sutter Health Plus health plans as follows: (a) 1.87% increase for the Active HMO ML 26 group; and (b) 1.19% increase for the Pre-Medicare retiree group.
The health plan premium rates will be effective for the period of January 1, 2021 through December 31, 2021.
Financial Implications: See report.
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,687–N.S. (Kaiser), and Resolution No. 69,688–N.S. (Sutter).

Consent Calendar

12. 2021 Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program)
From: City Manager
Recommendation: Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2021 for administering the Workers' Compensation Program, in an amount not to exceed $235,979.91.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,689–N.S.

13. Memorandum of Understanding: Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association
From: City Manager
Recommendation: Adopt a Resolution approving a new one (1) year Memorandum of Understanding (hereafter referred to as "MOU") with the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 Berkeley Chief Fire Officers Association (hereafter referred to as the "Association") with a term of June 30, 2020 through June 30, 2021 and authorizing the City Manager to make non-substantive edits to the format and language of the Memorandum of Understanding in alignment with the tentative agreement, and conforming to legal requirements.
Financial Implications: See report
Contact: LaTanya Bellow, Human Resources, (510) 981-6800
Action: Adopted Resolution No. 69,690–N.S.

14. Contract Amendments: Plan Check Services
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to execute contract amendments for an additional amount of $500,000 each, to new total amounts not to exceed $1,500,000 for each contract, and extending the terms of the contracts for a one-year period to June 30, 2022 with:
1. West Coast Code Consulting, Contract No. 119641-2
2. Telesis Engineers, Contract No. 119639-1
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400
Action: Adopted Resolution No. 69,691–N.S. (West Coast), and Resolution No. 69,692–N.S. (Telesis Engineers).

Consent Calendar

15. Filling Vacancies Among the Elected Representatives of the Poor
From: Human Welfare and Community Action Commission
Recommendation: Adopt a Resolution confirming the appointments of Ms. Denah Bookstein (District 1); and Mr. Carlos Hill (District 1) as elected representatives of the poor on the Human Welfare and Community Action Commission (HWCAC), having been voted onto the Commission at the HWCAC December 9, 2020 meeting, and that their terms expire December 9, 2022.
Financial Implications: None
Contact: Mary-Claire Katz, Commission Secretary, (510) 981-5400
Action: Adopted Resolution No. 69,693–N.S.

16. Amendments to the Berkeley Lobbyist Registration Act
From: Open Government Commission
Recommendation: Adopt an ordinance amending the Berkeley Lobbyist Registration Act (BMC Chapter 2.09) to incorporate the recommendations of the Open Government Commission (OGC).
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Adopt first reading of Ordinance No. 7,749–N.S. as revised in Supplemental Communications Packet #2 from Councilmember Harrison. Second reading scheduled for February 9, 2021.

17. Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association
From: Public Works Commission
Recommendation: Adopt a Resolution pursuant to Berkeley's Policy for Naming and Renaming Public Facilities, the Public Works Commission (PWC) recommends the naming and renaming of four Berkeley Paths, as identified on the map at Attachment 1 to the report, in honor of the four women founders of the Berkeley Path Wanderers:
1. Rename a path off of Keith Avenue near Shasta Road, currently named Eleanor Path, to "Eleanor Hall Gibson Path," after founder Eleanor Hall Gibson, who passed away in 2016;
2. Name the following paths, subject to a 2/3 vote of the City Council as provided at Section 2(B) of the Policy, as follows: - The extension connector of Walnut Street through the UC complex between Hearst and Berkeley Way to be named "Ruth Armstrong Path" in honor of Ruth Armstrong (Moskovitz); - The path parallel to the top of Solano Avenue running along Los Angeles Avenue up the tunnel slope towards the Marin Circle, to be named "Jacque Ensign Way" in honor of Jacque Ensign; and - Path 71 to be named "Patricia DeVito Path" in honor of Pat DeVito.
In addition to the renaming of these four paths, the Public Works commission supports the inclusion of interpretive signage describing the contributions of each of the honored individuals.
Financial Implications: See report
Contact: Joe Enke, Commission Secretary, (510) 981-6300
Action: Adopted Resolution No. 69,694–N.S.

Council Consent Items

18. Revisions to Enabling Legislation for Reimagining Public Safety Task Force
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution:
1. Rescinding Resolution No. 69,673-N.S.; and
2. Establishing a Reimagining Public Safety Task Force, comprised of: (a) one representative appointed by each member of the City Council and Mayor pursuant to the Fair Representation Ordinance, B.M.C. Sections 2.04.030-2.04.130, (b) one representative appointed by the Mental Health Commission, Youth Commission, and Police Review Commission (to be replaced by a representative of the Police Accountability Board once it is established), and (c) one representative appointed by the Associated Students of the University of California (ASUC) External Affairs Vice President, one representative appointed by the Berkeley Community Safety Coalition (BCSC) Steering Committee, and three additional members to be appointed "At-Large" by the Task Force, with appointments subject to confirmation by the City Council.

The Task Force will be facilitated by a professional consultant, the National Institute for Criminal Justice Reform (NICJR), with administrative support by the City Manager's office, and will serve as the hub of community engagement for the Reimagining Public Safety effort initiated and guided by the NICJR team. The Task Force will also include the participation of City Staff from the City Manager's Office, Human Resources, Health, Housing and Community Services, Berkeley Fire Department, Berkeley Police Department, and Public Works Department. For visual, see Attachment 3.

With the exception of "At-Large" appointments, appointments to the Task Force should be made by January 31, 2021, and reflect a diverse range of experiences, knowledge, expertise and representation. To maintain the Council's July 14, 2020, commitment to centering the voices of those most impacted in our process of reimagining community safety appointments should be made with the goal of achieving a balance of the following criteria:

a. Active Members of Berkeley Community (Required of All)*
b. Representation from Impacted Communities
-Formerly incarcerated individuals
-Victims/family members of violent crime
-Immigrant community
-Communities impacted by high crime, over-policing and police violence
-Individuals experiencing homelessness
-Historically marginalized populations
c. Faith-Based Community Leaders
d. Expertise/Leadership in Violence Prevention, Youth Services, Crisis Intervention, and Restorative or Transformative Justice
e. Health/ Public Health Expertise
f. City of Berkeley labor/union representation
g. Law Enforcement Operation Knowledge
h. City Budget Operations/Knowledge
i. Committed to the Goals and Success of The Taskforce (Required of All)

Council Consent Items

As outlined in the July 14, 2020, City Council Omnibus Action, City Council provided direction for the development of a new paradigm of public safety that should include, but is not limited to:
1) Building on the work of the City Council, the City Manager, Berkeley Police Department (BPD), the Police Review Commission and other City commissions and other working groups addressing community health and safety.
2) Research and engagement to define a holistic, anti-racist approach to community safety, including a review and analysis of emerging models, programs and practices that could be applied in Berkeley.
3) Recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform considering, among other things:
A. The social determinants of health and changes required to deliver a holistic approach to community-centered safety.
B. The appropriate response to community calls for help including size, scope of operation and power and duties of a well-trained police force.
C. Limiting militarized weaponry and equipment.
D. Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce alternative and restorative justice models, and reduce or eliminate use of fines and incarceration.
E. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.
F. Reducing the Berkeley Police Department budget to reflect its revised mandates, with a goal of a 50% reduction, based on the results of requested analysis and achieved through programs such as the Specialized Care Unit.
Direct the City Manager to ensure that the working group of City Staff as outlined in the October 28th Off-Agenda Memo is coordinating with the Task Force.
The Task Force will provide input to and make recommendations to NICJR and City Staff on a set of recommended programs, structures and initiatives incorporated into a final report and implementation plan developed by NICJR to guide future decision making in upcoming budget processes for FY 2022-23 and, as a second phase produced, in the FY 2024-2025 budget processes.
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 69,695–N.S.

Council Consent Items

19. Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self Defense
From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt a resolution calling on the National Parks Service to conduct a Reconnaissance Survey to assess the suitability of lands in the San Francisco Bay Area to honor the Black Panther Party in Berkeley, Oakland, Richmond, and the surrounding Bay Area; send letter to the National Parks Service, and President[-elect] Joseph R. Biden, Jr with resolution.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Adopted Resolution No. 69,696–N.S. as revised in Supplemental Communications Packet #2 from Councilmember Taplin.

20. Relief for Child Care Providers
From: Councilmember Hahn (Author), Councilmember Harrison (Co-Sponsor), Councilmember Wengraf (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Adopt a resolution making child care providers, including all forms of early childhood education, eligible for grants and other assistance under the Berkeley Relief Fund.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Adopted Resolution No. 69,697–N.S.

21. Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade
From: Councilmember Wengraf (Author), Councilmember Droste (Co-Sponsor), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 48th anniversary of its passage.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Adopted Resolution No. 69,698–N.S.

22. Support for AB 15 and AB16
From: Councilmember Robinson (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Taplin (Co-Sponsor)
Recommendation: Send a letter of support for AB 15, the Tenant Stabilization Act of 2021, and AB 16, the Tenant, Small Landlord, and Affordable Housing Provider Stabilization Act of 2021, to Assemblymembers Buffy Wicks and David Chiu and Senator Nancy Skinner, and urge the legislature not to preempt cities like Berkeley from taking robust steps to protect tenants.
Financial Implications: See report
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
Action: Approved recommendation.

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Urgent Item: Letter to Governor Newsom Calling for Improvements and Additional Funding for State's Vaccine Rollout
From: Councilmember Kesarwani (Author)
Recommendation: Request that the City Manager send the attached letter to Governor Newsom calling for improvements and additional funding for the state's vaccine rollout. Specifically, the letter requests: immediate additional funding of $400 million to local health departments for vaccine distribution, administration, and public outreach; data on vaccine usage at the health care system and county level; and flexibility for vaccine phases and a user-friendly experience.
Copies of the attached letter should also be sent to: Senator Nancy Skinner, Chair, Senate Budget and Fiscal Review Committee; Assemblymember Phil Ting, Chair, Assembly Budget Committee; the Senate Budget and Fiscal Review Committee; the Assembly Budget Committee; Mark Ghaly, Secretary, California Health and Human Services; Tomás Aragón, Director, State Public Health Officer, Department of Public Health; and Keely Bosler, Director, Department of Finance.
Financial Implications: Staff time
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
Action: Moved to Consent Calendar. Approved recommendation with revisions to the letter, the final language of the letter to read as follows:

We believe the distribution of safe and effective vaccines to Californians demands a level of urgency akin to a wartime mobilization, so we write to you with concerns about California's vaccine rollout to date. We understand that there is currently a limited supply of vaccines being made available to local health departments and health care systems, as is true for all U.S. states and territories. We also know that the availability of vaccine supply is dependent on manufacturers and coordination with the federal Centers for Disease Control and Prevention.

We applaud recent steps taken by your administration and local partners to establish mass vaccination sites and increase the number of trained vaccinators in order to ensure that life-saving vaccine gets into arms as quickly as possible. We strongly agree with the recommendations that have already been made in a letter authored by Assemblymember Cottie Petrie-Norris on January 13, 2021, which was co-signed by 46 state lawmakers. In that letter, state legislators called on your administration to:

- *Provide a reliable forecast of vaccine doses to be distributed to local health departments and health care systems, and it is our sincere hope that your administration and the incoming Biden-Harris administration can work together to provide the certainty that our local vaccine distributors need in order to adequately plan for efficient vaccine distribution;*
- *Expand the pool of vaccinators to include nursing students, retired medical professionals, firefighters, and trained service members of the National Guard; and*
- *Assure that state reimbursement will be available to local health departments for vaccine distribution costs.*

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As a local health jurisdiction, the City of Berkeley is eager to play its role in vaccinating our community; as of January 15, 2021, our city has used 92 percent of 1,100 first doses received and eagerly awaits more life-saving doses to protect our community. We respectfully make the following requests that we believe will help to ensure that we have the tools needed to win the war against COVID-19:

1) Provide immediate additional funding to local health departments for vaccine distribution, administration, and public outreach. The COVID-19 pandemic has exposed long-term under-investment in local health departments by the state and federal government alike. We support the request made by a number of organizations—including the California State Association of Counties, Urban Counties of California, Rural County Representatives of California, County Health Executives Association of California, and the Health Officers Association of California—to provide $400 million for COVID-19 vaccine distribution and administration. This funding is critical to ensuring that local health departments have the staffing and logistical support needed to get vaccine into arms and to leverage partnerships with trusted messengers that can promote the safety and efficacy of vaccines to our diverse communities. We are concerned about news reports indicating that roughly 20 to 40 percent of frontline health care workers in Los Angeles County and an estimated 50 percent in Riverside County declined the vaccine, and we believe much more investment is needed in a public awareness campaign.

2) Provide data on vaccine usage at the health care system, county and local health jurisdiction level. It has come to our attention that the California Department of Public Health does not provide data on vaccine usage rates by health care system and at the county level or by local health jurisdiction. Given our state's challenges in using available vaccine, we are concerned that local health departments do not have access to local data on how vaccine distributors within their jurisdiction are performing in terms of vaccine usage. We urgently request that the state make vaccine usage data available by health care system and at the county level or by local health jurisdiction, so that local health departments can support entities within their jurisdiction that may be experiencing challenges in efficiently using vaccine doses.

3) Promote flexibility for vaccine phases and a user-friendly experience. As we proceed with our vaccination program, we urge you to ensure that our state's prioritization system for distributing vaccines includes flexibility so that no dose ever goes to waste within the established tiers and phasing. In addition, reports of uneven access to vaccine among eligible priority groups across the state and long phone hold times lead us to believe that we must do more to promote a user-friendly experience. This should include ensuring that information from any vaccine provider be offered in threshold languages as determined by each county. To that end, we support efforts to create multiple access points—from pharmacies and doctor's offices to mass vaccination sites—across our state and to provide multiple avenues for our diverse populations to make an appointment or learn where they can go to get vaccinated.

4) Promote Equity in vaccine prioritization and distribution

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As the state continues the roll out of vaccination, it should center equity in its decision making and prioritization, and prioritize populations that have been most impacted and suffer from the highest mortality rates due to COVID-19.

We share your firm belief that our state's well-being and economic vitality hinges on reaching herd immunity from COVID-19 through efficient and equitable distribution of vaccines to our state's 40 million residents. We are eager to do our part at the local level to vaccinate members of our community, and we appreciate your consideration of the issues we raise.

23. Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025 *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee)*
From: Councilmember Davila (Author)
Recommendation: Adopt a resolution with the following actions:
1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over $28K by 2025, over $23K by 2026, and all others by 2027, in order to actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles.
2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.
(On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item as amended by the committee with the following recommendation: Adopt a resolution with the following actions: 1. Refer to the City Manager to prepare any draft ordinances that, to the extent legally permissible, achieve an 80% phase out of the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2027. This shall include termination of purchasing these vehicles to support City fleets and, for the general public, a staged phase out of such cars valued at over $28K by 2025, over $23K by 2026, and all others by 2027, in order to

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actively create a used electric vehicle market for lower income customers that allows them to acquire electric vehicles at a cost equal to or below that of comparable gasoline, diesel, or natural gas vehicles. 2. Refer to the City Manager and/or designee(s) to report to the City Council, in consultation with other City Departments the following information: (A) Feasibility of terminating the sale of gasoline, diesel and natural gas passenger vehicles; (B) ways to promote and facilitate the use and sale of all-electric vehicles in the City, particularly among low income communities, including the provision of local tax incentives and rebates, as large as is necessary to cover any cost difference between an electric car and a comparable gas car; ways to promote and facilitate the purchase and use of electric micro mobility alternatives (e-bikes, scooters) in the City, particularly among low income communities and families, including loaner programs, subsidized long term rentals, purchase subsidies, and expanded secure parking for e-bikes, including larger cargo bikes; and the establishment of public charging station and related infrastructure to support all-electric vehicles; (C) any "just transition" elements related to the above action, including the impact upon and opportunities for auto mechanics.)
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Moved to Consent Calendar. Adopted Resolution No. 69,699–N.S. as revised in Supplemental Communications Packet #2 from Councilmember Harrison, and the recommendation revised to request that the City Manager return to the City Council with an analysis of the impact to the sales tax revenue to the City if a local ordinance is adopted prior to State requirements going into effect.

24. Support calling upon food companies within Berkeley to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities *(Continued from December 15, 2020. Item contains revised material.)*
From: Councilmember Davila (Author), Councilmember Harrison (Co-Sponsor)
Recommendation: Adopt a Resolution calling upon supermarkets, restaurant companies, and other food corporations with locations in Berkeley, CA to implement the requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities.
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Moved to Consent Calendar. Adopted Resolution No. 69,700–N.S. as revised in Supplemental Communications Packet #2 from Councilmember Harrison and the recommendation revised to add that the Mayor's Office will send copies of the resolution to all businesses that are subject to the provisions of the resolution.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – Wengraf; Absent – None.

25. Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley *(Reviewed by the Health, Life Enrichment, Equity and Community Committee)*
From: Councilmember Davila (Author), Councilmember Bartlett (Co-Sponsor)

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Recommendation: Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley, and commit to eliminate all socioeconomic barriers to health equity. In addition:
1. Declare the resolution an emergency measure for the immediate preservation of public peace, property, health, or safety, especially during the COVID-19 pandemic and it shall take effect and be in force immediately upon its adoption.
2. Budget Referral to convene a series of town hall sessions for all community members, City workers, and small business owners to discuss the concerns of people of color and marginalized community members, and develop strategies and programs (especially Mental Health Programs for the unhoused stay housed) for greater inclusivity, understanding, empathy, compassion, and unity. The purpose of these meetings should be to strengthen anti-racist capacity building and commitments within the city. This can be done by discussing the current quantitative and qualitative reality of racial justice and injustice, racism and non-racism in all areas of city life toward developing measures to ensure the achievement racial equity in Berkeley. These town halls, strategies and programs could include: the definition and lived experience of racism in systemic and institutional forms the effects and trauma caused by them, and provide resources to combat implicit bias on all levels. Community partners to consider to facilitate such workshops include Beyond Diversity: Courageous Conversations About Race and Showing Up for Racial Justice (SURJ).
3. City Council will establish a working group to promote racial equity as well as the development of programs to address racial equity in this City.
4. Direct the City Manager or his/her designee to record COVID-19 data by race/ethnicity and to explore greater health disparities that have emerged as a result of this crisis.
5. Direct the City Manager or his/her designee to hold several fundraisers at town hall sessions for black-owned small businesses, research of state and federal RFPs for the purpose of grants acquisitions for program development in the City of Berkeley that have been affected by Covid-19 and/or recent protests.
6. Direct the City Manager or his/her designee to prepare a Health in All Policies Ordinance (see attached City of Richmond Ordinance) for Council review and adoption, critically evaluating the public health impact of all legislative and budgetary proposals, especially upon people of color and marginalized community members.
7. Direct the City Manager or his/her designee to adopt a mandatory requirement of 16 hours of ongoing annual online and in-person training on implicit bias, cultural sensitivity, and cultural humility for City Employees, commissioners, and community members; and
8. Direct the City Manager or his/her designee in partnership with the Berkeley Public Health Division and the Mental Health Division to develop a Strategic Plan for Health Equity, with the inclusion of a diverse group of staff with expertise in this subject matter and begin immediate implementation of recommendations.
9. Direct the City Manager or his/her designee to have an antiracism dashboard that delineates and tracks progress towards specific antiracist goals. This would involve: 1) tracking and measuring specific data that shows the extent to which racism has become a public health crisis; which would in turn enable 2) the City and the

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Community to dramatically reduce instances of racism, if not totally eliminate some of them; and 3) demonstrate to constituents that the other recommendations have made, and must continue to make, a tangible difference. The dashboard shall include: analyzing hospital infant mortality by race; tracking food insecurity among Berkeley residents, and correlation to racial demographics; analyzing the effects of biological weathering and resultant mental health challenges on immune strength for black individuals, and studying mental health resource availability and outreach targeting at-risk black communities; analyzing the administration of medications and health therapies by race, in an attempt to understand Berkeley health providers position vis a vis the systemic under-prescription and under-treatment of Black patients pain; tracking violent incidents targeting queer Black residents, and studying the availability of mental health resources and culturally competent healthcare for queer Black patients; identifying the largest sources of corporate environmental or carcinogenic pollution in Berkeley, and the racial demographics of people with prolonged exposure to those regions (i.e. workers and residents within range of toxic substances); identifying the locations of city waste storage/processing and the racial demographics of those most closely exposed; examining property taxes by neighborhood, and correlation to school resources and student racial demographics; examining the availability of stable and affordable Internet access, as necessary for all possible student activities offered and required by Berkeley public schools;
10. Collaborate with the Berkeley Unified School District and the Vision 2020 to see how this is correlated to household racial demographics; analyzing students' realistic access to extracurricular activities such as arts and athletics; race-based differential access means that some students have less access to educational opportunities that help with physical and mental health; identifying the levels of lead and other toxins in public school buildings, and correlation to resource allocation and racial demographics among schools.
11. Submit copies of this resolution to State Assemblymember Buffy Wicks, State Senator Nancy Skinner, Congresswoman Barbara Lee, Alameda County Supervisor Keith Carson, as well as various organizations such as the Berkeley NAACP, the African American Holistic Resource Center Steering Committee, and Healthy Black Families.
(On November 23, 2020, the Health, Life Enrichment, Equity & Community Committee made a qualified positive recommendation for the City Council to take the following action:
1. Make the following statement:
Declare Racism as a public health crisis and a threat and safety issue for the City of Berkeley, and commit the City of Berkeley to eliminating all racial and socioeconomic barriers to health equity.
2. Recommend that City Councilmembers consider working together or independently to convene a public session or sessions in their districts on racism as a public health crisis and threat and safety issue, to further public knowledge and input on these important matters and help create a movement to address racial disparities in Berkeley.
3. Refer to the Mayor and City Manager to discuss how to incorporate programs and policies to address racial equity in the work of the City of Berkeley.

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4. Refer to the City Manager and Office of Economic Development to consider how the City of Berkeley can support women and minority owned businesses through the COVID crisis and recovery period.
5. Refer to the City Manager to adapt the Richmond Health in All Policies Ordinance and return to Council a version for the City Council to consider adopting, or any other recommendation related to the proposed Ordinance.
6. Refer to the City Manager to consider requiring and providing antiracism, implicit bias, cultural sensitivity and cultural humility training for all City of Berkeley employees, and the City Council, and to consider ways to make such training accessible to the public via online or other training opportunities.
7. Refer to the City Manager to include an Anti-Racism dashboard on the City of Berkeley's new website, to consolidate information about racial disparities across all City of Berkeley services and initiatives.
8. Recommit to continuing the City of Berkeley's work with Berkeley Unified School District through the 2020 Vision process, and recommend adding a focus on extracurricular activities and access to enrichment and support outside of the classroom.)
Financial Implications: $50,000
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Moved to Consent Calendar. Approved the recommendation of the Health, Life Enrichment, Equity & Community Committee, and added to the recommendation to strike from the report all references to the definitions of racism. The supplemental material in Supplemental Communications Packet #2 from Councilmember Taplin was withdrawn by the Councilmember.

26. Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers
From: Councilmember Taplin (Author), Councilmember Bartlett (Co-Sponsor), Mayor Arreguin (Co-Sponsor)
Recommendation: Refer the City Manager and City Attorney to draft an emergency ordinance to guarantee hazard pay of an additional five dollars an hour for grocery store workers, effective upon adoption and until the City returns to the Yellow-Tier 4 rate of positivity for COVID-19.
Financial Implications: None
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Moved to Consent Calendar. Approved the recommendation as revised in Supplemental Communications Packet #2 from Councilmember Taplin and that the City Manager should take into consideration similar hazard pay programs in Long Beach and Los Angeles as part of this referral.

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27. Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19
From: Councilmember Hahn (Author), Councilmember Harrison (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)
Recommendation: Adopt an ordinance revising BMC Chapter 16.18 Right-of-Way Encroachments and Encroachment Permits and BMC Section 14.48.150 Sidewalk Seating, Benches, and Planters to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days after the termination of the declared City emergency rather than the current 90 days.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Moved to Consent Calendar. Adopted first reading of Ordinance No. 7,750–N.S. as revised in Supplemental Communications Packet #2 from Councilmember Hahn. Second reading scheduled for February 9, 2021.

Information Reports

28. Condominium Conversion Program – Annual Report
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Received and filed.

29. Referral Response: Housing and Homeless Uses for City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street
From: City Manager
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – None.

Adjournment

Action: M/S/C (Hahn/Wengraf) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 9:00 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on January 19, 2021.

_____
Rose Thomsen
Deputy City Clerk

Communications

Item #18: Revisions to Enabling Legislation for Reimagining Public Safety Task Force

1. Steve Martinot

North Berkeley BART

2. 69 form letters (I am a resident)
3. Andrea Altschuler
4. Mary Lai
5. Janice Schroeder
6. Particia Maud Engel
7. Vicki Sommer
8. Joel Resnikoff
9. Toni Casal
10. Miranda Ewell
11. Jeannette MacMillan
12. Jodi Ravel
13. Kathleen Jo
14. Claudia Valas
15. Jack Kurzweil
16. Libby Lee-Egan
17. Eileen Hughes
18. Reynaldo Santa Cruz
19. Whitney Moss
20. Lee Bishop
21. Julieta Pisani McCarthy
22. Cece Littlepage (2)
23. Linda Gallaher-Brown
24. Caroline & Stephen Shiboski
25. Sheila Himmel
26. Alan Finkelstein
27. Peggy Scott
28. Meryl Siegal
29. Laura Garcia Moreno
30. Joel Resnikoff
31. Eleni Sotos
32. Marianne Schulman
33. Kenneth Gross
34. Andrea Altschuler
35. Becca Schonberg
36. Leslie Valas
37. Michael Katz
38. Jacqueline Wilson and Family
39. Aime Baldwin (2)

40. Barbara Fisher
41. Claudia Valas
42. Teresa Clarke
43. Sue Martin
44. Mary Behm-Steinberg
45. Mariko Nobori
46. Cathryn Hrudicka
47. Judy Peck
48. Irene Rice
49. Deborah Gouailhardou
50. Larry Orman
51. Leah Levy
52. Daniel Borgstrom
53. Danny and Adrienne Snyder
54. Rebecca Burke and Jay Koslofsky
55. Raymond Barglow
56. Eileen Hughes
57. Virginia Browning
58. Todd Jailer
59. Gary Dahl
60. David Brandon

Pickleball
61. Jeanne Schuman
62. Brian MacDougall
63. Laurie Mac Dougall
64. Susanne Mitchell

African-American Holistic Resource Center
65. Sivan Orr
66. Eric Friedman
67. Barbara Ann White

Keep Playgrounds Open
68. Tia Pelz
69. Pat Reilly
70. Megha Charalambides
71. Sarah Burt
72. Hillary Kilimnik
73. Katya Stoakes
74. Rainbow Rubin
75. Elif Lostuvali
76. Dan Bristol
77. Elena Montoya

Vision 2025
78. Nilang

79. Jill Eckart

Covid-19 Related
80. Jennifer Pearson
81. Nathan Francis
82. Tyler Walsh
83. Nova Blazej
84. Michai Freeman
85. Moni Law (2)
86. M. Mendonca
87. Elena Montoya
88. Clark Socie
89. Linda Cranmer
90. Vivian Warkentin
91. David Lerman (3)
92. Lisa Hernandez, City of Berkeley Health Officer

5G & Wired
93. Greg Jan
94. Lloyd Morgan
95. Protect Berkeley
96. Max Ventura

Solar Speed Limit Sign
97. Victoria Hritonenko
98. Maya Trilling
99. Joe Lurie
100. Bruce Perens
101. Donna Rosenthal
102. Fred Bamber
103. Lola Vollen

Homelessness
104. Russbumper (4)
105. Willow Katz
106. Teal Major

Needle Disposal
107. Zoe Keeler
108. Ziad Shafi

Bayer Corporation
109. Max Ventura
110. Councilmember Harrison

Cannabis
111. JJ

112. Getting It Right From the Start

PG&E
113. Michael Nystrom

Golden Gate Field Horses
114. Scott Chaney, on behalf of the California Horse Racing Board
115. Heather

ADU's
116. Gradiva Couzin, Chair, Disaster and Fire Safety Commission

Ceremonial Matters – Cheryl Davila
117. Andrea Mullarkey
118. Cheryl Davila
119. Elisa Mikiten

Downtown Streets Team's Safety Protocol
120. Carol Denney
121. Julia Lang

Environmental Concerns
122. Russbumper
123. Vivian Warkentin
124. Thomas Lord
125. Meryl Siegal

Rent Control
126. Krista Glickman

Posting Policy Commission Minutes
127. Kelly Hammargren

Berkeley's City Budget
128. David Lerman

Neighborhood Rat Infestation
129. Sheila Goldmacher

Slavery
130. Russbumper

Adeline Corridor
131. Lynn Cooper

Residential Parking Permits

132. Jeff Stein

Happy New Year and Thanks
133. Bob Flasher

URL's Only
134. Barbara Gilbert
135. Russbumper (5)
136. Vivian Warkentin (11)

Supplemental Communications and Reports 1

Item #16: Amendments to the Berkeley Lobbyist Registration Act
137. Revised material, submitted by Councilmember Harrison

Item #20: Relief for Child Care Providers
138. Kym Johnson

Item #23: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025
139. Supplemental material, submitted by Councilmember Harrison

Item #24: Support calling upon food companies within Berkeley to Implement the Requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities
140. Amber Canavan, on behalf of PETA

Supplemental Communications and Reports 2

Item #16: Amendments to the Berkeley Lobbyist Registration Act
141. Revised material, submitted by Councilmember Harrison

Item #17: Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association
142. Alina Constantinescu, BPWA President
143. Karen Ebadi
144. Janet Byron
145. Susan Schwartz

Item #19: Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self-Defense
146. Supplemental material, submitted by Councilmember Taplin
147. Ron Sundergill, on behalf of the National Parks Conservation Association
148. Kieron Slaughter

Item #20: Relief for Child Care Providers
149. Prima Offril, on behalf of the Cedar Creek Montessori School
150. Ashok Kumar
151. Patty Camacho
152. Kristin Spanos, on behalf of First 5 Alameda County

Item #23: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025
153. Supplemental material, submitted by Councilmember Harrison

Item #24: Support calling upon food companies within Berkeley to Implement the Requirements of Proposition 12 as soon as possible by only selling eggs and meat from cage-free facilities
154. Supplemental material, submitted by Councilmember Harrison

Item #25: Declare Racism as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley
155. Supplemental material, submitted by Councilmember Taplin

Item #26: Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers
156. Supplemental material, submitted by Councilmember Taplin
157. Connor Jackson
158. Julianne Pelaez
159. Jordan Burns
160. Abigail Lawlor
161. Sophia Stremel
162. Tallulah
163. Raquel Moral
164. Six similarly worded letters

Item #27: Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19
165. Supplemental material, submitted by Councilmember Hahn

Supplemental Communications and Reports 3

Item #17: Renaming of Four City Paths for Founders of the Berkeley Path Wanderers Association
166. Austene Hall

Item #18: Revisions to Enabling Legislation for Reimagining Public Safety Task Force
167. Igor Tregub, Chair of Peace and Justice Commission

Item #19: Urging the National Parks Service to Establish a National Parks Unit in the San Francisco Bay Area to Honor the Black Panther Party for Self-Defense
168. Alex Knox, on behalf of the Telegraph Business Improvement District
169. Fredrika Newton
170. Jennifer Lynn-Whaley
171. Terance Barkus
172. Mike Uberti
173. Olivia Anglade
174. Nathalio Gray

Action Calendar

Item #23: Introduce an Ordinance terminating the sale of gasoline, diesel and natural gas passenger vehicles throughout the City of Berkeley by 2025

175. Igor Tregub, on behalf of the Sierra Club, SF Chapter
176. Kathy Dervin
177. Betsy Biegelo-Teller
137. Eric Strid

178. Item #25: Declare Racism **as a Public Health Crisis, a Threat and Safety Issue in the City of Berkeley**

179. Diana Bohn
180. Elliot Halpern

Item #26: Guaranteeing COVID-19 Hazard Pay for Grocery Store Workers

181. Timothy James, on behalf of the California Grocers Association

Attachment 4

MINUTES
SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Thursday, January 21, 2021

6:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **836 1292 4326**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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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: 6:00 p.m.

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

Absent: Arreguin

Action Calendar – Public Hearings

1. Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street
From: City Manager
Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the decision of the Landmarks Preservation Commission (LPC) to not designate the property at 1915 Berryman Street as a City Landmark or Structure of Merit, and dismissing the appeal.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Public Testimony: The Vice Mayor opened the public hearing. 46 speakers.
M/S/C (Droste/Wengraf) to close the public hearing.
Vote: Ayes - Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste; Noes – None; Abstain – None; Absent – Arreguin.

Action: M/S/C (Kesarwani/Droste) to adopt Resolution No. 69,701–N.S. affirming the decision of the Landmarks Preservation Commission (LPC) to not designate the property at 1915 Berryman Street as a City Landmark or Structure of Merit, and dismissing the appeal.
Vote: Ayes - Kesarwani, Taplin, Bartlett, Harrison, Wengraf, Robinson, Droste; Noes – Hahn; Abstain – None; Absent – Arreguin.

Action Calendar – Public Hearings

2. ZAB Appeal: 0 (2435) San Pablo Avenue
From: City Manager
Recommendation: Conduct a public hearing, and upon conclusion adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2018-0229, to construct a four-story, 20,526-square-foot, mixed-use building with 42 Group Living Accommodation rooms and 800 square feet of ground floor commercial/retail space on two vacant parcels, and dismissing the appeal.
Financial Implications: None
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Public Testimony: The Vice Mayor opened the public hearing. 24 speakers.
M/S/C (Droste/Robinson) to close the public hearing.
Vote: Ayes - Kesarwani, Bartlett, Harrison, Wengraf, Robinson, Droste; Noes – Hahn; Abstain – None; Absent – Arreguin Taplin (Recused: Provided public testimony on the project at an earlier date).

Action: M/S/C (Droste/Hahn) to suspend the rules and extend the meeting to 11:30 p.m.
Vote: Ayes - Kesarwani, Bartlett, Hahn, Robinson, Droste; Noes – Harrison, Wengraf; Abstain – None; Absent – Taplin (Recused), Arreguin.

Action: M/S/C (Wengraf/Droste) to call the question on the item.
Vote: Ayes - Kesarwani, Bartlett, Harrison, Wengraf, Robinson, Droste; Noes – None; Abstain – Hahn; Absent – Taplin (Recused), Arreguin.

Action: M/S/C (Droste/Kesarwani) to adopt Resolution No. 69,702–N.S. affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2018-0229, to construct a four-story, 20,526-square-foot, mixed-use building with 41 Group Living Accommodation rooms, one manager's dwelling unit, and 800 square feet of ground floor commercial/retail space on two vacant parcels, and dismissing the appeal. Additionally to add a condition to comply with Section 13.42 of the Building Code regarding GLA management and add a soap dispenser in the bathroom.
Vote: Ayes - Kesarwani, Bartlett, Hahn, Wengraf, Robinson, Droste; Noes – Harrison; Abstain – None; Absent – Taplin (Recused), Arreguin.

Adjournment

Action: M/S/C (Droste/Robinson) to adjourn the meeting.
Vote: Ayes - Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste; Noes – None; Abstain – None; Absent – Taplin, Arreguin.

Adjourned at 11:07 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on January 21, 2021.

_____
April Richardson
Assistant City Clerk

Communications

Item #1: Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street

1. Ellen Simms
2. Alexander Sahn
3. Andrew Sutherland
4. Patrick Kennedy
5. James Proctor
6. Kyle Ray Kelley
7. Kevin Burke
8. Nicole Hsu
9. Philip Soffer
10. Sara Fain
11. Robert Chance
12. Shawn Drost
13. Deborah Kropp (2)

Item #2: ZAB Appeal: 0 (2435) San Pablo Avenue

14. Toni Mester (2)
15. Fran Haselsteiner
16. Whit and Una Ingram
17. Douglas Smith
18. Joan Bobkoff
19. Mitch Rubin
20. David King and Kim Maplestone
21. Wanie Biggs
22. Scott Fanning
23. Marcia DuBois

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street

24. Lindsay Brothers
25. Erin Morris
26. Bret Peterson
27. David Mendelsohn
28. Daniella Thompson
29. Carrie Olson, Berkeley Architectural Heritage Association
30. Anthony Bruce
31. Jack Woodruff
32. Lisa Bruce
33. Pam Ormsby
34. Cynthia Hanson
35. Lorraine Lerman
36. Leslie McLean

37. Martin Guerrero
38. Valerie J Herr
39. Jane Larson
40. Thalia Lubin
41. Jane White
42. Judith Thomas
43. Susan Moon
44. Charlene M. Woodcock
45. Sally Nelson
46. Summer Brenner
47. Roger Pritchard
48. Peter G. Lomhoff
49. Michael Katz
50. Kim Bancroft
51. Laura Cochrane
52. Carol Denney
53. Rachel Rosekind
54. Watson Ladd
55. Daniel Killian
56. Daniel Winkler
57. Laura
58. Scott Govers
59. Hannah Mobarekeh
60. Jason Martens
61. Deborah Kropp
62. Jeremy Fancher
63. Libby and Chris Lee-Egan

Item #2: ZAB Appeal: 0 (2435) San Pablo Avenue

64. Susan St. George
65. Virginia Warheit
66. Toni Mester
67. Kelli Negro
68. Watson Ladd
69. Jonathan Singh
70. Doug Fowler
71. Berkeley Neighborhoods Council
72. Philip Soffer
73. Alfred Twu
74. Felicia Betancourt
75. Aviv Schifrin
76. Betsy Thagard
77. 9 Similarly Worded Letters
78. 9 Similarly Worded Letters

Supplemental Communications and Reports 3

Item #1: Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street

79. Kathleen Giustino (2)
80. Francine Masiello

81. Rachel Callaghan (2)
82. Sharon Entwistle
83. Michael Hulihan
84. Clem Donahue
85. Constance Rivemale
86. Tom Hall
87. Renee Leventhal
88. Helen Toy
89. Caitlin Glasscock
90. teacherrosenrg@
91. Mark Morris
92. David Toy
93. Karen Weil
94. Maryann Wolfe
95. Dina Roumiantseva
96. Ali Alia

Item #2: ZAB Appeal: 0 (2435) San Pablo Avenue

97. Kent Wilson
98. Mark Numainville, City Clerk
99. Holly Mines
100. Vanessa Boehm
101. Azleeza16@
102. Travis Close
103. Leah Goodman
104. Elizabeth Gulli
105. Donna Vial
106. Marge Essel
107. Elisa Mikiten
108. Sam Saxe-Taller

Attachment 5

MINUTES
BERKELEY CITY COUNCIL
SPECIAL MEETING

MONDAY, JANUARY 25, 2021

4:30 P.M.

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

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*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free);** enter Meeting ID: **846 6233 9508.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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Preliminary Matters

Roll Call: 4:32 p.m.

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

Absent: Kesarwani

Councilmember Kesarwani present at 4:37 p.m.

Public Comment - Limited to items on this agenda only – 24 speakers

CLOSED SESSION:

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

1. **PUBLIC EMPLOYEE APPOINTMENTS PURSUANT TO GOVERNMENT CODE SECTION 54957(b):**

    a. **Title of position to be filled:** City Attorney

    Action: No reportable action taken.

2. **CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6**

    Negotiators: Dee Williams-Ridley, City Manager, Paul Buddenhagen, Deputy City Manager, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Dania Torres-Wong, Chief Labor Negotiator, Burke Dunphy.

    Employee Organizations: International Brotherhood of Electrical Workers (IBEW), Local 1245, SEIU 1021 Community Services and Part-time Recreation Activity Leaders, Public Employees Union Local 1.

    Action: No reportable action.

OPEN SESSION:

No reportable action taken.

Adjournment

Action: M/S/C (Droste/Robinson) to adjourn the meeting.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Wengraf.

Councilmember Wengraf absent at 7:04 p.m.

Councilmember Harrison absent at 7:21 p.m.

Adjourned at 7:22 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting on January 25, 2021.

_____
Mark Numainville
City Clerk

Attachment 6

MINUTES
BERKELEY CITY COUNCIL
SPECIAL MEETING

TUESDAY, JANUARY 26, 2021

3:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free);** enter Meeting ID: **828 9971 4502.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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Preliminary Matters

Roll Call: 3:03 p.m.

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

Absent: Kesarwani, Taplin, Bartlett

Councilmember Kesarwani present at 3:08 p.m.

Councilmember Taplin present at 3:08 p.m.

Councilmember Bartlett present at 3:17 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. *Stahschmidt v. Berkeley (Alameda Superior Court Case No. RG 20069713) (AUP #ZP2018-0058)*

   Action: No reportable action taken.

OPEN SESSION:

No reportable action taken.

Adjournment

Action: M/S/C (Wengraf/Harrison) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 3:33 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on January 26, 2021.

_____
Mark Numainville
City Clerk

Attachment 7

MINUTES
SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Tuesday, January 26, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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Action Calendar

Preliminary Matters

Roll Call: 4:02 p.m.

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

Absent: Bartlett

Councilmember Bartlett present at 4:11 p.m.

Action: M/S/C (Arreguin/Taplin) to adopt a temporary rule for the special meeting to limit public comment to one minute per speaker with no yielding of time.
Vote: Ayes – Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett

Action Calendar – Public Hearings

1. Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23
(Continued from December 15, 2020. Item contains revised and supplemental material.)
From: City Manager
Recommendation: Conduct a public hearing and upon conclusion select among proposed ordinance language options and take the following action:
Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Title 14 and Title 23 which would:
1. Modify Minimum Residential Off-street Parking Requirements
2. Impose Residential Parking Maximums in Transit-rich Areas
3. Amend the Residential Preferential Parking (RPP) Permit Program
4. Institute Transportation Demand Management (TDM) Requirements
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Public Testimony: The Mayor opened the public hearing. 51 speakers.
M/S/C (Arreguin/Robinson) to close the public hearing.
Vote: All Ayes.

Action: M/S/C (Droste/Harrison) to:
1) Adopt first reading of Ordinance No. 7,751-N.S. to include the Planning Commission's minimum parking recommendations, the Planning Commission's maximum parking recommendations, the RPP modifications option to not extend eligibility for permits to residents of any newly constructed residential buildings, the TDM recommendation with an amendment in Section 23C.18.020 that removes the Southside Plan Area exemption from the TDM program and does not require transit passes for projects in the Southside Plan Area;
2) Refer to the City Manager and appropriate commissions updates to the TDM program to reflect evolving mobility and disability needs, including electric mobility options;
3) Refer to the City Manager the review and redesign of the RPP program.
Second reading scheduled for February 9, 2021.
Vote: All Ayes.

Adjournment

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

Adjourned at 7:30 p.m.

I hereby certify that the foregoing is a true and correct record of the special session meeting held on January 26, 2021.

_____
Mark Numainville
City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23

1. Alexandra Hallowell
2. Robert Gonzalez
3. Gradiva Couzin
4. Walter Wood
5. George Porter, commissioner for the Commission on Aging
6. Dale Rose
7. Scott Shenker and Mary Ruth Quinn
8. Jane Seto
9. Liza Lutzker, on behalf of Walk Bike Berkeley
10. Shawn Drost
11. John Parman
12. Gary Miguel
13. Watson Ladd
14. Adam Rogers
15. Lisa and Tom Goodman
16. Barry Fike
17. Charles Siegel
18. Aaron Foxworthy
19. Ariella Granett
20. Jan Knecht
21. Zach Franklin
22. Libby and Chris Lee-Egan
23. Alfred Twu
24. Karen Parolek
25. Drew Finke
26. Stephen Dalton
27. Ethel Murphy
28. Deborah Binder

29. Michael Ho
30. Marjorie Alvord
31. 6 similarly worded letters (Please support)
32. 9 similarly worded letters (As a Berkeley resident)
33. 10 similarly worded letters (I am writing)
34. 6 similarly worded letters (My name is)

Supplemental Communications and Reports 3

Item #1: Referral Response: Zoning Ordinance Amendments that Reform Residential Off-Street Parking; Amending Berkeley Municipal Code Title 14 and Title 23

35. Revised material, submitted by Councilmember Hahn
36. Presentation, submitted by Planning
37. Milo Trauss
38. Annie Preston
39. Ben Gould
40. Noah Budnick
41. Jack Colicchio
42. Rachel Gold
43. Ariel Zucker
44. Charles Kahn
45. Franklin Lei
46. David Coolidge
47. Aaron Bialick
48. Peggy Scott
49. Allegra Guarino
50. Virginia Browning
51. Naomi Levinthal
52. Martha Richards
53. Daniel Borgstrom
54. Kathleen Hanley
55. Dale Friedman
56. Steve Sperber
57. K. Schwartz
58. David Brandon
59. Samuel Taplin
60. Steve Gilmartin
61. Walter Wood
62. Jeff Stein
63. Dawn Finch
64. Zachary Lamb
65. Lily Good
66. Carolyn Weil
67. Anne Torney
68. Josh Gutwill
69. Stefania Pombo
70. Mimi Nielsen
71. Desmid Lyon
72. Jason Warriner
73. Liza Lutzker

74. Laura Magnani
75. Laurie Schley
76. Charles Almy
77. Judy Stamps
78. Paul Jolly
79. Laurence LePaule
80. DDM
81. Marcia Schwartz
82. David Brown
83. Shari Kimball
84. Carol Hirth
85. Meryl Siegal
86. Cece Littlepage
87. Kenneth Gross
88. Elena McSwiggen
89. Marla and Rich Faszholz
90. Tom Reilly
91. Julieta Pisani McCarthy
92. Phyllis Oyama
93. Jodi Ravel
94. Tom Yamaguchi
95. Doris Iaroli
96. Frances Feldon
97. Andrea Altschuler
98. Janice Schroeder
99. Barney Greinke
100. Preet Dhillon
101. Justin Unverricht
102. Larry Orman
103. Richard Rosenblum
104. Igor Tregub, Chair, Sierra Club Northern Alameda Group
105. Jess Bloomer
106. Carol Crooks
107. Era Goel
108. Leah Levy (2)
109. Arlene Makita-Acuna
110. Leslie Valas
111. Fran Smith
112. Mary Behm-Steinberg
113. Brock and Elaine Smith
114. Mary Rose
115. Nick Morgan
116. Andrew Livsey
117. Nina Torcoletti
118. Cathryn Hrudicka and Richard Links
119. Todd Stuart
120. Deborah Binder
121. George Porter
122. Tom Lent

123. Eileen Hughes
124. Goodman Landscape Design
125. Vince Sugrue
126. Claudia Valas
127. Lewiss17@
128. Albert Farre
129. Moni Law
130. Teah Cory

Attachment 8

MINUTES

BERKELEY CITY COUNCIL MEETING

Tuesday, January 26, 2021
6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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

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To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us02web.zoom.us/j/87354849181. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **873 5484 9181**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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

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

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

Preliminary Matters

Roll Call: 7:48 p.m.

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

Absent: Bartlett

Councilmember Bartlett present at 7:51 p.m.

Ceremonial Matters:

1. Recognition of Mary Webb, Local Artist and Activist

City Auditor Comments:

The City Auditor noted Items 13 and 14 from the Public Works Department regarding the Pedestrian Plan and Paving Plan and the need to include equity in the City's paving policy.

City Manager Comments:

Acting City Manager Paul Buddenhagen provided an update on the City's vaccination efforts.

Public Comment on Non-Agenda Matters: 9 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 12 speakers.

Action: M/S/C (Arreguin/Harrison) to accept supplemental material from the City Manager for Item 14.
Vote: All Ayes

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

Consent Calendar

1. Contract No. 32000129 Amendment: Resource Development Associates for Planning and Project Coordination Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000129 with Resource Development Associates through January 31, 2022, adding $49,000 for a total not to exceed amount of $97,850, to fund Mental Health Services Act (MHSA) Innovations (INN) Planning and "Help@Hand" Technology Suite Project Coordination services.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,703–N.S.

Consent Calendar

2. Contract No. 32000106 Amendment: Easy Does It for Provision of Wheelchair Van Service for Seniors & Disabled
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000106 with Easy Does It with a new NTE (not to exceed) total amount of $150,000 for the period April 1, 2021 through June 30, 2023 for the provision of accessible wheelchair van services to clients of the Aging Services Division's Berkeley Rides for Seniors & the Disabled program.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 69,704–N.S.

3. Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code
(Continued from November 10, 2020)
From: City Manager
Recommendation: Adopt a Resolution accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code
Financial Implications: None
Contact: Andrew Greenwood, Police, (510) 981-5900, Savita Chaudhary, Director of Information Technology (510) 981-6541, Dave White, City Manager's Office, (510) 981-7000
Action: Adopted Resolution No. 69,705–N.S.

4. Contract: Sposeto Engineering Inc. for Central Berkeley Transportation & Infrastructure Improvements Project
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the Central Berkeley Transportation & Infrastructure Improvements Project, ("Project"), Specification Nos. 21-11411-C, 21-11416-C, and 21-11417-C; 2. Accepting the bid of Sposeto Engineering Inc., the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract with Sposeto Engineering 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 $3,477,475, which includes a contingency of fourteen percent for unforeseen circumstances.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,706–N.S.

Consent Calendar

5. Contract: Cratus, Inc. for Sanitary Sewer Rehabilitation at Various Locations
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for the Sanitary Sewer Project, located on Cedar Street, Virginia Gardens, Sacramento Street, Lincoln Street, Spaulding Avenue Backline, Roosevelt Avenue Backline, Martin Luther King Jr. Way and Backline, Walker Street Backline, Telegraph Avenue Backline, Atherton Street, Fulton Street, Bancroft Way, Shattuck Avenue, and Kittredge Street; accepting the bid of the lowest responsive and responsible bidder, Cratus, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed $2,074,469, which includes a 10% contingency of $188,588.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,707–N.S.

6. Contract: Toole Design Group for Planning, Design, and Engineering of the Southside Complete Streets Project
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Toole Design Group for Planning, Design, and Engineering of the Southside Complete Streets Project, for a not-to-exceed amount of $979,349 for the period February 1, 2021 through March 31, 2024.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,708–N.S. as revised in Supplemental Communications Packet #2 to revise the not-to-exceed amount to $1,281,611.

7. Approval of Berkeley Strategic Transportation Plan Second Addendum
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the Berkeley Strategic Transportation Plan Second Addendum. 2. Authorizing the City Manager to submit unfunded Five-Year Priority Projects from the Berkeley Strategic Transportation Plan Second Addendum to the Alameda County Transportation Commission for inclusion and funding in the County's Fiscal Year (FY) 2022 – FY 2026 Comprehensive Investment Plan. 3. Authorizing the City Manager to execute agreements as needed for accepting the awarded grant funds.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Adopted Resolution No. 69,709–N.S.

Consent Calendar

8a. A People's First Sanctuary Encampment *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*
From: Homeless Commission
Recommendation: The City Council to adopt the People's First Sanctuary Encampment Model incorporating all text in this report, urging best practices for Sanctuary Homeless Encampments with an oversight agency to be named by members of the encampment community and refer to the City Manager to fund liability insurance for the agency chosen by the encampment community.
(On December 14, 2020, the Health, Life Enrichment, Equity & Community Committee moved the Companion Report with a qualified positive recommendation to the City Council to take the following action: 1.Direct the City Manager to incorporate parts of the Commission's recommendations, including: providing clean water, sanitation, accessible toilets and trash removal services; and requiring that homeless services providers obtain input from clients when developing rules and ensure that the privacy and security of clients is respected and maintained at all times; 2. In addition, the City Manager shall receive the Homeless Commission's recommendations and retain them for future guidance when developing homeless services programs and models; and 3. That the City Council reaffirms its commitment to dignified and client-centered homeless services.)
Financial Implications: See report
Contact: Brittany Carnegie, Commission Secretary, (510) 981-5400
Action: See action for Item 8b.

Consent Calendar

8b. Companion Report: A People's First Sanctuary Encampment *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*
From: City Manager
Recommendation: As part of the referral adopted by City Council on January 21, 2020, the City Manager will direct staff to incorporate parts of the Commission's recommendations which do not conflict with guidance already approved by City Council including: providing clean water, sanitation, accessible toilets and trash removal services for the sanctioned encampment, requiring that a future provider of services for the encampment obtain input from residents of the encampment when developing rules for the outdoor shelter and ensure that the privacy and security of residents is respected and maintained and ensure that the privacy and security of residents is respected and maintained.
(On December 14, 2020, the Health, Life Enrichment, Equity & Community Committee moved the Companion Report with a qualified positive recommendation to the City Council to take the following action: 1.Direct the City Manager to incorporate parts of the Commission's recommendations, including: providing clean water, sanitation, accessible toilets and trash removal services; and requiring that homeless services providers obtain input from clients when developing rules and ensure that the privacy and security of clients is respected and maintained at all times; 2. In addition, the City Manager shall receive the Homeless Commission's recommendations and retain them for future guidance when developing homeless services programs and models; and 3. That the City Council reaffirms its commitment to dignified and client-centered homeless services.)
Financial Implications: Staff time
Contact: Lisa Warhuus, Housing and Community Services, (510) 981-5400
Action: Approved the recommendation of the Health, Life Enrichment, Equity & Community Committee.

Council Consent Items

9. Confirming Community Appointments to Reimagining Public Safety Task Force
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution: 1. Confirming the appointment of by the Associated Students of the University of California (ASUC) External Affairs Vice President to the Reimagining Public Safety Task Force. 2. Confirming the appointment of by the Steering Committee of the Berkeley Community Safety Coalition (BCSC) to the Reimagining Public Safety Task Force
Financial Implications: No direct fiscal impacts
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Adopted Resolution No. 69,710–N.S. as revised in Supplemental Communications Packet #2 from Mayor Arreguin to confirm the appointments of Alecia Harger (ASUC) and Todd Walker (BCSC).

Council Consent Items

10. Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council *(Continued from November 10, 2020)*
From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor)
Recommendation: Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) $40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.
Financial Implications: $40,000
Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110
Action: Approved recommendation revised to be a referral to the FY 2022 budget process.

11. Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code
From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1 to the report). Recommendations to Additional Objective Development Standards in Zones 2 and 3: -Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet. -Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district. Recommendations to amend the Fire Code: -Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population. -Require sprinklers in new construction, consistent with local Fire Code. -Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.
Financial Implications: Staff time
Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160
Action: Approved recommendation revised to add the underlined phrase, "…and objective development standards <u>for ADUs in all districts with expedited consideration</u> to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3."

Action Calendar – Public Hearings

12a. ***Item Removed by City Manager* Public Hearing: ZAB Appeal: 1850 Arch Street, Use Permit #ZP2019-0212**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400

12b. ***Item Removed by City Manager* Public Hearing: ZAB Appeal: 1862 Arch Street, Use Permits #ZP2019-0213**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400

12c. ***Item Removed by City Manager* ZAB Appeals: 1850 and 1862 Arch Street, Use Permits #ZP2019-0212 and ZP2019-0213**
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar

13. Berkeley 2020 Pedestrian Plan
From: City Manager
Recommendation: Adopt a Resolution approving the Berkeley 2020 Pedestrian Plan, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300
Action: Moved to Consent Calendar. Adopted Resolution No. 69,711–N.S.

14. Public Works Commission Recommendation for the Five-Year Paving Plan
From: Public Works Commission
Recommendation: Adopt a Resolution that recommends approval of the first three years of the Five-Year Paving Plan, for FY2021 to FY2025, as proposed by Staff, with special advisories regarding prioritization of permeable paving on select streets.
Financial Implications: See report.
Contact: Joe Enke, Commission Secretary, (510) 981-6300

Action: Moved to Consent Calendar. Adopted Resolution No. 69,712–N.S. with the revisions noted below in the supplemental materials submitted by the City Manager.

District 4: for FY 2021, replace Durant between Shattuck and Fulton with Channing between McKinley and MLK. There is no budget impact related to this change.

District 6: no changes for FY 2021. Due to EBMUD's rescheduling of its work, some of this district's paving segments were pushed further back in the 5-year plan. Staff and the Commission will return for the 5-year paving plan approval in January 2022 with identified street segments for FY 2022 and 2023; costs for these segments will be offset by reductions in this district's FY 2024 and 2025 paving.

Action Calendar – Public Hearings

15. Amend BMC Chapter 14.52 Authorizing goBerkeley Parking Program at All Parking Meters
From: City Manager
Recommendation: Conduct a public hearing, and upon conclusion adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 14.52 to add all parking meter areas to the goBerkeley parking program, thereby authorizing the use of demand-responsive parking management citywide under the existing goBerkeley fee structure and program guidelines.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Public Testimony: The Mayor opened the public hearing. 1 speaker.
M/S/C (Robinson/Droste) to close the public hearing.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Councilmember Harrison absent 9:31 p.m. – 9:57 p.m.

Action: M/S/C (Robinson/Droste) to adopt first reading of Ordinance No. 7,752-N.S. Second reading scheduled for February 9, 2021.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Action Calendar

16. Support Community Refrigerators *(Continued from November 10, 2020)*
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a Resolution to create an allocation of the homeless budget towards the purchasing of community refrigerators to be distributed in Council districts to provide access to food for those who have no refrigeration or may be food insecure.
2. Allocate $8,000 of the budget for the purchasing of the refrigerators.
Financial Implications: See report.
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Moved to the Consent Calendar to take no action taken on the recommendation.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Harrison.

Action Calendar

17. Declare Juneteenth as a City Holiday for the City of Berkeley *(Reviewed by the Budget & Finance Policy Committee)*
From: Councilmember Davila (Author)
Recommendation:
1. Adopt a resolution declaring Juneteenth as a City Holiday for the City of Berkeley
2. Send copies of this resolution to State Assemblywoman Buffy Wicks, State Senator Nancy Skinner, and United States Congresswoman Barbara Lee.
(This item expired on December 14, 2020, and is returning to Council with no action taken by the Budget and Finance Policy Committee.)
Financial Implications: See report
Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120
Action: Moved to Consent Calendar with an amended recommendation to refer the item to the City Manager to consider the proposed new holiday in the context of other proposed new holidays in the budget process and labor MOU negotiations.

Information Reports

18. Report for Phase 3 Study to Underground Utility Wires in Berkeley
From: Public Works Commission, Disaster and Fire Safety Commission, Transportation Commission
Contact: Joe Enke, Commission Secretary, (510) 981-6300
Action: Received and filed. Requested staff to include the report in the Capital Improvements worksession in March.

Public Comment – Items Not Listed on the Agenda - 4 speakers.

Adjournment

Action: M/S/C (Robinson/Wengraf) to adjourn the meeting.
Vote: Ayes – Kesarwani, Taplin, Bartlett, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Harrison, Hahn.

Councilmember Hahn absent 9:53 – 9:57 p.m.

Adjourned at 9:57 p.m.

I hereby certify that the foregoing is a true and correct record of the regular session meeting held on January 26, 2021.

_____
Mark Numainville
City Clerk

Communications

Eviction Moratorium
1. Virginia Browning
2. Councilmember Hahn

25 Cent Disposable Cup Fee
3. Carla Woodworth
4. Michael Katz

North Berkeley BART Development
5. Franklin Lei

URL's Only
6. Russbumper (4)

Supplemental Communications and Reports 1

Item #14: Public Works Commission Recommendation for the Five-Year Paving Plan
7. Jennifer Willman
8. Justin Palmer
9. Donald Rothberg
10. Nancy Kates
11. Suzanne Alberga
12. Jeanie and Bob Minor

Supplemental Communications and Reports 2

Item #6: Contract: Toole Design Group for Planning, Design, and Engineering of the Southside Complete Streets Project
13. Revised material, submitted by Public Works

Item #9: Confirming Community Appointments to Reimagining Public Safety Task Force
14. Revised material, submitted by the Mayor

Item #14: Public Works Commission Recommendation for the Five-Year Paving Plan
15. Jeanne Schuman
16. Margot Dashiell
17. Martin Hammer
18. Gloria Elissha
19. Anne Jennings
20. Doug Abadie
21. Richard Neese
22. Karen Dabrusin
23. Linda and James Helman
24. Anne Pardee

Supplemental Communications and Reports 3

Item #3: Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

25. Blair Beekman

Item #9: Confirming Community Appointments to Reimagining Public Safety Task Force

26. Katherine Lee, Police Review Commission Officer

Item #13: Berkeley 2020 Pedestrian Plan

27. Presentation, submitted by Planning (Transportation Division)

Item #14: Public Works Commission Recommendation for the Five-Year Paving Plan

28. Revised material, submitted by Public Works
29. Arlene Acuna
30. Rick Diamond
31. Robert Sanders
32. Dawn Finch

Miscellaneous Communications

33. Ms Omowale Fowles (2)
34. Thomas Lord

Attachment 9

MINUTES
BERKELEY CITY COUNCIL
SPECIAL MEETING

THURSDAY, JANUARY 28, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

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

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To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us02web.zoom.us/j/81442915311. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free);** enter Meeting ID: **814 4291 5311.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

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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.

Preliminary Matters

Roll Call: 4:02 p.m.

Present: Harrison, Hahn, Wengraf, Robinson, Arreguin

Absent: Kesarwani, Taplin, Bartlett, Droste

Councilmember Taplin present at 4:03 p.m.

Councilmember Bartlett present at 4:05 p.m.

Councilmember Droste present at 4:07 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, Paul Buddenhagen, Deputy City Manager, David White, Deputy City Manager, LaTanya Bellow, Human Resources Director, Burke Dunphy, Labor Negotiator.

Employee Organizations: International Brotherhood of Electrical Workers (IBEW), Local 1245, Public Employees Union Local 1.

Action: No reportable action taken.

OPEN SESSION:

No reportable action taken.

Adjournment

Action: M/S/C (Wengraf/Droste) to adjourn the meeting.
Vote: Ayes – Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Kesarwani, Bartlett.

Adjourned at 6:15 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on January 28, 2021.

_____
Mark Numainville
City Clerk

Communications

- None

Supplemental Communications 1

- None

Supplemental Communications 2
Item #1: Conference With Labor Negotiators; Government Code Section 54957.6

1. Sarah Moore
2. Leisl Griffith
3. Barbara White
4. Katie Van Dyke
5. Walter Vandernald
6. Barry Jennings
7. Adrian Merry
8. Wendy Wellbrock
9. Joy Brown
10. Shelialanna Harris
11. Heidi Obermeit
12. Dechen Tsering
13. Reeve Battle
14. Ronald Torres
15. Beth Thomas
16. Billi Romain
17. Jesse Bright
18. Danette Perry

Supplemental Communications 3

- None

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Economic Development Manager

Subject: Contract: Mildred Howard Sculpture Commission

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract for an amount not to exceed $210,000, and any amendments thereto, with Mildred Howard for a public art commission of a sculpture for the preferred location at the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way (see map, Attachment 3).

FISCAL IMPACTS OF RECOMMENDATION

The $210,000 contract will be funded through the Cultural Trust Fund (Fund 148). Funding for this public art project was set aside in the Public Art in Private Development Budget for FY 2021 adopted by the Civic Arts Commission (M/S/C Passmore/Blecher; Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Ross, Tamano; Nays — None; Abstain — None; Absent — Slattery) at its regularly scheduled commission meeting on December 9, 2020.

CURRENT SITUATION AND ITS EFFECTS

The Civic Arts Commission approved commissioning a sculpture by artist Mildred Howard for the preferred location at the triangular green space at Adeline Street and Martin Luther King Jr. Way at its regularly scheduled commission meeting on December 9, 2020 (M/S/C Ross/Blecher. Vote: Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Ross, Tamano; Nays — None; Abstain — None; Absent — Slattery). Mildred Howard is world renowned artist[1] who grew up in South Berkeley, where she lived until 2017 when she was displaced from her live/work unit by a rent increase.[2] She has received many awards and fellowships including two Rockefeller Fellowships to Bellagio, Italy; the Joan Mitchell Award; an NEA Fellowship in Sculpture; the Lee Krasner Award in recognition of a lifetime of artistic achievement; and an Honorary Doctorate of Fine Arts from the San Francisco Art Institute. Her artworks are in the collections of the San Francisco Museum of Modern Art (SFMOMA), the de Young

[1] https://en.wikipedia.org/wiki/Mildred_Howard and Selz, Peter *Spirit and Matter: A Conversation with Mildred Howard*, Sculpture Magazine, December, 2015.
[2] https://www.sfchronicle.com/art/article/Berkeley-s-beloved-homegrown-artist-Mildred-10840197.php

Museum in San Francisco, the Museum of Glass in Tacoma, Washington, and many more.

Mildred Howard proposes creating a 10’ diameter bronze sculpture (Attachment 2) mounted on a concrete base with a granite skin to be installed at the preferred location at the intersection of Adeline Street and Martin Luther King Jr. Way in the triangular green space which is currently planted with ivy and has a backdrop of redwood trees (Attachment 3). If the preferred location is infeasible due to future development at that site, the artwork would be installed at a highly visible location along the Adeline Corridor near the commercial district. Her proposal takes its inspiration from traditional African currency from the Congo. She describes the artwork concept as follows:

> *In addition to being used as money for exchange, traditional West African currency could be worn as a sign of prosperity, embodying one’s power. As such, each piece of currency possessed both a symbolic and an economic value. This artwork symbolically celebrates the labor and perseverance of many African-American families who once owned homes in the surrounding neighborhoods. Below the “red line” of Martin Luther King Street (then Grove Street), African-American businesses once thrived. In the wake of a virtual exodus of African-Americans throughout Berkeley and surrounding cities, it is crucial that their contributions to this community not be forgotten. This sculpture is a monument to the contributions made by African-Americans in Berkeley and a tangible metaphor for the wealth they worked so hard to build, even in the face of racism and oppression.*

To ensure that the preferred location is feasible and so that the artwork is properly integrated with the installation site, the contract with the artist will include a final design phase in addition to artwork fabrication. The final artwork design must be approved by the Civic Arts Commission prior to the artist commencing with artwork fabrication. There will be a separate contract with a professional art handling company to address artwork lighting and installation.

Commissioning the sculpture by Mildred Howard for Adeline Street and Martin Luther King Jr. Way is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. This public art project also advances goals contained in two other strategic planning documents of the City of Berkeley:

1. The Arts and Culture Plan for the City of Berkeley (Adopted July 24, 2018 by Resolution 68,568–N.S.)
   Policy 4.1: Enhance Berkeley’s environment by placing temporary and permanent public art in public spaces throughout the city.
2. The Adeline Corridor Specific Plan (Adopted Dec. 8, 2020 by Resolution 69,642–N.S.)
   Policy 7.7 (Public Art): Incorporate public art into publicly-accessible spaces, streetscape amenities, and wayfinding signage.

BACKGROUND

Mildred Howard originally proposed this sculpture as part of the procurement process for the Measure T1 Public Art Project opportunity at San Pablo Park. For that project a Request for Qualifications was released on September 11, 2018 and was open through October 23, 2018. A selection panel comprised of arts professionals reviewed the qualifications of the 42 applicants and recommended 21 applications to be presented to the San Pablo Park Public Art Project selection panel, which was comprised of arts professionals, a representative from the Civic Arts Commission, a Public Works Measure T1 project team member, and community representatives. This panel reviewed the qualifications of the 21 artists on the short list and selected four finalists who were invited to develop site specific public art project proposals. The San Pablo Park Public Art Project selection panel reconvened to evaluate the four proposals and they selected another artist for the San Pablo Park public art project. However, the panel made a recommendation to the Civic Arts Commission that the proposal by Mildred Howard be commissioned for another site in Berkeley. The Civic Arts Commission received this recommendation favorably and allocated funds for the sculpture's commission and approved the proposal for the new site.

The proposed sculpture site at Adeline Street and Martin Luther King Jr. Way is a highly visible location which will allow Mildred Howard's sculpture to create a visual identity that celebrates the neighborhood's cultural heritage.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This sculpture will honor the African American heritage of South Berkeley and will be a legacy artwork by an important artist with a deep connection to Berkeley where she grew up and lived for most of her life.

ALTERNATIVE ACTIONS CONSIDERED

There were no alternative actions considered.

CONTACT PERSON

Jennifer Lovvorn, Chief Cultural Affairs Officer, (510) 981-7533

Attachments:
1: Resolution
2: Proposed Sculpture Description
3: Proposed Artwork Location

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

CONTRACT: MILDRED HOWARD TO CREATE A PUBLIC ARTWORK FOR THE GREEN SPACE AT ADELINE STREET AND MARTIN LUTHER KING JR. WAY

WHEREAS, the City of Berkeley's Arts and Culture Plan calls for the enhancement of Berkeley's environment by placing temporary and permanent public art in public spaces throughout the city; and

WHEREAS, the Adeline Corridor Specific Plan calls for incorporating public art into publicly-accessible spaces, streetscape amenities, and wayfinding signage; and

WHEREAS, funding for the artwork commission was set aside in the Public Art in Private Development Budget for FY 2021 as approved by the Civic Arts Commission on December 9, 2020; and

WHEREAS, Mildred Howard's proposal to create a 10' diameter bronze sculpture mounted on a concrete base with a granite skin to be installed at a prominent location along the Adeline Corridor was approved by the Civic Arts Commission at its meeting on December 9, 2020.

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 thereto with Mildred Howard for a public art commission of a sculpture for the Adeline Corridor for an amount not to exceed $210,000. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.

Proposal for Public Art by Mildred Howard

West African metal sculpture in copper, bronze and iron stands at the intersection of art, jewelry and wealth. In addition to being used as a currency for exchange, such objects could be worn as a sign of prosperity, embodying one's power. Some of the hand-forged money was created in the shape of tools. As such, each piece of such currency possessed both a symbolic and an economic value. My proposal takes its inspiration from this powerful signifier, using traditional African currency from the Congo to memorialize the unsung contributions of the African-American community in South Berkeley – a community that has been largely displaced due to gentrification and the rise of a new, digitally-oriented economy.

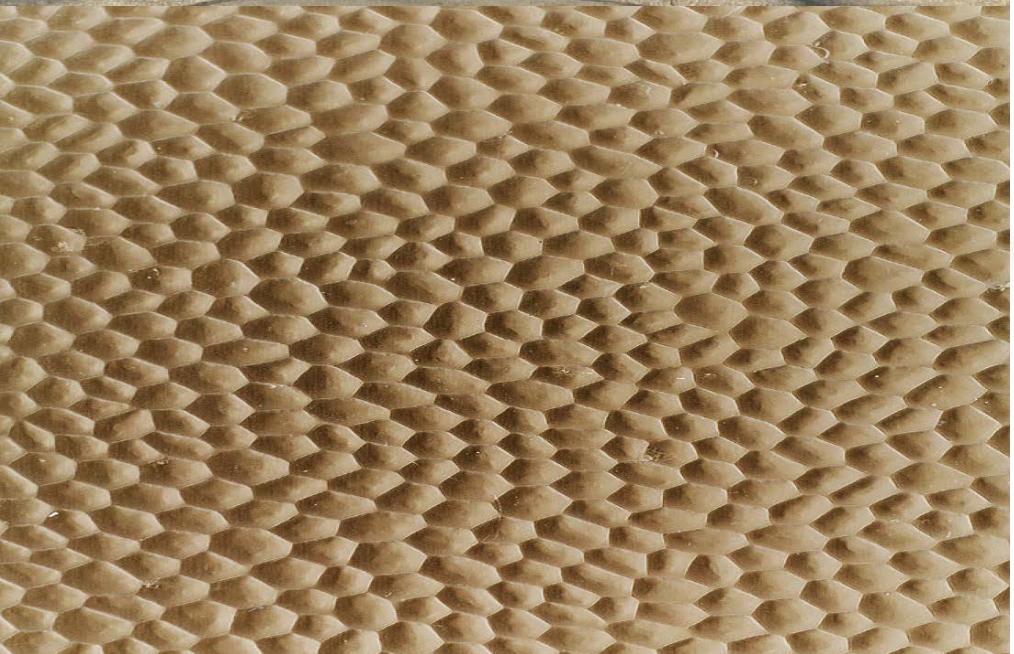
This work symbolically celebrates the labor and perseverance of many African-American families who once owned homes in South Berkeley. Below the "red line" of Martin Luther King Street (then Grove Street), African-American businesses once thrived. In the wake of a virtual exodus of African-Americans throughout Berkeley and surrounding cities, it is crucial that their contributions to this community not be forgotten. This sculpture is a monument to the contributions made by African-Americans in Berkeley and a tangible metaphor for the wealth they worked so hard to build, even in the face of racism and oppression.

Team:
Mildred Howard, Project Lead Artist, Oakland, CA
Hugh Hynes, Architecture, Principal of PROTOinc, San Francisco, CA
Artworks Foundry, Fabrication, Berkeley, CA

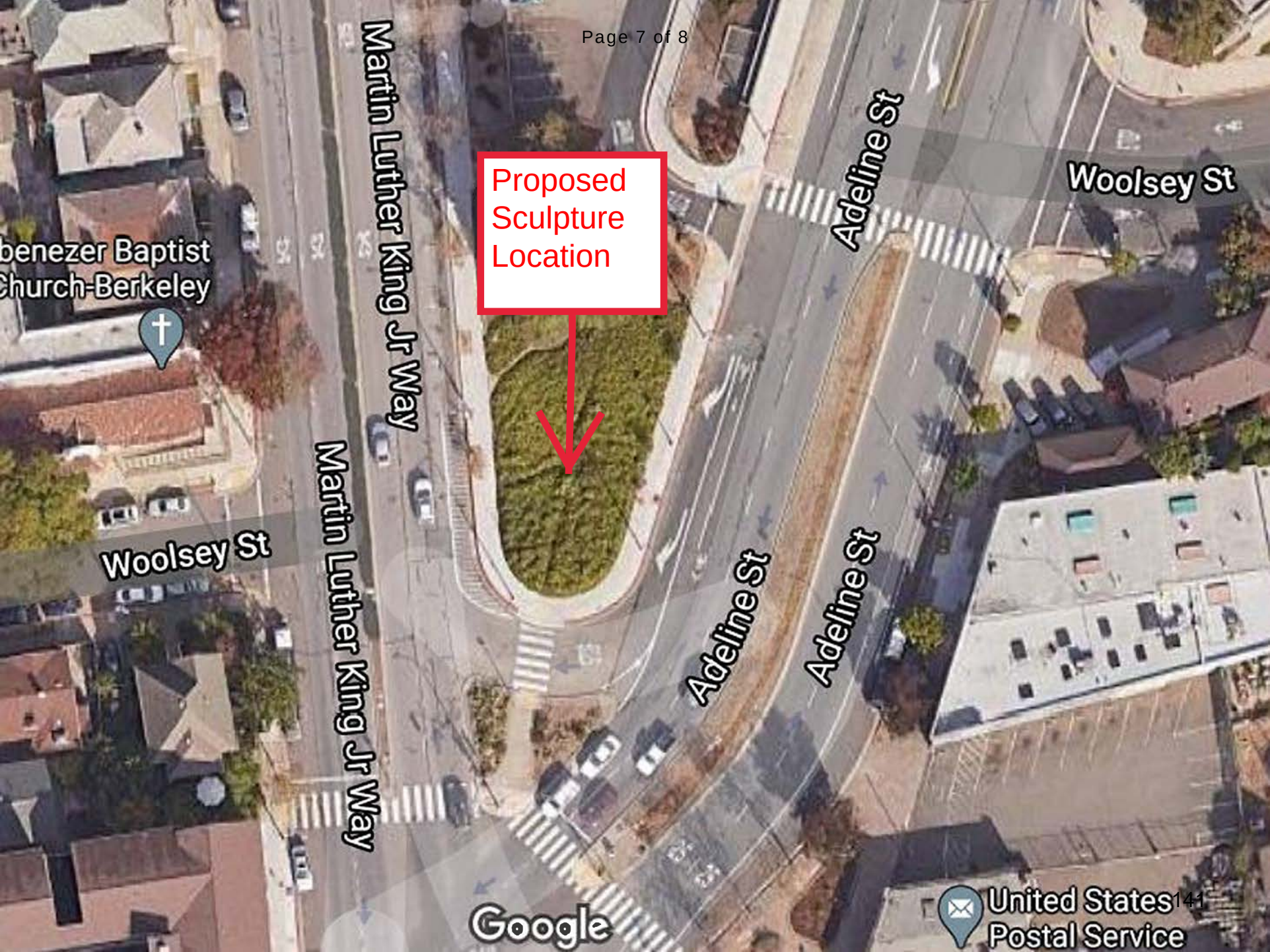











Proposed Sculpture Location
Martin Luther King Jr Way
Martin Luther King Jr Way
Adeline St
Adeline St
Adeline St
Woolsey St
Woolsey St
benezer Baptist
Church-Berkeley
United States
Postal Service
Google


Proposed
Sculpture
Location
NO
PARKING
ANY
TIME

04

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 23, 2021

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is $400,000.

PROJECT	Fund	Source	Amount
Pre-Qualified Pool Of Fine Art Services Providers	148	Cultural Trust	**$250,000**
Finance Department Consultant	011	General Fund	**$150,000**
Total:			**$400,000**

CURRENT SITUATION AND ITS EFFECTS

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

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

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

RATIONALE FOR RECOMMENDATION
Need for the services.

ALTERNATIVE ACTIONS CONSIDERED
None.

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

Attachments:
1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on February 23, 2021

a) Pre-Qualified Pool Of Fine Art Services Providers
b) Finance Department Consultant

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

NEXT 30 DAYS

Attachment 1

DATE SUBMITTED: February 23, 2021

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
21-11438-C	PRE-QUALIFIED POOL OF FINE ART SERVICES PROVIDERS	1/27/2021	3/2/2021	The Civic Arts Program is looking for providers of fine art services including: art maintenance technicians, artwork preparators, conservators, artwork fabricators, fine art installers with experience and expertise in the installation, moving and restoration of large-scale artworks, fine art transportation and storage, photographers and videographers of artwork, graphic designer, sign makers, fine art framing services, audio visual technicians, public art curation and project management, and art collection registrars, with the intent of establishing a pre-qualified pool of firms for the purpose of	Multiple contracts totaling approximately $250,000 over three years.	Fund 148	City Manager's Office/Office of Economic Development/Civic Arts	Jennifer Lovvorn 981-7533
DEPT. TOTAL					**$250,000**			

NEXT 30 DAYS

Attachment 1

DATE SUBMITTED: February 23, 2021

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
21-11441-C	Finance Department Consultant	2/24/2021	3/20/2021	To hire temporary staff to help staff and manage the Revenue Collection Division of the Finance Department while the manager is on extended leave and also until positions are filled permanently.	$150,000	011-33-324-341-0000-000-412-612990-	Finance	Henry Oyekanmi 981-7326
DEPT. TOTAL					**$150,000**			
GRAND TOTAL					**$400,000**			

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

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: Contract No. 104289-1 Amendment: Jackson & Coker for Locums Tenens Psychiatrists

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 104289-1 with Jackson & Coker Locum Tenens, LLC to provide Locum Tenens Psychiatrists through June 30, 2024 in an amount not to exceed $964,480. This amendment will add three years to the contract term and $564,480 in funding.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the scope of work in the amount of $564,480 will be provided from ERMA GL Code 315-51-503-526-2017-000-451-612990-.

CURRENT SITUATION AND ITS EFFECTS

This service provides a safety net for consumers when the Mental Health Division's Adult Mental Health Clinic experiences a shortage of staff qualified to prescribe medication. This contract amendment will allow intermittent usage of locum tenens medication services through Jackson & Coker Locum Tenens, LLC to ensure clients have access to medication. Locum tenens are licensed and qualified Psychiatrists or Nurse Practitioners who have a temporary placement at a contracting facility.

BACKGROUND

Over the last several years, the Mental Health Division has experienced great difficulty in filling vacant positions for staff who can prescribe psychiatric medications. Due to a variety of factors, including the Medi-Cal expansion through the Affordable Care Act, an existing shortage of psychiatrists in the region has been greatly exacerbated. By contracting with a locum tenens, the City is able to maintain continuity of services to clients when there is staffing turnover, long term vacancies, or additional short term staffing needs.

To provide necessary medication prescription and monitoring services while attempting to fill staff vacancies, the City entered into FUND$ Contract No. 9880 with J&C on March 17, 2015 for locum tenens services with a contract limit of $24,900. When recruitment efforts

did not lead to permanent staffing, contract amendment 9880A increased the contract limit to $49,900 on June 19, 2015. Due to continued staff vacancies and an approaching contract limit, contract amendment 9880B was executed on July 24, 2015 to increase the contract limit to $99,900. Because of ongoing staff shortages, contract amendment 9880C was executed August 24, 2016 to increase the contract limit to $174,900. When recruitment efforts again did not lead to permanent staffing, contract amendment 9880D (ERMA Contract No. 104289-1) increased the contract limit to $400,000 on January 2, 2018. Primarily due to staffing shortages throughout the region, hourly rates for locum tenens psychiatrists have increased significantly since this contract was originally executed. This contact amendment increases the contract limit to $964,480; an amount which is based on costs for one full time vacancy for an extended period of time.

The primary objective of the mental health division is to employ career staff in the clinic. Currently, due to recent hiring, there are no vacancies. However, since continuity of medication treatment is critical to client care and outcomes, locum tenens capacity is needed to ensure medication needs can be met if a sudden vacancy occurs.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Jackson & Coker offers locums tenens that provide psychiatry services to Med-Cal, uninsured, disenfranchised, and under-served populations. These services are necessary for the provision of mental health treatment provided by the City. These services will only be utilized during staff shortages and are not a replacement of permanent staffing. Jackson & Coker have performed up to the terms of the contract and have provided suitable locum tenens for the Mental Health Division during staffing shortages.

ALTERNATIVE ACTIONS CONSIDERED

The City is required to provide necessary medication prescription and monitoring services for individuals with mental illness. The contract amendment could be for a shorter period of time and for a lessor amount of funding, but this would require the Mental Health Division to return with more frequent amendments to this contract over time.

CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611
Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:
1: Resolution

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

CONTRACT NO. 104289-1 AMENDMENT: JACKSON & COKER FOR LOCUM TENENS PSYCHIATRISTS

WHEREAS, Berkeley Mental Health ("BMH") Division has a successful partnership with Jackson & Coker Locum Tenens, LLC ("J&C"), providing locums tenens psychiatry services for BMH clients; and

WHEREAS, J&C is an essential provider of psychiatry services in Berkeley; and

WHEREAS, J&C offers locum tenens that provide psychiatry services, provided by licensed psychiatrists, to Medi-Cal, uninsured, disenfranchised, and under-served populations; and

WHEREAS, J&C's services support mental health goals of improving the health and well-being of the community during periods of staff shortages; and

WHEREAS, the City of Berkeley entered into FUND$ Contract No. 9880 with J&C on March 17, 2015 for a term ending on June 30, 2017 for an expenditure contract limit not to exceed $24,900, in order to provide locums tenens psychiatric services including necessary medication prescribing and attempting to fill staff vacancies; and

WHEREAS, the City of Berkeley entered into Contract No. 9880A with J&C on June 19, 2015 for an expenditure contract limit not to exceed $49,900, in order to provide ongoing locums tenens psychiatric services when recruitment efforts did not lead to permanent staffing; and

WHEREAS, the City of Berkeley entered into Contract No. 9880B with J&C on July 24, 2015 for an expenditure contract limit not to exceed $99,900, in order to provide ongoing locums tenens psychiatric services due to continued staff vacancies and expenditures approaching the prior contract limit; and

WHEREAS, the City of Berkeley entered into Contract No. 9880C with J&C on August 24, 2016 for an expenditure contract limit not to exceed $174,900, in order to provide ongoing locums tenens psychiatric services due to continued staff vacancies and expenditures approaching the prior contract limit; and

WHEREAS, the City of Berkeley entered into Contract No. 9880D (ERMA Contract No. 104289-1) with J&C on January 2, 2018 for an expenditure contract limit not to exceed $400,000, in order to provide ongoing locums tenens psychiatric services due to continued staff vacancies and expenditures approaching the prior contract limit; and

WHEREAS, funds are available in the current budget year in ERMA GL Code 315-51-503-526-2017-000-451-612990-.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with the Jackson & Coker Locum Tenens, LLC for Locum Tenens Psychiatrists through June 30, 2024 in an amount not to exceed $964,480. A record signature copy of said contract and any amendments to be on file with the Office of the City Clerk.
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Office of the City Manager

CONSENT CALENDAR
February 23, 2021

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: California Community Housing Agency Middle Income Rental Housing Program

RECOMMENDATION

Adopt a Resolution authorizing the City to become an Additional Member of the California Community Housing Agency (CalCHA), a Joint Powers Authority; supporting CalCHA's issuance of tax-exempt bonds for the production, preservation, and protection of essential middle-income rental housing; and authorizing the City Manager to enter into purchase option agreements with CalCHA for middle-income rental housing created within City limits.

FISCAL IMPACTS OF RECOMMENDATION

There are no financial expenditures, liabilities, or obligations created by joining CalCHA or executing a Purchase Option Agreement for a property. The City could transfer its purchase option to another entity, such as an affordable housing provider, in lieu of acquiring any property. The City would assume bond repayment debt if a Purchase Option Agreement on a property is exercised between Year 15 and Year 30. Any proceeds from the future sale of the property will be remitted to the City once all bonds are repaid in full. Staff are recommending any revenue entitled to the City via a project's surplus cash flow or sale be deposited in the Housing Trust Fund (HTF) program for future affordable housing uses.

CURRENT SITUATION AND ITS EFFECTS

The City's Housing Trust Fund and Below Market Rate (BMR) affordable housing programs create rental opportunities for low-income households. The structure of State and federal funding sources, as well as the State Density Bonus Law, typically make affordable rental housing available to lower-income households below 60% of Area Median Income (AMI).

CalCHA is the first California Joint Powers Authority (JPA) focused exclusively on the production, preservation and protection of "missing middle" housing targeting households earning between 60% and 120% of AMI. As an example, the median income for a family of four at 80% AMI in Alameda County is currently $104,400. Through its Essential Middle-Income Rental Housing Program (Program), CalCHA acquires existing market-rate apartment communities through the issuance and sale of

its own governmental purpose bonds. As a governmental entity, CalCHA is granted a 100% property tax exemption for each property it acquires.

Catalyst Housing Group (Catalyst) has partnered with CalCHA in the creation and implementation of the Program. Catalyst sources all acquisition and development opportunities for CalCHA. They also provide CalCHA with funds to pursue housing opportunities, earnest money deposits, and due diligence costs, while overseeing all legal, financing, diligence, and closing processes. Post-close, Catalyst serves as CalCHA's asset manager and oversees third-party property management, ensures regulatory agreement compliance, and reports regularly to CalCHA, their staff, and bondholders.

Acquired properties are converted to rent-restricted units for households earning no more than 120% of AMI and secured by regulatory agreements. Under the Program, no existing tenants are displaced. Rents on affordable units created through this Program would be capped at a maximum of 35% of a household's applicable percentage of AMI. Annual rent increase percentages are capped at a maximum of 4%, which is below the limits allowed with State's Tenant Protection Act of 2019 (AB1482). As a government entity, CalCHA is technically exempt from rent control. However, CalCHA indicated they are open to observing all local and relevant regulations.

Staff cannot estimate how many, if any, properties would be acquired through the Program as it is dependent on market transactions. This financing model typically works best with large developments; most of those purchased to date have been more than 200 units, although Catalyst representatives indicated that smaller projects can be feasible. The City would not be a direct party to the real estate transaction or financial transaction. The bonds issued by CalCHA for a project are payable solely out of the revenues and receipts derived from the project being financed and are not obligations of the City.

The City would first need to become an Additional Member of CalCHA for the Program to acquire properties in Berkeley. As part of the agreement with CalCHA, the City would need to sign a Purchase Option Agreement before any property can be acquired within City limits. The Purchase Option Agreement does not obligate but allows the City, at its sole discretion, to purchase the property between Year 15 and Year 30 of the bonds. To maintain housing affordability beyond 30 years, the City would likely have to negotiate and assign its purchase option to a non-profit housing developer.

Additionally, the City would receive any surplus cash flow from the property during the life of the bonds. If the City elects not to exercise its purchase option, CalCHA maintains the right to sell the property after Year 30, at which time all net sale proceeds would be granted to the City. Staff are recommending all surplus cash flow and revenue from projects be deposited in the HTF.

Joining the CalCHA and supporting its issuance of tax-exempt bonds for middle-income housing is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BACKGROUND

At the time of this report, 20 jurisdictions have joined CalCHA as Additional Members in JPA Agreement including Fairfield, Hayward, Larkspur, Livermore, Marin County, Menlo Park, Mountain View, Napa, and Santa Rosa. CalCHA has acquired four assets since its inception in January 2019: 1) Annadel Apartments in Santa Rosa (390 units), 2) Verdant at Green Valley in Fairfield (286 units), 3) Serenity at Larkspur in Larkspur (342 units), and 4) The Arbors in Livermore (162 units). This totals over $550M of acquisitions and conversions.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Joining the JPA would expand the possibility of increased affordable housing opportunities that are not dependent on local subsidy. It would also provide rental housing affordable to middle income renters who do not have access to subsidized housing via the City's HTF and BMR programs. The City has the discretion to approve CalCHA proposals on a project-by-project basis and carries no liability.

Participating in CalCHA will not affect the City's local non-profit housing organizations because it would not compete for any of the same funding sources, including local funds, and would be considering different types of properties for acquisition.

ALTERNATIVE ACTIONS CONSIDERED

City Council could elect not to become an Additional Member of CalCHA

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, Health, Housing and Community Services, (510) 981-5114

Attachments:
1: Resolution
2: Joint Powers Authority Agreement
3: Boilerplate Purchase Option Agreement

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

CALIFORNIA COMMUNITY HOUSING AGENCY ("CALCHA") MIDDLE INCOME RENTAL HOUSING

WHEREAS, the City of Berkeley ("City") recognizes decent and affordable housing is a basic human right and adopted addressing this right and the statewide housing goal of "attaining decent housing and suitable living environments for every California family" in the 2015-2023 City of Berkeley Housing Element; and

WHEREAS, no existing Federal, State or local subsidies, programs or motivations currently exist to meaningfully address the growing shortfall of protected middle-income rental housing; and

WHEREAS, CalCHA is a Joint Powers Authority created specifically to produce, preserve and protect quality affordable rental housing made available to California's essential middle-income workforce; and

WHEREAS, CalCHA intends to acquire existing rental properties within City limits and restrict future occupancy to middle-income households earning no more than 120% of area median income; and

WHEREAS, CalCHA will avoid the displacement of existing residents, implement regulatory agreements restricting the incomes and rents of future residents, and impose caps on the annual rent increases of qualified middle-income households; and

WHEREAS, CalCHA will finance its acquisitions through the issuance of tax-exempt bonds, and in order for CalCHA to issue tax-exempt bonds in Berkeley, the City must be an Additional Member of CalCHA; and

WHEREAS, the City proposes to become an Additional Member of CalCHA pursuant to Section 12 of the Joint Exercise of Powers Agreement Relating to the California Community Housing Agency; and

WHEREAS, subsequent to becoming an Additional Member of CalCHA, any existing rental housing within City limits which CalCHA intends to acquire and finance with tax-exempt bonds must receive support and approval from the City; and

WHEREAS the City proposes to support and approve CalCHA's issuance of tax-exempt bonds for the acquisition of existing rental properties as a means towards the preservation and protection of essential middle-income rental housing within City limits; and

WHEREAS, CalCHA's issuance of tax-exempt bonds will provide public benefit through the production, preservation and protection of below-market-rate rental housing, as well as the granting of all surplus project revenues to the City; and

WHEREAS, pursuant to one or more purchase option agreements (the "Purchase Option Agreements"), between CalCHA and the City, CalCHA will grant the City the option, but never the obligation, to purchase each essential middle-income rental housing property commencing on the date fifteen (15) years after CalCHA's acquisition of such property; and

WHEREAS, the Purchase Option Agreements will additionally provide the City with all surplus project revenues from each essential middle-income rental housing property; and

WHEREAS, the City will maintain the option to exercise such Purchase Option Agreements for a period of fourteen (14) years following the commencement dates of the Purchase Option Agreements for each essential middle-income rental housing property; and

WHEREAS, the City proposes to authorize the City Manager or her designee to enter into Purchase Option Agreements with CalCHA for all essential middle-income rental housing created within City limits.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City is hereby authorized to become an Additional Member of CalCHA and the City Manager or designee is authorized to execute the Joint Exercise of Powers Agreement Relating to the California Community Housing Agency subject to approval as to form by the City Attorney.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby supports and approves CalCHA's issuance of tax-exempt bonds as a means towards the production, preservation, and protection of essential middle-income rental housing within City limits.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby authorizes the City Manager or designee to enter into Purchase Option Agreements with CalCHA for all essential middle-income rental housing created within City limits, and any amendments needed, subject to approval as to form by the City Attorney.

BE IT FURTHER RESOLVED that any surplus project revenues received by the City from middle-income rental housing properties acquired by CalCHA will be designated for the Housing Trust Fund for the development and preservation of affordable housing within the City.

JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA COMMUNITY HOUSING AGENCY

THIS AGREEMENT, dated as of January 29, 2019, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the "Members" and those parties initially executing this Agreement are referred to as the "Charter Members"):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a "public agency" as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means; and

WHEREAS, each Member is also empowered by law to acquire, construct, improve, operate and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, including but not limited to acquiring, constructing, improving, operating and disposing of real property for a public purpose, all as specified in this Agreement, and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute non-recourse debt, which may include bonds, notes, commercial paper or any other evidences of indebtedness, leases, installment sale or other financing agreements or certificates of participation therein (herein "Obligations"), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue non-recourse Obligations pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects that provide, preserve and support affordable local housing for low-income, moderate-income and middle-income families and individuals within the jurisdictions of the Members, including, but not limited to, capital or working capital projects, purchase or acquisition of property, receivables, commodities, bonds, other revenue streams or assets of any kind, liability or other insurance, or retirement programs, or facilitating Members use of existing or new financial instruments and mechanisms in the furtherance of this purpose; and

WHEREAS, by this Agreement, each Member desires to create and establish the "California Community Housing Agency" for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of non-recourse Obligations for any purpose or activity permitted under the Joint Exercise of Powers Act or any other law; provided, however that such purpose shall be solely for the acquisition, construction, rehabilitation, ownership, operation, maintenance, administration and/or financing of multifamily housing for low-income, moderate-income and middle-income families and individuals (the "Purpose"). Such Purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Obligations issued or caused to be issued by the Agency (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement, resolution or other instrument pursuant to which such Obligations are issued.

Section 3. Agency.

A. CREATION AND POWERS OF AGENCY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Community Housing Agency" (the "Agency"), and said Agency shall be a public entity separate and apart from the Members. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members, and the Obligations of the Agency shall only be non-recourse obligations.

B. BOARD.

The Agency shall be administered by the Board of Directors (the "Board," or the "Directors" and each a "Director") whose members shall be, at all times, members of the Board of Supervisors (the "Board of Supervisors") of Kings County, California, with each such Director serving in his or her individual capacity as Director of the Board. The term of office as a member of the Board shall terminate when such member shall cease to be a member of the Board of Supervisors and the successor to such member of the Board of Supervisors shall become a member of the Board.

Notwithstanding the preceding paragraph, the Board may by resolution or bylaws provide for changes in the qualifications, composition and number of Directors, the appointment of Directors, successors, their respective terms of office and any other provisions relating to the qualification and office of the Directors, including provision for alternative Directors (in which case all references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director).

The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein.

Directors shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Agency shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Agency from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Agency (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Obligations (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, and except as may otherwise be specified by resolution of the Board, the Treasurer is designated as the depositary of the Agency to have custody of all money of the Agency, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Agency is designated as the public officer or person who has charge of, handles, or has access to any property of the Agency, and such officer shall file an official bond with the Secretary of the Agency in the amount specified by resolution of the Board but in no event less than $1,000.

The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Directors or officers, employees or agents of the Agency and to cause any of said Directors, officers, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Agency.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of

California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Agency shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors present at the meeting, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Agency may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Agency shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for the Purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Agency is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, improve, own, maintain and operate, or provide for maintenance and operation, and sell, lease, pledge, assign, mortgage or otherwise dispose, of any property, improvements, commodities, leases, contracts, receivables, bonds or other revenue streams or assets of any kind relating to the Purpose; to exercise the power of condemnation; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to establish and collect fees; to form public benefit nonprofit corporations or other affiliate entities to accomplish any of its Purposes; to make grants, loans or provide other financial assistance to governmental, nonprofit and for profit organizations to accomplish any of its Purposes; and generally to do any and all things necessary or convenient to accomplish its Purposes. The boundaries of the Agency shall encompass the boundaries of all the Members and the powers of the Agency may be exercised anywhere within those boundaries or to the extent permitted by the laws of the State of California, including, but not limited to the Joint Exercise of Powers Act,

outside of those boundaries, which may be outside of the State of California, provided that the power of condemnation may only be exercised within the jurisdictional boundaries of the Charter Members.

Without limiting the generality of the foregoing, the Agency may issue or cause to be issued Obligations, and pledge any property, contracts or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law.

The manner in which the Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California county could exercise such powers and perform such duties. The manner in which the Agency shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2019.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Agency, all property of the Agency both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Obligations.

From time to time the Agency shall issue Obligations, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its Purposes under this Agreement, including but not limited to acquiring, constructing, improving, operating and disposing of real property for a public purposes.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing or refinancing or on post-issuance compliance or administration may be used by the Agency. The expenses of the Board shall be paid from the proceeds of the Obligations, payments made by Obligation obligors or other third parties, or any other unencumbered funds of the Agency available for such purpose.

Section 8. Obligations Only Limited and Special Obligations of Agency.

The Obligations, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Agency. The Obligations shall be only special non-recourse obligations of the Agency, and the Agency shall under no circumstances be obligated to pay the Obligations except from revenues and other funds pledged therefor. Neither the Members nor the Agency shall be obligated to pay the principal of, premium, if any, or interest on the Obligations, or other costs incidental thereto, except the Agency from the revenues and funds pledged and available therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of the Agency shall be pledged to the payment of the principal of, premium, if any, or interest on the Obligations nor shall the Members or the Agency in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Obligation or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Agency in his or her individual capacity, and neither the Board of the Agency nor any Director or officer thereof executing the Obligations shall be liable personally on any Obligation or be subject to any personal liability or accountability by reason of the issuance of any Obligations.

Section 9. Accounts and Reports.

All funds of the Agency shall be strictly accounted for. The Agency shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Obligations). The books and records of the Agency shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Agency shall cause an independent audit to be made of the books of accounts and financial records of the Agency by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Agency may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Agency. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Charter Members which report shall describe the amount of money held by the Treasurer for the Agency, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude

amounts held by a trustee or other fiduciary in connection with any Obligations to the extent that such trustee or other fiduciary provided regular reports covering such amounts.)

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Agency funds, the Treasurer of the Agency shall receive, have the custody of and disburse Agency funds pursuant to the accounting procedures developed under Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided that, to the extent permitted by law, the Agency may provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Charter Members upon: (1) the filing by such public agency with the Agency of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Charter Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

Qualifying public agencies may also be added as Non-Charter Members ("Additional Members") of the Agency upon: (1) the filing by such public agency with the Agency of a resolution of the governing body of such public agency requesting to be added as an Additional Member of the Agency, and (2) adoption of a resolution of the Board approving the addition of such public agency as an Additional Member. An Additional Member may limit in the aforementioned resolution the scope of its Additional Membership to what is necessary or appropriate to facilitate the financing or refinancing of one or more specified projects or programs.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that at least one Member shall be a Charter Member and no such withdrawal shall result in the dissolution of the Agency so long as any Obligations remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board, which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Agency of any person who is or was a Director or an officer, employee or other agent of the Agency, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Agency, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Agency and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Agency, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. The Board may purchase a policy or policies of insurance in furtherance of any indemnification obligation created or otherwise in protection of Directors, officers, employees or other agents.

Section 14. Contributions and Advances.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Agency by the Members for any of the Purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Agency and the Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member has any obligation to make advances or contributions to the Agency to provide for the costs and expenses of administration of the Agency, even though any Member may do so. The Members understand and agree that a portion of the funds of the Agency that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and to nonprofit organizations to accomplish any of the governmental unit's or nonprofit organization's purposes.

Section 15. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Agency while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 16. Amendments.

Except as provided in Sections 3B and 12 above, or to cure any error, omission or ambiguity in this Agreement, this Agreement shall not be amended, modified, or altered except with (i) written consent of all holders of any outstanding bonds of the Agency, (ii) written consent of each of Charter Member, and (iii) negative consent of each Additional Member. To obtain the negative consent of each such Additional Member, the following negative consent procedure shall be followed: (a) the Agency shall provide each such Additional Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Agency shall provide each such Additional Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no such Additional Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 17. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Charter Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Charter Member approving this Agreement and the execution and delivery hereof.

Section 18. Partial Invalidity.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

Section 20. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their duly authorized representatives as of the day and year first above written.

Charter Member:

KINGS COUNTY

By _____
Name: Joe Neves
Title: Chairman JAN 2 9 2019

ATTEST:

By _____
Name: Melanie Curtis
Title: Deputy Clerk to the Board of Supervisors

Charter Member:

HOUSING AUTHORITY OF THE COUNTY OF KINGS

By _____
Name: Joe Neves
Title: Chairman

ATTEST:

By _____
Name: Jennifer Malone
Title: Deputy Clerk to the Board of Supervisors

FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA COMMUNITY HOUSING AGENCY

THIS FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated July 30, 2019 (this "First Amendment"), is executed and delivered to amend the provisions of that certain Joint Exercise of Powers Agreement, dated as of January 1, 2019, (the "Agreement"), among the County of Kings and the Housing Authority of the County of Kings (the "Charter Members") and the other members (the "Additional Members" and, together with the Charter Members, the "Members") thereto.

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), the Charter Members and the Additional Members entered into the Agreement; and

WHEREAS, pursuant to Assembly Bill No. 1912, enacted on September 29, 2018 ("AB 1912"), Section 6508.1 of the California Government Code prohibits Members from disclaiming the retirement obligations of the Agency if the Agency were to contract with a public retirement system (as defined in such statute); and

WHEREAS, also pursuant to AB 1912, Section 6508.2 of the Government Code requires that the retirement obligations of the Agency be apportioned among former and current Members such that the apportionment equals 100% of the retirement liability of the Agency if the Agency is unable to meets it retirement obligations under the circumstances described in such statute; and

WHEREAS, the Agency does not currently have any retirement contract with any public retirement system; and

WHEREAS, pursuant to Section 16 of the Agreement, the provisions of the Agreement may be amended with the written consent of the Charter Members provided that no amendment shall materially adversely affect the interests of any Additional Member unless the negative consent of that Additional Member is also obtained; and

WHEREAS, in order to ensure that Members will not be obligated for any portion of any future retirement obligations of the Agency, the Charter Members now find it necessary and desirable to amend the Agreement as provided herein, which amendment does not materially adversely affect the interests of any Additional Member; and

NOW, THEREFORE, the Charter Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Authority for Amendment.

This First Amendment is hereby executed in accordance with Section 16 of the Agreement.

Section 2. Definitions.

All terms defined in the Agreement shall have the same meanings when used in this First Amendment, except as otherwise provided herein.

Section 3. Amendments.

A. **Amendment to Section 3.A. of the Agreement.**

The paragraph in Section 3.A. of the Agreement is hereby amended to read in full as follows (additions to the Agreement shown in underline text and deletions shown in ~~strikethrough~~ text):

> Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Community Housing Agency" (the "Agency"), and said Agency shall be a public entity separate and apart from the Members. To the extent permitted by law, its ~~Its~~ debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members, and the Obligations of the Agency shall only be non-recourse obligations.

B. **Amendment to Section 4 of the Agreement.**

Section 4 of the Agreement is hereby amended to read in full as follows (additions to the Agreement shown in underline text and deletions shown in ~~strikethrough~~ text):

> The Agency shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for the Purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Agency is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, improve, own, maintain and operate, or provide for maintenance and operation, and sell, lease, pledge, assign, mortgage or otherwise dispose, of any property, improvements, commodities, leases, contracts, receivables, bonds or other revenue streams or assets of any kind relating to the Purpose; to exercise the power of condemnation; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to establish and collect

fees; to form public benefit nonprofit corporations or other affiliate entities to accomplish any of its Purposes; to make grants, loans or provide other financial assistance to governmental, nonprofit and for profit organizations to accomplish any of its Purposes; and generally to do any and all things necessary or convenient to accomplish its Purposes. The boundaries of the Agency shall encompass the boundaries of all the Members and the powers of the Agency may be exercised anywhere within those boundaries or to the extent permitted by the laws of the State of California, including, but not limited to the Joint Exercise of Powers Act, outside of those boundaries, which may be outside of the State of California, provided that the power of condemnation may only be exercised within the jurisdictional boundaries of the Charter Members.

Notwithstanding anything to the contrary in this Agreement, the Agency shall not have the power or the authority to enter into any retirement contract with any public retirement system (as defined in Section 6508.2 of the California Government Code) for any reason. The provision in this paragraph is intended to benefit the Members and to be a confirming irrevocable obligation of the Agency which may be enforced by the Members, individually or collectively.

Without limiting the generality of the foregoing, the Agency may issue or cause to be issued Obligations, and pledge any property, contracts or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law.

The manner in which the Agency shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California county could exercise such powers and perform such duties. The manner in which the Agency shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

C. **Amendment to Section 20 of the Agreement.**

Section 20 of the Agreement is hereby amended to read in full as follows (additions to the Agreement shown in underline text and deletions shown in ~~strikethrough~~ text):

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement, along with its recitals which are an integral part and are incorporated herein, is the complete and exclusive statement of the agreement among the Members, which ~~supercedes~~supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

Section 4. Effective Date.

This First Amendment shall become effective and be in full force and effect on the date that the Board shall have received from two of the Charter Members an executed counterpart of this First Amendment.

Section 5. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

The recitals are an integral part of this First Amendment and are incorporated herein.

Any section not so amended as stated above shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Joint Exercise of Powers Agreement to be executed and attested by their duly authorized representatives as of the day and year first above written.

Charter Member:

KINGS COUNTY

By _____
Name: Joe Neves
Title: Chairman AUG 0 6 2018

ATTEST:

By _____
Name: Catherine Venturella
Title: Clerk of the Board of Supervisor

Charter Member:

HOUSING AUTHORITY OF THE COUNTY OF KINGS

By _____
Name: Doug Verboon
Title: Vice Chairman

ATTEST:

By _____
Name: Jennifer Molina
Title: Administrative Assistant

RECORDING REQUESTED BY
California Community Housing Agency

WHEN RECORDED RETURN TO:
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Jesse Albani

PURCHASE OPTION AGREEMENT

By and Between

CALIFORNIA COMMUNITY HOUSING AGENCY

and

CITY OF [CITY]

_____

Dated as of [DATE]

_____

Relating to

CALIFORNIA COMMUNITY HOUSING AGENCY
ESSENTIAL HOUSING REVENUE BONDS, [SERIES]
([PROPERTY NAME])
and
CALIFORNIA COMMUNITY HOUSING AGENCY
SUBORDINATE ESSENTIAL HOUSING REVENUE BONDS, [SERIES]
([PROPERTY NAME])

PURCHASE OPTION AGREEMENT

This PURCHASE OPTION AGREEMENT ("*Option Agreement* ") is made effective as of [DATE] ("*Effective Date*") by and between the CALIFORNIA COMMUNITY HOUSING AGENCY a joint exercise of powers agency organized and existing under the laws of the state of California (including its successors and assigns, "*Owner*") and City of [CITY] ("*Host*").

BACKGROUND

WHEREAS, the Owner proposes to issue Bonds (as hereinafter defined) to finance Owner's acquisition of the certain multifamily rental housing project (the "*Project*") located at [ADDRESS] in [CITY], California, located on the real property site described in Exhibit A hereto; and

WHEREAS, the Owner intends to offer the Project to the Host pursuant to this Option Agreement.

AGREEMENT

In consideration of the mutual covenants herein contained, and such other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and Host mutually agree as follows:

Section 1. Grant of Option. Owner hereby grants to Host an option ("*Option*") to purchase the Optioned Property (as herein defined) upon payment of the Option Price (as herein provided) within the Option Term (as herein defined) and in compliance with and observance of all of the terms and conditions of this Option Agreement.

Section 2. Definitions. Capitalized terms used in this Option Agreement shall have the meanings assigned to them in this Section 2; capitalized terms used in this Option Agreement and not defined in this Section 2 or elsewhere herein shall have the meanings assigned to them in the Indenture (herein defined).

(a) "*Authority Indemnified Parties*" – the Owner and each of its officers, governing members, directors, officials, employees, attorneys, agents and members.

(b) "*Bonds*" – collectively, (i) the California Community Housing Agency Essential Housing Revenue Bonds, [SERIES] ([PROPERTY NAME]) (the "Series A Bonds"), and (ii) the California Community Housing Agency Subordinate Essential Housing Revenue Bonds, [SERIES] ([PROPERTY NAME]) (the "Series B Bonds"), with such other series and sub-series designations as may be set forth in the Indenture, originally issued to finance Owner's acquisition of the Project and related transaction costs.

(c) "*Bond Trustee*" – Wilmington Trust, National Association or any successor trustee under the Indenture.

(d) "*Closing*" – shall have the meaning set forth in Section 9 hereof.

(e) "*Conveyance*" – that transaction or series of transactions by which Owner shall transfer, bargain, sell and convey any and all right, title or interest in and to the Optioned Property to Host.

(f) "*Extraordinary Costs and Expenses*" – shall have the meaning set forth in the Indenture.

(g) "*Indenture*" – the Indenture of Trust dated as of [DATE] between Owner, as issuer, and the Bond Trustee, as trustee, pursuant to which the Bonds were issued.

(h) "*Manager*" – Catalyst Housing Group LLC and its successors and assigns.

(i) "*Option Price*" – the sum of the amounts set forth below:

i. an amount sufficient to either prepay, redeem in whole or fully defease for redemption on the earliest call date all Project Debt; *plus*

ii. any fees or other amounts not identified in clause (i) that may be necessary to effect the complete release from and discharge of any lien, mortgage or other encumbrance on the Optioned Property; *plus*

iii. any amounts due to Owner (including the Authority Indemnified Persons, as provided in the Indenture), the Bond Trustee or any predecessor or successor, or any other Person under any indenture, loan agreement, bond, note or other instrument relating to any Satisfied Indebtedness (including, without limitation, indemnification amounts, Owner's Extraordinary Costs and Expenses, recurrent and extraordinary fees and expenses, and reimbursable costs and expenses of any kind or nature); *plus*

iv. Transaction Costs; *minus*

v. The amount of any Project Debt assumed by Host; and *minus*

vi. Any funds held by or for Owner under the Indenture applied to the retirement of Project Debt.

(j) "*Option Exercise Date*" – the date fifteen (15) years from the issuance of the Bonds.

(k) "*Option Term*" – shall commence on the Option Exercise Date and, if not exercised, shall terminate at 11:59 p.m. local time on the date that is fourteen (14) years from the Option Exercise Date.

(l) "*Optioned Property*" – means all of Owner's right, title and interest (which includes fee simple title to the real property) in and to all property and assets used in or otherwise related to the operation of the Project including, without limitation, all real property and interests in real property, all tangible and intangible personal property including furniture, fixtures, equipment, supplies, intellectual property, licenses, permits, approvals, and contractual rights of

any kind or nature together with the right to own and carry on the business and operations of the Project.

(m) "*Outstanding*" – with respect to Bonds, as of any given date, all Bonds which have been authenticated and delivered by the Trustee under the Indenture, except: (i) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee or prior to such date for cancellation; (ii) Bonds deemed to be paid in accordance with Article VIII of the Indenture; and (iii) Bonds in lieu of which other Bonds have been authenticated under the Indenture.

(n) "*Project Debt*" – any debt secured by the Project and incurred to finance or refinance Owner's acquisition of the Project and related transaction costs, including any portion of the Bonds and any bonds, notes or other indebtedness issued by Owner to refund the Bonds in whole or in part.

(o) "*Transaction Costs*" – to the extent not otherwise described herein, any costs or expenses of any kind or nature associated with or incurred by Owner and Host in connection with the consummation of the Conveyance, any refinancing of the Project or assumption of Project Debt regardless of whether such costs and expenses are customarily borne by the seller or purchaser in any such transaction, including but not limted to taxes, recording fees and other impositions, Owner's and Host's legal and other professional fees, fees for verification agents, bidding agents, escrow agents, custiodians or trustees, assumption fees, prepayment fees, the cost of the appraisal, surveys, inspections, title commitments, title insurance premiums and other title-related fees, and all amounts required for indemnification of Authority, Trustee and Manager.

Section 3. Effectiveness; Term and Termination. The Option shall become effective on the Option Exercise Date and may be exercised during the Option Term. Owner agrees that it will not enter into any agreement to sell all or any part of the Optioned Property during the Option Term, without the specific written request of the Host and written consent of the Owner, which consent shall not be unreasonably withheld, and delivery of an Opinion of Bond Counsel to the Owner substantially to the effect that such sale will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. After expiration of the Option Term, Host shall not be precluded from purchasing all or any portion of the Optioned Property from Owner at a price and on the terms agreed upon by Host and Owner, but Owner shall not be precluded from seeking or agreeing to sell, or consummating the sale of, all or any portion thereof to any third person.

Section 4. Manner of Exercise.

(a) Owner's Notice. At least six (6) months prior to the Option Exercise Date, Owner shall provide Host notice of the Option Exercise Date; provided, however, that failure to provide such notice shall not affect the sufficiency or validity of any proceedings taken in connection with the exercise of the Option.

(b) Host's Notice. To exercise the Option, Host shall provide a notice (an "*Exercise Notice*") to Owner at any time prior to the end of the Option Term.

(c) Owner's Response. Within fifteen (15) business days of its receipt of the Exercise Notice, Owner shall provide Host with written estimate of the amounts comprising the Option Price.

(d) Host's Response. Within fifteen (15) business days of its receipt of Owner's estimate under Subsection (c), Host shall notify Owner in writing either (i) that it is withdrawing its Exercise Notice, or (ii) that it intends to proceed with the purchase of the Optioned Property.

(e) Fixing of Option Price; Contractual Obligation. Unless Host notifies Owner in writing that it is withdrawing its Exercise Notice within fifteen (15) business days of its receipt of Owner's estimate under Section 4(c) hereof, Host shall deliver to Owner a purchase agreement therefor in form and substance satisfactory to Owner and its counsel subject to the terms and conditions of this Option Agreement. Unless Owner shall have objected to the form of purchase agreement within fifteen (15) business days of its receipt thereof, Owner shall be deemed to have accepted the terms of the purchase agreement without the need for the signature of Owner thereon, and Host shall be obligated to purchase and Owner shall be obligated to sell and convey to Host good and marketable title to the Optioned Property at the Option Price within ninety (90) days thereafter.

Section 5. Determination of Option Price. Unless the parties otherwise agree, Owner shall cooperate with Host and provide Host with all information and records in its possession, and access to counsel and other professionals, to assist Host in determining and updating the Option Price.

Section 6. Surplus Cash. The Owner shall cause the Trustee to create an account (the "Excess Revenue Fund") under (i) the Indenture or (ii) in the event that the Bonds have been retired and the Indenture discharged, a separate trust agreement identifying Owner as trustor, a trustee selected by Owner as trustee, and Host as beneficiary, into which excess revenue over expenses shall be deposited. Upon the commencement of the Option Term, after full payment of the fees, charges and expenses of the Owner and the Trustee and other amounts required to be paid pursuant to the Indenture or other documents relating to then-outstanding Project Debt, amounts remaining in the Excess Revenue Fund shall be transferred to the Host. Thereafter, amounts in the Excess Revenue Fund shall be transferred to the Host periodically.

The Host shall apply amounts in the Excess Revenue Fund to the payment of the Option Price and thereafter shall apply such funds in its sole discretion.

Section 7. Terms of Conveyance.

(a) The Conveyance shall be in the nature of a grant deed in which Owner shall deliver one or more deeds, bills of sale, or other instruments of transfer without recourse or warranty of any kind or nature.

(b) The Optioned Property will be conveyed to Host in AS IS CONDITION, WITH ALL FAULTS, and without representations or warranties of any kind or nature as to the condition of the Property. Host acknowledges that Owner will convey the Optioned Property AS IS and that OWNER IS MAKING NO WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, with reference to the condition of the Property. HOST WAIVES ANY AND ALL

CLAIMS AGAINST OWNER, INCLUDING BUT NOT LIMITED TO, CLAIMS BASED IN PART, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, STRICT LIABILITY AND STRICT RESPONSIBILITY, IN CONTRACT, IN WARRANTY, IN EQUITY, OR UNDER ANY STATUTE, LAW OR REGULATION ARISING DIRECTLY OR INDIRECTLY OUT OF ANY CONDITION OF THE PROPERTY.

(c) There shall be no partial transfer and that, upon consummation of the Conveyance, Owner shall be fully divested of any and all right, title or interest in and to the Optioned Property.

(d) Upon payment of the Option Price, as adjusted for any prorations, credits and charges, Owner shall convey title to the Optioned Property by quit claim deed reasonably satisfactory in form and substance to Host.

Section 8. Closing. The closing of the Conveyance ("*Closing*") shall take place not later than the ninetieth (90^{th}) calendar day following the date on which the parties agree on the terms of the purchase agreement pursuant to Section 4(e) hereof at such time within normal business hours and at such place as may be designated by Host.

(a) Prorations. All general and special real property taxes and assessments, and rents shall be prorated as of the Closing, with Host responsible for all such items to the extent arising or due at any time following the closing. General real property taxes shall be prorated at the time of Closing based on the net general real property taxes for the year of Closing.

(b) Limitation. If, after taking into account all adjustments and prorations, the net amount due Owner at Closing is less than the Option Price, the Option Price, as the case may be, shall instead be the Option Price, it being understood and agreed that in no event shall Owner receive proceeds less than the amount necessary to fully retire or defease, as the case may be, the Series A Bonds and the Series B Bonds and otherwise satisfy all of the payments constituting the components of the Option Price.

Section 9. Recording. This Option Agreement, and any amendment thereto, shall be recorded with the recorder's office of the County of Alameda; *provided*, that in the event Host fails to exercise the Option, then upon termination of the term of this Option Agreement, Host shall cooperate with Owner to remove any such recorded Option Agreement or amendment thereto from title to the Optioned Property upon Owner's reasonable request therefor and, in any event, by no later than thirty (30) days after the expiration of the original term of this Option Agreement. In the event that, within said time, Host fails to so cooperate and provide its original signature to a termination of such recorded Option Agreement or amendment thereto, then Host hereby irrevocably constitutes and appoints Owner as Host's true and lawful attorney (and agent-in-fact) to execute in Host's name any such termination.

Section 10. Possession. Physical possession of the Optioned Property shall be delivered to Host at the time of Closing.

Section 11. Title Insurance, Title Defects.

(a) Within fifteen (15) business days after it receives the Option Exercise Notice, Owner shall provide Host with a title commitment (the "*Title Commitment*") in the customary ALTA form of Standard Owner's Policy of Title Insurance in Host's favor, for the amount equivalent to the Option Price (whichever is applicable), with a commitment to insure good and marketable fee simple title to the Optioned Property in Host, issued by a title insurance company licensed to do business in the State of California and acceptable to Host (the "*Title Company*"). The policy shall show the status of title to the Optioned Property and show all exceptions, including easements, restrictions, rights-of-way, covenants, reservations, and other conditions of record, if any, affecting the subject real estate. Accompanying the Title Commitment, Owner shall also have Title Company furnish Host with true, correct, complete, and legible copies of all documents affecting title to the subject real estate. The cost and expense of such Standard Owner's Title Commitment shall be payable as a Transaction Cost. Host shall pay the additional premium due if Host elects to obtain an extended coverage policy of title insurance and/or extended coverage endorsements. Owner shall cooperate with Host, at no expense to Owner, by providing an affidavit to Title Company to induce Title Company to issue to Host at Closing a "GAP" endorsement to the Title Commitment showing the effective date of the Title Commitment to be the time and date of Closing.

(b) If the Title Commitment shows exceptions to title which are unacceptable to Host, Host shall, within ten (10) business days after receipt of the Title Commitment and not later than twenty (20) business days before the date for Closing, notify Owner of such fact and Owner shall have twenty (20) business days after Owner receives Host's written objections to cure such defects and to present a Title Commitment on the basis of which Closing may occur or to notify Host that Owner will not cure same. If Owner cannot or will not cure such defects within such twenty (20) day period and thereafter convey title to the Property as required in this Agreement, then Host shall have the right (at Host's option) to either:

(i) Rescind the Option Exercise Notice and Owner may proceed to close the sale under the terms of the third-party offer, if there is a third-party offer; or

(ii) Accept whatever title Owner can or will convey, without reduction in the purchase price because of such title defects. Any exceptions to title disclosed on the Title Commitment to which Host does not timely object to in writing or to which Host objects but thereafter accepts by Closing shall be included as a "Permitted Exception."

Section 12. Assignment. The Host shall not assign the Option without the prior written consent of the Owner, which consent shall not be unreasonably withheld, and delivery of an Opinion of Bond Counsel to the Owner substantially to the effect that such assignment will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Notwithstanding the foregoing, neither party to this Option Agreement shall assign its interests, obligations, rights and/or responsibilities under this Option Agreement without the prior written consent of the other party.

Section 13. No Individual Liability. No Authority Indemnified Person shall be individually or personally liable for the payment of any sum hereunder or be subject to any

personal liability or accountability by reason of the execution and delivery of this Option Agreement , or by any proceedings for the determination of the Option Price, or Host's exercise or waiver of same, or otherwise except in the case of such Authority Indemnified Person's own willful misconduct.

Section 14. Notices, Governing Law, Binding Effect and Other Miscellaneous Provisions.

(a) Notices. All notices provided for in this Option Agreement shall be in writing and shall be given to Owner or Host at the address set forth below or at such other address as they individually may specify thereafter by written notice in accordance herewith:

If to Owner:	California Community Housing Agency 1400 W. Lacey Blvd., Building 1 Hanford, California 93230 Attention: Michael LaPierre
With a copy to:	Catalyst Housing Group 21 Ward Street, Suite 2 Larkspur, California 94939 Attention: Jordan Moss
If to Host:	City of Berkeley Health, Housing & Community Services 2180 Milvia Street, 2nd Floor Berkeley, CA 94704 Attention: Housing and Community Services Manager

Such notices shall be deemed effective upon actual delivery or upon the date that any such delivery was attempted and acceptance thereof was refused, or if mailed, certified return receipt requested, postage prepaid, properly addressed, three (3) days after posting.

(b) Consents and Approvals. All consents and approvals and waivers required or asserted hereunder shall be in writing, signed by the party from whom such consent, approval, waiver or notice is requested, provided that no written consent or approval of Owner shall be required for any action that Host may, in its reasonable good faith judgment, find it necessary to take in the event of an emergency.

(c) Cooperation. Owner will keep Host advised of its complete name at all times, including any change of such name. Host will keep Owner advised of its complete name at all times, including any change of such name.

(d) Pronouns. Where appropriate to the context, words of one gender include all genders, and the singular includes the plural and vice versa.

(e) Amendments. This Option Agreement may not be modified except in a written instrument signed by Host and Owner.

(f) Complete Agreement. This Option Agreement together with all schedules and exhibits attached hereto and made part thereof supersedes all previous agreements, understandings and representations made by or between the parties hereto.

(g) Governing Law. This Option Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. All claims of whatever character arising out of this Option Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between Owner and any other party hereto, if and to the extent that such claim potentially could or actually does involve Owner, shall be brought in any state or federal court of competent jurisdiction located in Kings County, California. By executing and delivering this Option Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of forum non-conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by Owner of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units and/or political subdivisions of the State of California that may exist at the time of and in connection with such matter.

(h) Legal Construction. In case any one or more of the provisions contained in this Option Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid provision shall be deemed severable, and shall not affect the validity or enforceability of any other provisions of this Option Agreement, all of which shall remain fully enforceable.

(i) Term. This Agreement shall terminate upon the earlier of (a) the Conveyance or (b) the first date on which all Project Debt has been retired and Owner has made an absolute assignment to Host of all future Surplus Cash.

(j) Captions. The captions used in this Option Agreement are solely for convenience, and shall not be deemed to constitute a part of the substance of the Option Agreement for purpose of its construction.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Option Agreement as of the date set forth above.

CALIFORNIA COMMUNITY HOUSING AGENCY

By: _____

_____

CITY OF BERKELEY

By: _____

_____

Signature Page to Purchase Option Agreement

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 _____)

On _____, before me, _____,
(insert name and title of the officer)
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_____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

07

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Department of Information Technology

Subject: Contract No. 084534-1 Amendment: NextGen Health Care Information Systems Inc. for Electronic Health Records

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 084534-1 with NextGen Healthcare Information Systems, Inc., increasing the amount by $118,610 for a total contract value not to exceed $820,937 and extending the term from September 30, 2010 through June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Additional funding in the amount of $118,610 is available in the Department of Heath, Housing, and Community Services' FY2021 and 2022 General Fund budget as itemized below, and this contract amendment has been entered into the Citywide contract database and assigned contract number 084534-1. Spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

$25,150	FY 2021: Professional Services Budget Code: 011-51-506-555-0000-000-451-612990 (General Fund, HHCS, Professional Services)
$46,020	FY 2021: Software Maintenance Budget Code: 011-51-506-555-0000-000-451-613130 (General Fund, HHCS, Software Maintenance)
$71,170	FY 2021 Subtotal: Professional Services and Software Maintenance
$47,440	FY 2022: Software Maintenance Budget Code: 011-51-506-555-0000-000-451-613130 (General Fund, HHCS, Software Maintenance)
$47,440	FY 2022: Subtotal: Professional Services and Software Maintenance

$47,440	FY 2021 Subtotal: Professional Services and Software Maintenance
$71,170	FY 2022 Subtotal: Software Maintenance
$118,609	**FY21/22 Total: Professional Services and Software Maintenance**

CURRENT SITUATION AND ITS EFFECTS

The Public Health Division utilizes the **NextGen Practice Management (PM) and Electronic Health Record (EHR)** System to manage secure patient health information and to streamline related processes including electronic billing and grant funding. The system has been upgraded to include: ePrescribing; a Quest Laboratory Tests and Results interface; an Immunization Registry Interface with the State CAIR2 system; an integrated Medication Inventory module; NGShare for secure referrals and communication with other providers; the Patient Portal for secure communication and patient access to online health records; and custom grant reporting modules.

The NextGen PM-EHR system was certified to manage Meaningful Use Reporting. Medicare and Medicaid Programs have provided financial incentives for the Meaningful Use of certified EHR technology to improve patient care which qualified the City to collect $437,750 during the past few years in incentives through Meaningful Use Reporting.

We recently implemented NextGen system changes to support and bill for Telehealth services which are delivered without face to face encounters at City facilities. This is critical during the COVID-19 pandemic.

The NextGen PM-EHR system will be upgraded in 2021 to produce the Berkeley High School Health Center Grant Data extracts that will replace manual data entry with an upload of files into an external grant reporting system. This new custom functionality will free up staff time to focus on more important services to clients.

The NextGen EPM-EHR System Implementation and Upgrade projects have been included as Strategic Plan Priority Projects, advancing the City's goal to provide an efficient and financially-healthy City government.

BACKGROUND

In September 2010, City Council approved a contract with NextGen Healthcare Information Systems, Inc. to implement the PM and EHR system.

On June 28, 2011, Council approved a contract amendment with NextGen for data conversion and additional training and implementation support.

In August 2011, the City implemented the NextGen Practice Management (PM) Module, including electronic billing, at three Berkeley Public Health Clinics.

In June 2013, the City implemented NextGen's Electronic Health Record (EHR).

On July 2, 2013, Council approved a contract amendment with NextGen Healthcare Information Systems, Inc. for an Immunization Registry interface, for additional software licensing, and for three additional years of maintenance services (through FY 2016).

On July 14, 2015, City Council approved a contract amendment with NextGen Healthcare Information Systems, Inc. for the Patient Portal and for two additional years of software licensing and maintenance services (through FY 2018).

On June 26, 2018, City Council approved a contract amendment with NextGen Healthcare Information Systems, Inc. for an integrated Medication Inventory module and for two additional years of software licensing and maintenance services.

ENVIRONMENTAL SUSTAINABILITY

The system replaces paper-based processes with secure online tools, which reduces paper consumption, mailings, and the need for Public Health patients to travel to clinics for routine information. In addition, the system supports electronic data exchange with other healthcare providers and produces electronic data for claims and grant reporting. The system operates on a virtual infrastructure thus reducing the City's carbon footprint.

RATIONALE FOR RECOMMENDATION

NextGen Inc. is a market leader in clinical software and is designated by the Centers for Medicare and Medicaid Services (CMS) as meeting federal requirements for Meaningful Use of Electronic Health Record (EHR) technology. The system supports Clinics in compliance with the Health Insurance Portability and Accountability Act (HIPAA), which outlines the privacy and security standards for health patient information.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered implementing and maintaining the PM-EHR system without vendor services. However, the risk of maintaining such a complex application without specialized support is too high, especially given the impact on Public Health Clinic and BHS Health Center services and workflow.

CONTACT PERSON

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

Attachments:
1: Resolution

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

CONTRACT NO. 084534-1 AMENDMENT: NEXTGEN HEALTH CARE INFORMATION SYSTEMS INC. FOR ELECTRONIC HEALTH RECORDS

WHEREAS, the NextGen Practice Management (PM) and Electronic Health Record (EHR) System has provided a reliable and HIPAA-compliant system for collecting health patient information; and

WHEREAS, the NextGen Practice Management (PM) and Electronic Health Record (EHR) System has improved the efficiency of Public Health clinic operations and resulted in increased revenue; and

WHEREAS, the NextGen Practice Management (PM) and Electronic Health Record (EHR) System is a CMS-certified Electronic Health Record (EHR) technology, meets the requirements for achieving EHR Meaningful Use measures, and sets the stage to qualify for further American Recovery and Reinvestment Act (ARRA) incentive dollars through the State; and

WHEREAS, a software maintenance and support agreement with NextGen Healthcare Information Systems, Inc. is necessary for system updates; and

WHEREAS, additional funding in the amount of $118,610 is available in the Department of Heath, Housing, and Community Services' FY2021 and 2022 General Fund budget, and this contract amendment has been entered into the Citywide contract database and assigned contract number 084534-1, and spending for this contract in future fiscal years will be subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 8460D with NextGen Healthcare Information Systems, Inc., increasing the amount by $118,610 for a total contract value not to exceed $820,937 and extend the term from September 30, 2010 through June 30, 2022.

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Information Technology

Subject: Contract No. 32100060 Amendment: RevolutionCyber, LLC for Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No 32100060 with RevolutionCyber, LLC for additional professional services to develop the policies and procedures for the City's Data Safety program, for an amount not to exceed $77,050.00 and a total contract value not to exceed $102,025.00 from November 13, 2020 through June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

One time funding for this project is available in the Department of Information Technology's Fiscal Year (FY) 2021 General Fund allocation as itemized below.

$77,050	FY 2021: Professional Services FY 2021 Budget Code: 011-35-363-382-0000-000-472-612990- (General Fund, IT Department, Professional Services)
$77,050	**Total FY 2021 Professional Services**

CURRENT SITUATION AND ITS EFFECTS

The City's existing cyber-resilience plan prioritizes and organizes cyber security projects, objectives, and requirements needed within the next five years to improve the City's cyber-resilience posture. The cyber resiliency plan categorizes all projects into five focus areas, which include Data Transparency, Data Privacy and Data Security, Program Functional Design, Policy and Rationale, Monitoring, Response & Mitigation, and Training and Culture. In December 2020, Council approved funding that allowed the City to move forward on six high-priority projects, including launching a Data Safety Program.

The launch of the Data Safety Program will focus on implementing technologies that impact the City's information safety, and is also a Strategic Plan Priority Project, advancing the City's goal to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.
- Create a resilient, safe, connected, and prepared city.

This contract amendment extends the initial contract work begun in preparation for the Data Safety Program. RevolutionCyber, LLC (RC) will draft the policy and procedures that will serve as the foundation of the Data Safety Program. The policy that RC will develop will ensure that all City information/data remains sufficiently protected with respect to its sensitivity, privacy, criticality, and context. RC will develop this policy in the form of an Administrative Regulation (AR) and it will apply to all City departments and staff. The AR will address the creation, labeling, use, sharing, governance, and disposition of information/data created and managed by the City.

BACKGROUND

In May 2019, the City engaged with a consultant to complete an "as-is" assessment of the City's cyber resiliency. The consultant developed a cyber-resilience plan that recommended and prioritized cyber security projects, objectives, and requirements for the next five years. In May 2020, the consultant also recommended a roadmap to the City with large-scale and coordinated projects that would create and mature the City's cyber-resilience capabilities and controls in the most efficient and effective manner.

In December 2020, staff presented to Council the assessment of the threats currently facing the City's information and computer-networks, the recommended roadmap, and prioritized six of the projects, setting their completion date to be on or by June 30, 2021. Establishing and launching a Data Safety Program was one of the six projects selected for FY 21.

ENVIRONMENTAL SUSTAINABILITY

RC will conduct their work remotely thus reducing greenhouse gas emissions from travel to and from City facilities.

RATIONALE FOR RECOMMENDATION

RC currently works with the City's senior leaders and their designees to assess the risk to the information in the structure of the City and its departments and to design and develop the standards for the Data Safety Program, which addresses those risks and the departments' data access needs.

Staff recommends continuing to work with RC to establish the policies and procedures for the Data Safety Program. RC has the outside perspective that provides industry best practices and experience in working with other local municipalities to help establish a framework that the City will use in the near future.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered developing and launching the Data Safety Program internally, however staff determined that the work would be completed more timely by having RC build on the work that they have previously completed for the City. Hiring another consultant would involve additional time and expenses to become familiar with the City's data distribution, departments, controls and technologies.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510-981-6541

Attachments:
1: Resolution

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

CONTRACT NO. 32100060 AMENDMENT: REVOLUTIONCYBER, LLC FOR PROFESSIONAL SERVICES

WHEREAS, in May 2019, the City engaged a consultant to complete an “as-is” assessment of the City’s cyber resiliency, which produced a cyber-resilience plan that recommended and prioritized cyber security projects, objectives, and requirements for the next five years; and

WHEREAS, in December 2020, staff presented to Council the assessment of the threats currently facing the City’s information and computer-networks, the recommended roadmap, and prioritized six of the projects setting their completion date to be on or by June 30, 2021; and

WHEREAS, establishing and launching a Data Safety Program was one of the six projects selected for FY 21; and

WHEREAS, RevolutionCyber, LLC currently works with the City’s senior leaders and their designees to assess the risk to the information within the structure of the City and its departments and to design and develop the standards for the Data Safety Program, which addresses those risks and the departments’ data access needs; and

WHEREAS, RevolutionCyber, LLC has the outside perspective that provides industry best practices and experience in working with other local municipalities to help establish a framework that the City will use in the near future; and

WHEREAS, one time funding for this project is available in the Department of Information Technology’s Fiscal Year (FY) 2021 General Fund allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 32100060 RevolutionCyber, LLC for Professional Services, for an amount not to exceed $77,050 and a total contract value not to exceed $102,025 from November 13, 2020 through June 30, 2022.

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Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Savita Chaudhary, Director, Department of Information Technology

Subject: Presidio Network Solutions Group, LLC: Using California National Association of State Procurement Officials (NASPO) ValuePoint Cooperative Pricing Agreement for Networking Hardware, Software, and Service Purchase Orders

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to increase spending authority with Presidio Networked Solutions Group, LLC ("Presidio") for the purchase of network equipment hardware, software, and installation services, using NASPO ValuePoint's purchasing agreement number CA#7-14-70-04 for the period beginning March 1, 2021 to June 30, 2022 for an amount not-to-exceed (NTE) $530,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for hardware, software, and services in the amount of $530,000, is allocated for Fiscal Year (FY) 2021 in the Department of Information Technology's IT Cost Allocation funds as outlined below.

$400,000	FY 2021: Network Equipment and Licenses Budget Code: 680-35-363-384-6007-000-472-613130 (IT Cost Allocation, IT Department)
$130,000	FY 2021: Core Network Implementation Services Budget Code: 680-35-363-384-6007-000-472-612990 (IT Cost Allocation, IT Department, Professional Services)
$530,000	**Total FY 2021: Professional Services**

CURRENT SITUATION AND ITS EFFECTS

The legacy core switches located in City Hall and the Public Safety Building, as well as the switches on each floor that serve our largest City facilities; City Hall, the Public Safety Building, and 1947 Center Street, are all over 7 years old and are due for replacement.

The core switches in City Hall and the PSB are the backbone of the entire City network, providing connectivity between both server rooms in a redundant manner, connecting all City desktops and laptops to all server and network resources, and providing connectivity between the City network and the outside world, for access to the internet and other cloud-based resources required to provide City services to our community.

The increase in remote work due to COVID-19 and the shelter in place orders has made network connectivity and stability even more critical than before to maintain daily operations and to continue to provide core services to Berkeley residents and community members. This increase in remote work has also changed the cybersecurity landscape, as cyberterrorists are targeting agencies who may have security vulnerabilities due to legacy network equipment, and/or not having all of the security measures in place to accommodate a rapidly growing remote workforce.

This network equipment replacement project is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

The Department of Information Technology has placed core infrastructure hardware on a regular replacement cycle, to ensure the overall health, speed, and security of the City network. This includes network switches, routers, wireless access points, servers, uninterrupted power supplies (UPS), and desktops. These replacements are largely completed by City staff, however in some cases the complexity of the replacements requires assistance from an outside vendor.

The core network switches in City Hall and the Public Safety Building are 7 years old an approaching end of life and end of support.

ENVIRONMENTAL SUSTAINABILITY

A fast, secure, and reliable network allows for more collaborative work to be accomplished between City facilities, and provides the backbone infrastructure that supports the City's online services, including the increased use of virtual meetings and videoconferencing, reducing greenhouse gas emissions from travel to and from City facilities.

RATIONALE FOR RECOMMENDATION

Presidio Networked Solutions is a leading IT solutions provider who has decades of experience deploying advanced networking solutions. Presidio will install and configure the core switches at the Civic Center and PSB server rooms, as well as replace the large network switches on each floor of City Hall and 1947 Center Street. At the conclusion of the project Presidio will provide documentation and knowledge-transfer so that

Department of Information Technology staff can maintain and support the new equipment moving forward.

The City of Berkeley participates in a cooperative purchasing agreement negotiated by NASPO ValuePoint to obtain Cisco networking products, which include but are not limited to hardware, software, and other goods related to the City’s Network Device Replacement Program. Cisco sells this networking equipment including hardware, software, and services purchased through their resellers. Presidio is an authorized reseller for Cisco. The purpose of these programs are to maximize the value of the City’s investment by adopting a citywide standard.

Presidio Networked Solutions is a leading IT solutions provider that will assist with the configuration, testing, installation and cutover, knowledge-transfer, and documentation for the replacement of core switches at the Civic Center and PSB server rooms, as well as the replacement of the large network switches on each floor of City Hall and 1947 Center Street.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered postponing planned and budgeted network infrastructure upgrades however, given the number of citywide technology systems that depend on an improved networking infrastructure, the risk of postponement is very high and can have huge impacts to the daily operations of the City and in providing serving the community. Postponing will also require increased hardware, software licensing, and maintenance costs including unexpected downtime for major systems.

CONTACT PERSON

Savita Chaudhary, Director, Department of Information Technology, 510-981-6541

Attachments:
1: Resolution

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

PRESIDIO NETWORK SOLUTIONS GROUP, LLC: USING CALIFORNIA NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS (NASPO) VALUEPOINT COOPERATIVE PRICING AGREEMENT FOR NETWORKING HARDWARE, SOFTWARE, AND SERVICE PURCHASE ORDERS

WHEREAS, the City typically upgrades and deploys core City hardware and software in a timeframe that keeps the versions at, or near, current commercial release versions and latest hardware; and

WHEREAS, the Network Device Replacement project is an annual infrastructure equipment replacement Project designed to support the Digital Strategic Plan and the City's Strategic Plan goal of advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; and

WHEREAS, Presidio Networked Solutions is a leading IT solutions provider that will assist with the configuration, testing, installation and cutover, knowledge-transfer, and documentation for the replacement of core switches at the Civic Center and PSB server rooms, as well as the replacement of the large network switches on each floor of City Hall and 1947 Center Street; and

WHEREAS, by utilizing existing NASPO pricing schedules, the City of Berkeley is able to take advantage of pre-negotiated prices, economies of scale, and increased efficiencies; and

WHEREAS, funding for this project in the amount of $530,000 is available in the Department of Information Technology's Fiscal Year (FY) 2021 IT Cost Allocation Fund.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to increase spending authority with Presidio Networked Solutions Group, LLC for the purchase of network equipment hardware, software, and installation services, using NASPO ValuePoint's purchasing agreement number CA#7-14-70-04 for the period beginning March 1, 2021 to June 30, 2022 for an amount not-to-exceed $530,000.

Office of City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: License Agreement: Patpatia & Associates, Inc. for 125-127 University Ave. Office Space

RECOMMENDATION

Adopt a Resolution to execute a short term license agreement with Patpatia & Associates, Inc. to license 2nd floor office space located at 125-127 University Ave from March 1, 2021 through April 30, 2021.

FISCAL IMPACTS OF THE RECOMMENDATION

During this license period, the Patpatia & Associates, Inc will pay a monthly rate of $0.00. Patpatia & Associates, Inc will make interior improvements valued at an estimated amount of $30,000. They will not pay the monthly rent of $3,000 until the commencement of the proposed lease agreement and move in date of May 1, 2021.

CURRENT SITUATION AND ITS EFFECTS

The City proposes to execute a short-term license agreement that would commence March 1, 2021 and end April 30, 2021. The City is simultaneously seeking Council approval for a lease agreement with a longer term. The timeframe needed to finalize a lease agreement is an estimated 3 months. This is an issue for the Patpatia & Associates, Inc. because they need to be able to occupy the space by May 1, 2021 and they would like to make the improvements before they occupy the space. This license agreement allows for them to make the improvements before their desired move in date and until the City can finalize a lease agreement.

Patpatia & Associates, Inc. will occupy the 1,706 square feet of vacant office space in the northwestern portion of the 2nd floor of the Waterfront office building at 125-127 University Avenue. The building's second floor currently includes one other non-profit tenant (International Child Rescue Institute) and one for-profit tenant (Levanthal Kline,

LLC). The first floor is currently vacant, and will be occupied by the Parking Enforcement Division and Traffic Bureau starting this year.

BACKGROUND

This office space has been vacant since December 1st, 2019, when the prior tenants, a private olive oil company, La Tourangelle, ended their lease. Since that time, the City marketed the office space in various ways and tried to recruit tenants that comply with public trust use requirements. The vacancy was advertised in publications such as Latitude 38 and Bay & Delta Yachtsman Magazine as well as Craigslist and LoopNet.

Patpatia & Associates, Inc. is a small management consulting business that provides business strategies to the financial services industry. They were established in Berkeley in 1992 and have recruited consultants and student interns from UC Berkeley.

ENVIRONMENTAL SUSTAINABILITY

The proposed license contains a requirement that tenants shall follow all environmental rules and regulations as they apply to City agencies. Specifically, tenants are required to minimize waste, recycle, and compost, as per Recycling and Composting Guidelines for City Buildings.

RATIONALE FOR RECOMMENDATION

The improvements generated by this license will help support the Marina Fund by adding value to a Waterfront property and enabling additional lease revenue. This short-term license agreement will allow the Patpatia & Associates, Inc. to move in and do improvements while the City develops a longer-term lease agreement.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700
Christina Erickson, Deputy Director, Parks, Recreation & Waterfront, 981-6703
Basil Lecky, Assistant Management Analyst, 981-6704

Attachments:

1. Resolution
2. Exhibit A: License Agreement

RESOLUTION NO. -N.S.

LICENSE AGREEMENT: PATPATIA & ASSOCIATES, INC. TO USE CITY PROPERTY LOCATED AT 125-127 UNIVERSITY

WHEREAS, Patpatia & Associates, Inc. is seeking office space to start March 1, 2021, and the City has a vacancy at the 125-127 University office building; and a 2-month short-term license agreement is needed until a longer-term lease can be completed; and

WHEREAS, Patpatia & Associates, Inc will pay a monthly rate of $0.00, and will make improvements valued at an estimated amount of $30,000; and

WHEREAS, Patpatia & Associates, Inc. is a small management consulting business established in Berkeley in 1992 that provide business strategies to the financial services industry.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council adopts a Resolution to execute a license agreement with Patpatia & Associates, Inc. to license the office space located at 125-127 University Ave. beginning March 1, 2021, ending April 30, 2021. The license shall be substantially in the form attached hereto as Exhibit “A”.

Exhibits
A: License Agreement

Exhibit A: License Agreement

LICENSE AGREEMENT

This AGREEMENT is entered into by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City") and Patpatia & Associates, Inc , ("Licensee"), to make improvements for general office and ancillary commercial use to be located at 125-127 University Avenue in Berkeley, CA.

1. LICENSE

City hereby grants a license to licensee, subject to all the terms and conditions herein, for the non-exclusive use of the City's property, located at 125-127 University Avenue as shown on the map attached hereto as Exhibit A and made a part hereof.

a. Licensee is a small business and this License is granted for the purpose of Licensee using the Property as described above for general office and ancillary commercial use, as further described in Exhibit B, attached hereto and made a part hereof. In the event Licensee fails to use the Property for such purposes, or to provide the services described herein, or uses the Property for unauthorized purposes, City may, in its sole discretion, terminate this License.

b. In consideration of the License, Licensee shall use reasonable diligence in promoting and advertising its services provided on the Property.

2. TERM

This License shall take effect once executed by both the City and the Licensee and duly approved by the Berkeley City Council (the "Effective Date"), subject to the following:

a. The License Term will expire at midnight on April 30, 2021.

b. Either party may terminate this License for any reason with thirty (30) days prior written notice to the other party.

c. Licensee is not in default under this License, covenants, and conditions of this License, except that, for the License Term, the monthly rent shall be **ZERO DOLLARS ($0.00).** This License Agreement will expire at the end of the Term.

d. Licensee will make improvements at an estimated cost of $30,000.

e. If License term above expires, Licensee continues in possession and the City does not object, all provisions of the License shall continue in effect, with the following exceptions: 1) the new agreement shall be on a month-to-month basis and shall be terminable by either party with at least thirty (30) days prior written notice.

3. RENT

Licensee shall pay to City, on or before the first day of each month during the Term hereof, monthly rent of **ZERO DOLLARS ($0.00)**. If the term commences on other than the first day of a calendar month or ends on other than the last day of a calendar month, Rent for such partial month shall be prorated on the basis of a 30-day month and paid on or before the first day of such month.

5. NOTICES

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

Basil Lecky
City of Berkeley
Parks, Recreation, and Waterfront
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

For purposes of this License, all notices to Licensee shall be addressed to:
Sunny Patpatia
Patpatia & Associates, Inc
1803 Sixth St. Suite A
Berkeley, CA 94710
(510) 559-7140

6. MAINTENANCE AND ALTERATIONS

a. Licensee shall, to the City's satisfaction, maintain the Property in good order and repair and reasonably free and clean of all debris, trash and rubble.

b. Licensee shall not construct any facilities, install any equipment, or make any alterations to the Property without the City's prior written consent, which shall not be unreasonably withheld. The Licensee shall pay for all improvements and/or alterations to existing facilities used by Licensee. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and remain with the premises at the termination of this license. Licensee shall otherwise surrender the Property to City in the same condition as at the commencement of this License.

7. ACCESS AND ENTRY TO PROPERTY BY OTHERS

The City, its agents and employees, and members of the public have the right to enter the Property, provided such entry does not cause unreasonable interference with Licensee's activities.

8. USE OF PUBLIC PROPERTY

a. Licensee shall keep any public and/or common areas adjacent to the Property free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee's operations or use of the Property.

b. Licensee agrees that except as otherwise provided in this License, it is not a covenant or condition of this License or of any other agreement with Licensee that City undertake or cause to be undertaken any development or redevelopment of the Property or surrounding areas or any improvement thereto, and City shall incur no liability whatsoever to Licensee for failure to undertake such development or redevelopment.

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

d. City at all times shall have the sole and exclusive management and control of the Property, including without limitation, the right to license or permit the use of space within the Property and adjacent areas to persons for, including but not limited to, the sale/rental of merchandise and/or services and the right to permit advertising displays, educational/art displays, and promotional activities and entertainment.

e. Nothing contained herein shall be deemed to create any liability to City for any personal injury, or any damage to motor vehicles, vessels, or other property of Licensee's guests, employees or others, unless solely caused by the gross negligence or willful misconduct of City, its agents, servants or employees. Licensee is solely responsible for the security of the Property, and for the safety of those using the Property. Licensee acknowledges that if City provides security guards or police patrols for the Property or any portion thereof, City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such acts. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Licensee or any other person or entity.

f. City reserves to itself and the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Property in locations that will not unreasonably interfere with Licensee's access to or use of the Property. Any interference shall be temporary, and all work on the Property shall proceed expeditiously. Licensee shall be given reasonable notice before commencement of any work on the Property. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Property, or any portion thereof, or to the Building, or other facilities located upon the Property, including

but not limited to pavement, curbs and sidewalks, the same shall be repaired by City at its expense, if not so repaired by the party installing and maintaining the line. City shall hold harmless and indemnify Licensee from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Licensee or its sub-licensees.

9. USE OF BERKELEY WATERFRONT PROPERTY; PUBLIC TRUST

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

b. The City at all times shall have the right and privilege of making such changes in and to the Berkeley Waterfront (other than the Building) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle The City to unreasonably effect changes that would materially and adversely affect access to or visibility of the Property, except temporarily during periods of construction. The City 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 Licensee shall comply with the same.

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

d. Nothing contained herein shall be deemed to create any liability to The City for any personal injury, or any damage to motor vehicles, vessels, or other property of Licensee's members, employees or others, unless caused by the gross negligence or willful misconduct of The City, its agents, servants or employees. Licensee is solely responsible for the security of the Property, and for the safety of those using the Property pursuant to this License or any permits or licenses from the City. Licensee acknowledges that if The City provides security guards or police patrols for the Berkeley Waterfront or any portion thereof, The City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. To induce The City to provide

such security, if any, as The City in its sole discretion deems reasonable, appropriate and economically feasible, Licensee hereby waives any present or future claims Licensee may have against The City, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. The City shall not be obligated to provide any public liability or property damage insurance for the benefit of Licensee or any other person or entity, each such party being responsible for its own insurance.

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

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

10. TAXES, ASSESSMENTS, AND OTHER CHARGES

Licensee shall pay all applicable personal property taxes lawfully levied on account of personal property owned by Licensee on the Property, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the Property. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

11. UTILITIES AND JANITORIAL SERVICES

a. The City shall be responsible and directly contract and pay for the following utilities and services in connection to Licensee's use or occupancy of the premises: water, sewage, trash removal, landscaping and HVAC.

b. Licensee is responsible for all janitorial services within their office, and services required or desired by Licensee in connection with its use or occupancy of the Premises,

including, but not limited to, electricity, gas, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

c. The City will not provide janitorial services to kitchens or storage areas within the office space. The City is not required to provide vacuuming and trash removal to the office space. The City will service common areas only.

12. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal to the Licensee. Licensee may not assign or sublicense this License in whole or in part, and any attempt to assign or sublicense this License shall terminate it.

13. INDEMNIFICATION

(a) To the fullest extent permitted by law, Licensee shall (1) immediately defend and (2) indemnify The City, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the License. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Licensee's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

(b) The duty to defend is a separate and distinct obligation from the Licensee's duty to indemnify. The Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon submittal to the Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Licensee from its separate and distinct obligation to defend The City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Licensee may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

(c) The review, acceptance or approval of any of Licensee's work or work product by any indemnified party shall not affect, relieve or reduce the Licensee's indemnification or defense obligations. This Section survives the termination of this License. The provisions of this Section are not limited by and do not affect the provisions of this License relating to insurance.

(d) Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Licensee or any of the Licensee's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Licensee or its subcontractors, the Licensee shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

14. INSURANCE

a. Licensee shall, at its sole option, elect to be self-insured or, at its sole cost and expense, maintain at all times during the performance of this license a commercial general liability insurance policy, or if legally self-insured, provide a certificate of coverage for general liability. The general liability policy or the certificate of coverage must provide minimum occurrence coverage in the amount of $2,000,000 (**Two Million Dollars**). The commercial general liability insurance or certificate coverage shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to City.

b. All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days' written notice to the City's Risk Manager; 2) be evidenced by the original Certificate of Insurance attached to the City's form endorsement or the insurance carrier's standard form endorsement evidencing the required coverage; and 3) be approved as to form and sufficiency by the Risk Manager.

c. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this License, coverage shall survive for a period of not less than five (5) years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this License.

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

15. RISK OF LOSS

Licensee bears all risk of loss under this License.

16. CONFORMITY WITH LAW

a. Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including the Occupation Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal, hazardous materials, water and air quality. All activities conducted by Licensee on the Property must be in accordance with these laws, ordinances, codes, and regulations. Licensee shall defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation by Licensee, or its officers, employees, partners, directors, agents, invitees, or guests, of any laws, ordinances, codes or regulations.

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

c. If a release of hazardous materials or hazardous waste occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office.

d. Licensee shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

17. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees shall be, and are, an independent contractor and not an agent or employee of the City. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

18. CITY NON-DISCRIMINATION ORDINANCE

Licensee hereby agrees to comply with the provisions of B.M.C. Chapter 13.26 as amended from time to time. In the performance of this License, Licensee agrees as follows:

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

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

c. Licensee represents that it is subject to state and federal anti-discrimination laws, and maintains a policy of non-discrimination in admission, access, and treatment in its programs, activities, and employment, which fulfill the requirements of subdivision (a), above. Assuming, arguendo, that the requirements of Chapter 13.26 would otherwise apply, for purposes of this License the City agrees that the documentation contemplated in subdivision (b) will not be required of Licensee.

19. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

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

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

20. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

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

b. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

c. If Licensee fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law and equity. Licensee's failure to comply with this Paragraph shall constitute default of the License.

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

21. BERKELEY LIVING WAGE ORDINANCE (LWO)

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

b. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the Property. These records shall include the total number of hours worked, the number of hours spent providing service on the Property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the License. The records described in this paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 23 herein.

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

d. If Licensee fails to comply with the requirements of the LWO and this License the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall constitute default of the License, upon which City may terminate this License pursuant to Paragraph 23.

e. In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of $50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay any of its eligible employees at least the applicable living wage 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 is not intended as a penalty of forfeiture for Licensee's breach.

22. SANCTUARY CITY CONTRACTING

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

A. "Data Broker" means either of the following:

i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;

ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

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

i. The City's computer-network health and performance tools;

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

23. OPPRESSIVE STATES

a. In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this License to forgo contractual relations to provide personal services to, the following entities:

i. The governing regime in any Oppressive State.

ii. Any business or corporation organized under the authority of the governing regime of any Oppressive State.

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

For purposes of this License, the Tibet Autonomous Region and the provinces of Ado, Kham, and V-Tsang shall be deemed Oppressive States. Licensee's failure to comply with this paragraph shall constitute a default of this License and City may terminate this License. In the event that City terminates this License due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this License is terminated

24. CONFLICT OF INTEREST PROHIBITED

a. In accordance with Government code section1090, Berkeley City Charter section 36, and the Berkeley Municipal Code (B.M.C.) Chapter 3.64, neither Licensee nor any employee, officer, director, partner or member of Licensee, or immediate family member of any of the preceding, shall have served with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this License.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family member of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

25. DEFAULT

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

a) Failure To Use Property: Failure to use the Property as specified in Paragraphs 5 and 6;

b) Nonpayment of Rent;

c) Failure to perform any obligation, agreement or covenant under this License;

d) A general assignment by Licensee for the benefit of creditors;

e) Bankruptcy;

f) Receivership taking possession of all or substantially all of Licensee's assets in the Property;

g) Insolvency or the attachment, execution or other judicial seizure of all or substantially all of Licensee's assets in or on the Property;

h) Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts;

i) Illegal Drugs, including any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the Property; or

j) Non-compliance with license term. Failure to perform any of the obligations and improvements listed on Exhibit C, such failure continuing for 30 days after notice from the City of said default.

26. REMEDIES UPON DEFAULT

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

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

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

personal property; and (4) in reletting the Property for such term, at such rent and upon such other terms and conditions as The City in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

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

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

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

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

27. RECYCLED PAPER FOR WRITTEN REPORTS

If Licensee is required by this License to prepare a written report or study, Licensee shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent (10%) more than the cost of virgin paper, and when such paper is available at the time that it is needed. For the purposes of this License, recycled paper is paper that contains at least fifty percent (50%) recycled product. If recycled paper is not available, Licensee shall use white paper. Written reports or studies prepared under this License shall be printed on both sides of the page whenever practical.

28. AUDIT

The City Auditor’s Office, or it designee, may conduct an audit of licensee’s financial and compliance records maintained in connection with the operations and services performed under this License, and with the payments made under this License. In the event of such audit, Licensee agrees to make all such financial and compliance records available to the Auditor’s Office, or its designee. City agrees to provide Licensee an opportunity to discuss and respond to any findings before a final audit report is filed.

29. SETOFF AGAINST DEBTS

Licensee agrees that City may deduct from any payments due to Licensee under this License any monies that Licensee owes City under any ordinance, agreement or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

30. GOVERNING LAW

The laws of the State of California shall govern this License.

31. AMENDMENTS

The terms of this License shall not be altered or otherwise modified except by a written amendment to this License executed by City and Licensee.

32. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

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

33. SEVERABILITY

If any part of this License or the application thereof is declared invalid for any reason, such invalidity shall not affect the other terms of this License which can be given without the invalid provision or application, and to this end the provisions of this License are declared to be severable.

34. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this License or a waiver of any other default of Licensee.

35. DEPOSIT

As security for the full and faithful performance by Licensee of each and every term, provision, covenant, and condition of this License, Licensee shall deposit with The City in an amount of THREE THOUSAND FIVE HUNDRED DOLLARS ($3,500). Such security shall be deposited on or before the Effective Date of this License.

If Licensee defaults in respect to any of the terms, provisions, covenants and conditions of this License, including but not limited to the payment of rent, The City may use the security

deposit or any portion of it to cure the default or compensate the City for all damage sustained by The City resulting from Licensee's default. If the City so uses any portion of the security deposit, Licensee will restore the security deposit to its original amount within ten (10) days after written demand from The City.

The City will not be required to keep the security deposit separate from its own funds and Licensee shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on The City's damages or other rights under this License, or a payment of liquidated damages or an advance payment of the rent. If Licensee pays the rent and performs all of its other obligations under this License, The City shall return the unused portion of the security deposit to Licensee within sixty (60) days after the end of the term. The City may deliver the security deposit to a purchaser of the Property and be discharged from further liability with respect to it.

36. REQUIRED ACCESSIBILITY DISCLOSURE

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

> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject Property 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 Property, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Property 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 Property." [*Cal. Civ. Code Section 1938(e)*]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to The City's prior written consent.

37. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY

At the termination of this License, Licensee shall: 1) give up and surrender the Property, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all Property which is not a fixture of or permanent attachment to the Property and which is owned and was installed by Licensee during the term of this License.

38. EFFECT ON SUCCESSORS AND ASSIGNS

This License shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

39. PESTICIDES

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

40. SIGNS

Licensee shall not install or letter any signs on the Property without the prior written consent of City. All signs on the Property shall conform to the provisions of Berkeley Municipal Code Chapter 20.04 and the Marina design guidelines for signs.

41. CONSENT OF PARTIES

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

42. REVIEW OF AGREEMENT BY COUNSEL; FAMILIARITY WITH CONTENTS AND EFFECT

Licensee and City represent that in entering into this Agreement, they have relied upon the legal advice of their respective attorneys. Licensee further represents that the terms of this Agreement have been completely read by it, and that these terms are fully understood and voluntarily accepted, and if applicable, by its attorneys.

43. AGREEMENT JOINTLY DRAFTED

Licensee and City and counsel for each, if applicable, has reviewed and revised, or has the opportunity to revise this Agreement, and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

44. EXECUTION IN COUNTERPARTS

This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same document.

45. ENTIRE AGREEMENT

a. The terms and conditions of this License, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this License. This License shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee.

No other agreement, statement, or promise relating to the subject matter of this License shall be valid or binding except by a written amendment to this License.

b. If any conflicts arise between the terms and conditions of this License and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this License shall control.

IN WITNESS WHEREOF, City and Licensee have executed this License as of the date written on the second paragraph of this License.

Approved as to form:

_____
City Attorney

Registered by:

_____
City Auditor

CITY OF BERKELEY

By _____
City Manager

Attest:

_____
City Clerk

LICENSEE
Sunny Patpatia, Patpatia & Associates, Inc

By_____
Sunny Patpatia

LICENSEE 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_____

EXHIBIT A

PROPERTY DESCRIPTION

The property is located within the Berkeley Waterfront in the City of Berkeley, CA. The premises include approximately 1,706 square feet comprising the northwestern portion of the 2nd floor of the building commonly known and referred to as 125-127 University Avenue, Berkeley, CA 94710.

EXHIBIT B

USE OF PROPERTY

Licensee shall only use the Property described on Exhibit A for general office and ancillary commercial use, subject to any applicable or required approvals from the City of Berkeley.

EXHIBIT C

LIST OF IMPROVEMENTS

Itemized List of Required Improvements
at the Second Floor Office Suite of
125 University Avenue, Berkeley, CA

Itemized Improvement	Estimated Cost
Wall Repairs and Painting	$7,500
Installation of Internal Office Door	1,000
Replacement of Carpet & Linoleum (cost of carpet & installation)	8,000
Bathroom Fixtures (sink, toilet) & Plumbing Repairs	1,500
Kitchenette Repairs and Refrigerator Replacement	1,500
Lock Replacement	500
Window Treatments	6,000
Lighting Repairs	1,000
Computer Network Wiring	2,500
Miscellaneous Repairs	2,000
Total	$31,500

Project completion timeframe of the improvements: 8-10 weeks

Office of City Manager

CONSENT CALENDAR
February 23, 2021

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: Patpatia & Associates, Inc. for 125-127 University Ave. Office Space

RECOMMENDATION

Adopt first reading of an Ordinance executing a lease agreement with Patpatia & Associates, Inc. to lease 2nd floor office space located at 125-127 University Ave. The lease term is anticipated to begin May 1, 2021 and end April 30, 2024.

FISCAL IMPACTS OF THE RECOMMENDATION

Patpatia & Associates, Inc. will pay a monthly rate of $3,000, escalating 3% per year. The total estimated payment over three years will be $111,272. The lease includes an option to extend for two additional years; if exercised, monthly rent will increase to $3,412, and will escalate by 3% the following year. Funds will be deposited into the Marina Fund Revenue Account Budget Code 608-52-544-592-0000-000-000-461120-.

CURRENT SITUATION AND ITS EFFECTS

The City proposes to execute a new three-year lease with Patpatia & Associates, Inc. to occupy the 1,706 square feet of vacant office space in the northwestern portion of the 2nd floor of the City-owned Waterfront office building at 125-127 University Avenue. There are two other existing office tenants on the 2nd floor: Levanthal and Kline and the International Child Rescue Institute. The first floor will be occupied by the Parking Enforcement Division and Traffic Bureau.

The monthly lease rate will increase annually by 3%. The rates were determined in 2018, when the City hired a consultant from Contra Costa County Real Estate Division to do a market study and to price the Waterfront office space at 125-127 University. That study established the market rate at $2/sq ft for all offices in the building. The City had to reduce the cost per square foot due to the impact COVID-19 has on the commercial rental market. If the 2-year option period is exercised, the rent will be increased to the $2/sq ft level, and escalate another 3% the following year.

This office space has been vacant since December 1st, 2019, when the prior tenants, a private olive oil company, La Tourangelle, ended their lease. Since that time, the City marketed the office space in various ways and tried to recruit tenants that comply with public trust use requirements. The vacancy was advertised was in publications such as Latitude 38 and Bay & Delta Yachtsman Magazine as well as Craigslist and LoopNet.

The building is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery ("public trust uses"). During times when the City is unable to lease to public trust uses, the State Lands Commission has determined that it would be financially and operationally prudent for the City to lease to non-public trust uses for short-term leases of five years or less. The City made multiple efforts to find trust uses to occupy this office space, but was unable to do so. While the City intends to attempt to find public trust uses over the long-term, staff recommends approval of these short-term three-year non-public trust leases.

BACKGROUND

The City is simultaneously seeking Council approval to enter into a short-term license agreement with Patpatia & Associates, Inc. that ends April 30, 2021. This was done because the timeframe needed to execute a lease agreement is estimated to be 2-3 months. Also, Patpatia & Associates wants to do improvements before they occupy the space. The license agreement will allow them to move in and make the improvements while the City works towards finalizing a long-term lease agreement.

Patpatia & Associates, Inc. is a small management consulting business that provide business strategies to the financial services industry. They were established in Berkeley in 1992 and have recruited consultants and student interns from the UC Berkeley.

ENVIRONMENTAL SUSTAINABILITY

The proposed lease contains a requirement that tenants shall follow all environmental rules and regulations as they apply to City agencies. Specifically, tenants are required to minimize waste, recycle, and compost, as per Recycling and Composting Guidelines for City Buildings.

RATIONALE FOR RECOMMENDATION

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

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700
Christina Erickson, Deputy Director, Parks, Recreation & Waterfront, 981-6703
Basil Lecky, Assistant Management Analyst, 981-6706

Attachments:

1. Ordinance
   Exhibit A: Lease Agreement

ORDINANCE NO. –N.S.

LEASE AGREEMENT: PATPATIA & ASSOCIATES, INC. FOR OFFICE SPACE AT 125-127 UNIVERSITY AVENUE AT THE BERKELEY MARINA

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

Section 1. The City Manager is hereby authorized to execute a three-year lease agreement and any amendments with Patpatia & Associates for office space at 125-127 University Avenue at the Berkeley Marina. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent will be $3,000 per month, escalating 3% annually, and will be deposited in the Marina Fund Budget Code 608-52-544-592-0000-000-000-461120-. The lease includes an option to extend for two additional years; if exercised, monthly rent will increase to $3,412, and will escalate by 3% the following year.

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

OFFICE LEASE

by and between

CITY OF BERKELEY
a California municipal corporation
(as Landlord)

and

Patpatia & Associates, Inc.
a California Corporation
(as Tenant)

Dated: May 1, 2021

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LIST OF EXHIBITS

Exhibit A-1	Legal Description of Property
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OFFICE LEASE

BASIC LEASE INFORMATION

1.	Landlord:	City of Berkeley, a California municipal corporation 2180 Milvia Street Berkeley, CA 94704 Attention: Director, Parks, Recreation & Waterfront Telephone: (510) 981-6704 Facsimile: (510) 981-6710
2.	Tenant:	Patpatia & Associates, Inc. 1803 Sixth St. Suite A Berkeley, CA 94710 Telephone: (510) 559-7140 Facsimile: (510) 559-7145
3.	Tenant Trade Name:	Tenant shall operate under the trade name Patpatia & Associates, Inc.
4.	Effective Date:	May 1, 2021
5.	Premises:	Approximately 1,706 rentable square feet comprising the southern portion of the 2nd floor ("**Premises**") of the building commonly known and referred to as 125-127 University Avenue, Berkeley, California 94710 (the "**Building**").
6.	Permitted Uses:	General office and ancillary commercial use, subject to any applicable or required approvals from the City of Berkeley.
7.	Initial Term:	Three (3) years, commencing as of May 1, 2021, with an option to extend for 2 years ("**Commencement Date**").
8.	Base Rent:	$3,000 per month with 3% annual increase
9.	Security Deposit:	$3,000
10.	Guarantor:	Not required with this Lease.

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

LANDLORD'S INITIALS _____ TENANT'S INITIALS _____

OFFICE LEASE

This Office Lease ("**Lease**") is made and entered into as of the effective date specified in Section 4 of the Basic Lease Information, above ("**Effective Date**"), by and between the City of Berkeley, a municipal corporation of the State of California ("**Landlord**"), and the tenant identified in Section 2 of the Basic Lease Information ("**Tenant**").

1. PREMISES.

1.1 Premises. Landlord is the owner of that certain Building referred to in Basic Lease Information Section 5, and the underlying land on which the Premises are located as described in Exhibit A-1 attached hereto and incorporated herein (collectively, the "**Property**"). Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises together with Tenant Improvements (defined below), if any. A drawing depicting the general location and layout of the demised Premises is attached hereto and incorporated by reference as Exhibit A-2. Any improvements or alterations existing in the Premises, or otherwise constructed by Tenant or on Tenant's behalf therein (whether under this Lease, or any prior lease or sublease) are referred to in this Lease as "**Tenant Improvements**." Notwithstanding the foregoing, Landlord will not be obligated to deliver possession of the Premises to Tenant (but Tenant will be liable for rent if Landlord can otherwise deliver the Premises to Tenant) until the City Council of Landlord has approved the Lease and Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant and the guaranty of Tenant's obligations under this Lease, if applicable, executed by the Guarantor(s) in the form attached hereto and incorporated by reference as Exhibit C ("**Guaranty**"); (ii) the Security Deposit and the first installment of Base Rent ; and (iii) copies of policies of insurance or certificates thereof as required under this Lease.

1.2 Landlord's Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign in or about the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord may exercise this right of entry without any abatement of Rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

2. COMMON AREA.

2.1 Definition of Common Areas. The term "**Common Area**," as used in this Lease, means all areas within the exterior boundaries of the Property now or later made available for the collective general use of Tenant and other persons entitled to occupy space in the Building, including the exterior surfaces and roof of the Building. Common Area shall not include any areas or facilities that could be considered as Common Area except that the areas or facilities are included in the description of premises leased to any other tenant of the Building.

2.2 Maintenance and Use of Common Area. The manner in which the Common Area shall be maintained shall be solely determined by Landlord. The use and occupancy by Tenant of the Premises shall include the right to use the Common Area (except areas used in the maintenance or operation of the Property), in common with Landlord and other tenants of the Property and their customers and invitees, subject to such reasonable, nondiscriminatory rules and regulations concerning the use of the Common Area as may be established by Landlord from time to time. Written notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Tenant thirty (30) days prior to their effective date. Tenant agrees to promptly comply with all such rules and regulations upon receipt of written notice from Landlord.

2.3 Control of and Changes to Common Area. Landlord shall have the sole and exclusive control of the Common Area, as well as the right to make reasonable changes to the Common Area. Landlord's rights shall include, but shall not be limited to, the right to: (i) restrain the use of the Common Area by unauthorized persons; (ii) cause Tenant to remove or restrain persons from any unauthorized use of the Common Area if they are using the Common Area by reason of Tenant's presence in the Property; (iii) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage noncustomer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's judgment; and (iv) reasonably change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area. Landlord may determine the nature, size and extent of the Common Area, as well as make changes to the Common Area from time to time which, in Landlord's opinion, are deemed desirable for the Property.

3. TERM.

3.1 Term; Commencement Date. The "**Initial Term**" of this Lease shall be as set forth in Section 7 of the Basic Lease Information and shall commence as of the Commencement Date set forth in Section 7 of the Basic Lease Information. The Initial Term together with the Extension Term(s), if any, are collectively referred to herein as the "**Term**."

3.2 Option to Extend Term. Tenant has an option to extend this lease agreement for two (2) years. During option period, rent will increase to two dollars per square foot at the beginning of the first option year ($3,412/month) and a 3% increase at the beginning of the second option year,

4. RENT; SECURITY DEPOSIT.

4.1 Base Rent; Rent. All Rent under this Lease shall commence as of the Commencement Date. Rent shall be paid as set forth in this Section 4. Tenant shall pay to Landlord, at Landlord's address for payment of Rent designated in Section 1 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent designated in Section 8 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each month of the Term. Upon execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent. If Base Rent is due for a period of less than a full month, it shall be prorated for such

partial month on the basis of a thirty (30) day month. The term "Rent" means the Base Rent and any other amounts of any kind that become due and payable by Tenant to Landlord under this Lease. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

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

4.3 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses ("**Delinquency Costs**"). If Landlord has not received any installment of Rent within five (5) business days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("**Applicable Interest Rate**") equal to the lesser of (i) the maximum interest rate permitted by Law, or (ii) five percent (5%) above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) ("**Bank**") as its "**Reference Rate**." If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord's acceptance of late Rent, partial 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 Lease and/or by operation of Law.

4.4 Security Deposit. The cash sum specified under Section 9 of the Basic Lease Information, if any, shall be deposited with Landlord concurrently with Tenant's execution of this Lease ("**Security Deposit**"). Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. Tenant is not entitled to any interest on the Security Deposit and Landlord shall not be liable therefor. If Tenant defaults on any provision of this Lease, Landlord may, at its election and without prejudice to any remedy it has under this Lease or by operation of Law, apply all or part of the Security Deposit to: (i) Rent or other sum in default; (ii) any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease; (iii) unamortized costs of improvements paid for by Landlord, if any; (iv) unamortized costs of brokerage commissions, if any; or (v) any expense, loss or damage that Landlord may suffer because of Tenant's default. Tenant waives the provisions of California Civil Code section 1950.7, and all Laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant, or of Tenant's officers,

agents, employees, independent contractors, invitees, customers, licensees, assignees or subtenants (individually and collectively, "**Tenant's Parties**").

4.5 Restoration of Security Deposit; Return of Security Deposit. If Landlord applies any portion of the Security Deposit during the Term, Tenant shall, within ten (10) days after demand by Landlord, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount. If Tenant performs every provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit, if any, shall be returned to Tenant or the last assignee of Tenant's interest under this Lease within thirty (30) days following the expiration or termination of the Term.

4.6 Transfer of Security Deposit; Assignment or Encumbrance of Security Deposit. If Landlord disposes of its interest in the Premises, Landlord may deliver the remaining Security Deposit to Landlord's successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit. Tenant may not assign or encumber the Security Deposit without the prior written consent of Landlord. Any attempt to do so shall be void and shall not be binding on Landlord.

5. UTILITIES AND JANITORIAL SERVICES.

5.1 Landlord Utility and Service Costs. Landlord shall be responsible and directly contract and pay for the following utilities and services in connection with Tenant's use or occupancy of the Premises: (i) water; (ii) sewage; (iii) the Landlord janitorial services described in Section 5.2 below; (iv) trash removal; and (v) HVAC (individually and collectively, the "**Landlord Services**").

5.2 Janitorial Services. Landlord shall provide all janitorial services to common areas only. Tenant shall provide and pay for all janitorial services, including supplies and shampooing carpets, to the Leased Premises during this lease term.

5.3 Tenant Utility and Service Costs. Tenant, at Tenant's sole cost and expense, shall be responsible and shall directly contract and pay for any and all utilities and services required or desired by Tenant in connection with its use or occupancy of the Premises, which are not expressly included within the definition of Landlord Services, including, but not limited to, electricity, gas, telephone, computer, internet, communications services, plumbing and drain clean out services, and alarm.

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

5.5 Exculpation of Liability. Landlord is not obligated to furnish any security patrol or any other services to Tenant, other than the Landlord Services expressly described above, and Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord's failure to furnish or election to discontinue providing any security patrol or other services. Landlord shall not be liable for any failure or interruption of any Landlord Service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease. Landlord makes no representation with respect to the presence, adequacy

or fitness of the heating, air conditioning or ventilation equipment on or about the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant. The exculpation of liability under this Section 5.5 shall not apply to the extent claims are caused by Landlord's gross negligence or willful misconduct.

6. TAXES.

6.1 Taxes. As used in this Lease "**Taxes**" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

6.2 Possessory Interest Taxes. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested shall be responsible for payment of any and all property taxes levied on the interest (collectively, "**Possessory Interest Taxes**").

6.3 Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon the trade fixtures, alterations, additions, improvements, partitions, cabling, wiring, furniture, equipment, inventories and other personal property located and/or installed on the Premises by or on behalf of Tenant (individually and collectively "**Tenant's Property**") and any Tenant Improvements (collectively, "**Personal Taxes**").

6.4 Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill. Tenant shall pay such amount directly to the taxing authority no later than ten (10) business days prior to the date on which such Taxes are due. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf within five (5) days of Landlord's demand therefor. Tenant shall reimburse Landlord for such Taxes and any penalties and fines, together with interest at the Applicable Interest Rate, from the date Landlord tendered payment.

7. INSURANCE.

7.1 Landlord. Landlord may elect to self-insure, jointly-insure, or maintain insurance or an insurance equivalent (including, but not limited to, that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Property (excluding Tenant's Property and any Tenant Improvements) on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage) similar in type and coverage limits to that carried by Landlord on its other properties. At Landlord's option, such insurance or insurance equivalent may be carried under any blanket or umbrella policies or other insurance or insurance equivalent which Landlord has in force for other buildings or projects. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 7.1 is referred to herein as "**Landlord's Insurance**." Landlord's Insurance shall not, under any circumstances, include

Tenant's Property, any Tenant Improvements, or other items required to be covered by Tenant's Insurance.

7.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times during the Term the following "**Tenant's Insurance**," and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith. Tenant's Insurance shall not have a deductible amount exceeding Five Thousand Dollars ($5,000).

7.3 Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars ($2,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage. If necessary, Tenant shall provide for restoration of the aggregate limit.

7.4 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.

7.5 Property Insurance. "All risk" property insurance including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, covering damage to or loss of Tenant's Property or any Tenant Improvements (together with, if the property of Tenant's invitees is to be kept in the Premises, warehouser's legal liability or bailee customers insurance insuring property belonging to invitees and located in or about the Premises), in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the mortgagees of Landlord shall be presumptive.

7.6 Other Insurance. Any other form or forms of insurance as Landlord or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

7.7 General.

7.7.1 Insurance Companies. Tenant's Insurance shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A-VII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

7.7.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as

required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure.

7.7.3 Additional Insureds. Landlord and any property management company of Landlord for the Premises shall be named as additional insureds on the commercial general liability policy required by Section 7.3. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

7.7.4 Primary Coverage. Tenant's Insurance shall be primary, without right of contribution from any Landlord's Insurance.

7.7.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease.

7.7.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant's Property or any Tenant Improvements to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of Landlord, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

7.7.7 Notification of Incidents. Tenant shall notify Landlord within twenty-four (24) hours after the occurrence of any accident or incident on or about the Property or any portion thereof which could give rise to a claim against Landlord, Landlord's Insurance, Tenant, or Tenant's Insurance, except that Tenant shall not be obligated to give Landlord notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation insurance. Tenant's notice shall be accompanied by a copy of any report(s) relating to the accident or incident.

7.7.8 Compliance With Insurance Requirements; Warranties. Tenant shall not do anything in the Premises, or bring or keep anything therein, or subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or fire, or violate Landlord's Insurance, or Tenant's Insurance, or which shall conflict with the regulations of the fire department or any Laws or with any insurance policy on the Premises or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted.

8. INDEMNITY; LIABILITY EXEMPTION.

8.1 Indemnity. Except to the extent claims are caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, representatives, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees,

expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's or Tenant's Parties use of the Premises, the Property, or any portion thereof, or the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or Tenant's Parties in or about the Premises, the Property or any portion thereof; (iii) any act, error or omission of Tenant or Tenant's Parties in or about the Property or any portion thereof; (iv) loss of, injury or damage to, or description of property (including but not limited to merchandise or inventory), including loss of use resulting from such loss, injury, damage, or destruction; or (v) any resulting economic loss, consequential damages, or exemplary damages (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section 8.1 shall survive the expiration or other termination of this Lease with respect to any claims or liability arising prior to such expiration or other termination.

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

9. REPAIRS AND MAINTENANCE.

9.1 Landlord's Obligations. The Premises are being leased to Tenant in their current, existing, "AS-IS" condition. 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, construct or install any Tenant Improvements, or otherwise alter or improve the Premises, Property, or any portion thereof. Having occupied the Premises before entering this Lease with Landlord, Tenant is familiar with the existing condition of the Property and Premises, including any Tenant Improvements, and acknowledges that Landlord has made no representation or warranty regarding the condition thereof. Landlord, at its expense shall maintain the Building's roof (including structure portions of the roof), foundation, and exterior walls, exterior windows,

common areas, building systems including HVAC, plumbing, and electrical and any items in the common areas required for compliance with applicable laws.

9.2 Tenant's Waiver. Notwithstanding anything in this Lease to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights, including its right to make repairs at Landlord's expense, under California Civil Code sections 1932(1), 1941, and 1942 or any similar Laws.

9.3 Tenant's Obligations. Tenant, at its expense, shall maintain the Premises in good order, condition and repair, including interior floor surfaces and floor coverings, interior walls and wall coverings, paintings, interior glass, doors, Tenant Improvements, Signs, , and any items required for compliance with Laws. In the event Tenant fails, in the reasonable judgment of Landlord, to so maintain the Premises in good order, condition and repair, Landlord shall in its sole discretion, upon five (5) days' written notice to Tenant, have the right but not the obligation to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within such five (5) day period. If Landlord elects to undertake any such repairs or maintenance as provided above, then Tenant shall pay as additional Rent, Landlord's actual costs paid or incurred in connection therewith.

10. ALTERATIONS.

10.1 Trade Fixtures; Alterations. Subject to the conditions and requirements of this Section 10, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises or any Tenant Improvements. For purposes of this Lease, "**Trade Fixtures**" means specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations, physical additions, or improvements in, about, or to the Premises without the prior written consent of Landlord, which consent may be granted or denied in Landlord's sole discretion. If Landlord approves proposed alterations, additions or improvements, Landlord's consent may be conditioned upon Tenant's establishing compliance with Laws and with Landlord's reasonable requirements regarding selection of contractors and construction of improvements and alterations. Should Tenant make any alterations, additions, improvements without the prior written consent of Landlord, Landlord may, at any time during the Term of this Lease, require Tenant to remove any or all of the same and restore the Premises to their prior condition, at Tenant's sole cost and expense.

10.2 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to installation in or about the Premises or any portion thereof of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "**Transmission Devices**").

10.2.1 Tenant will not place or allow any third party to place or maintain on the roof or on any exterior door, wall or windows (or within forty-eight inches (48") of any windows) of the Premises any sign, banner, flag, awning or canopy, advertising matter or

window coverings of any type without Landlord's prior written consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or window coverings as may be approved in good condition and repair at all times.

10.3 Signs. All signs, graphics, and awnings of every kind visible in or from public view or corridors, or the exterior of the Premises, installed or caused to be installed by, for the benefit of, or at the request of Tenant ("**Signs**") shall be, at Tenant's sole cost and expense, and subject to Landlord's prior written approval, and subject to all applicable Laws. Tenant shall remove all such Signs prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Signs. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice.

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

10.5 Damage; Removal. Tenant shall repair all damage to the Premises, Property and any portions thereof caused by the installation or removal of Tenant's Trade Fixtures or other work performed by or on behalf of Tenant. All alterations, improvements or additions that are now or in the future attached permanently to the premises shall be the property of Landlord and remain with the premises at the termination of this lease. Upon the expiration or other termination of this Lease, Tenant shall perform any closure work, investigation and environmental remedial work required by the presence or suspected presence of any Hazardous Materials under Hazardous Materials Laws (as hereinafter defined) or by any other applicable Laws; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration or other termination of the Term, any such items (except Trade Fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the expiration or other termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, the Property, or any portion thereof, whatsoever and in strict accordance with all applicable Laws.

10.6 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises and Property and all portions thereof free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) business days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date

of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

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

11. PREVAILING WAGES.

11.1 Prevailing Wages. Tenant acknowledges and agrees that any Tenant Improvements, repairs, maintenance, or alterations made by or on behalf of Tenant to the Premises, Property, or any portion thereof ("**Improvement Work**"), which will become Landlord's property upon the expiration or termination of this Lease, whether paid for in whole or part by Landlord or which are considered to have been paid for in whole or part by Landlord, will constitute "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds…." California Labor Code § 1720. Accordingly, Tenant shall comply with applicable prevailing wage policies as set forth in the City of Berkeley Municipal Code, applicable California Labor Code requirements pertaining to "public works" (California Labor Code Section 1720 et seq., as amended from time to time and implementing regulations)), and other applicable Laws addressing the payment of prevailing wages in connection with any Improvement Work (collectively, "**Prevailing Wage Laws**"). Tenant shall require the general contractor for any Improvement Work to submit, upon request by Landlord, certified copies of payroll records to Landlord and to maintain and make records available to Landlord and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Tenant shall also include in its general contractor agreement, and in all of its subleases and other contracts, a provision in a form acceptable to Landlord which obligates the general contractor and others as applicable, (i) to comply with, and to require that their respective subtenants, contractors and/or subcontractors comply with, Prevailing Wage Laws, and (ii) upon request by Landlord to submit certified copies of payroll records to Landlord and to maintain and make such payroll records available to Landlord and its designees for inspection and copying during regular business hours at the Premises or at another location within the City of Berkeley. Tenant shall defend, indemnify and hold harmless Landlord and its officers, officials, employees, volunteers, agents and representatives (collectively, "**Indemnitees**") from and against any and all present and future liabilities, obligations, orders, claims, damages, fines, penalties and expenses (including attorneys' fees and costs) (collectively, "**Claims**"), arising out of or in any way connected with Tenant's obligation to comply with all such Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726. Tenant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Tenant's obligation to comply with all Prevailing Wage Laws with respect to the Improvement Work.

12. PERMITTED USE AND PUBLIC TRUST TIDELANDS REQUIREMENTS.

12.1 Usage. The Premises shall be used only for the permitted uses set forth in Section 6 of the Basic Lease Information and for no other purpose whatsoever without the prior written consent of Landlord. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually "**Law**" and collectively "**Laws**"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining a Berkeley Business License and any other permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes no representation concerning the availability of any permits or approvals required or permitted under this Lease. Tenant shall comply with the rules and regulations, including observance of prohibited uses ("**Rules**"), attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as Landlord may from time to time prescribe. Tenant shall not commit waste; overload the floors or structure of the Premises; permit any unreasonable odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises that are offensive or objectionable to Landlord or other tenants or occupants of the Property; take any action which would constitute a nuisance or would disturb, obstruct, or endanger Landlord or other tenants or occupants of the Property; take any action which would abrogate any warranties; or use or allow the Premises to be used for any unlawful purpose; and shall cooperate with Landlord and Landlord's agents to prevent those actions. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the Rules or any other terms or provisions of such tenant's or occupant's lease.

12.2 Public Trust Tidelands Requirements. Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to that certain statutory grant from the State of California to the City of Berkeley, as set forth in Statutes 1913, Chapter 347, as amended ("**Statutory Grant**"). Tenant agrees and covenants to use the Property in a manner consistent with the Statutory Grant and applicable public trust and tidelands requirements during the term of this Lease.

13. ENVIRONMENTAL MATTERS.

13.1 Environmental Compliance. Tenant shall, at its sole cost and expense, comply with all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force (collectively, "**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local Law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the

Resources Conservation and Recovery Act. "**Hazardous Materials**" include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl ("**PCB**") or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by-product thereof. Neither Tenant nor Tenant's Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises or the Property. 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 Property to be removed from the Premises and Property and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant; (iii) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened; or (iv) any claim made or threatened by any person against Landlord, Tenant, the Premises, Property, or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or 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 copies of all workplans and subsequent reports submitted to the governmental agency with jurisdiction to Landlord in a timely manner.

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

14. DAMAGE AND DESTRUCTION.

14.1 Casualty. If, during the Term, the Premises is totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable ("**Casualty**"), then Landlord shall have the right at Landlord's option to give written notice to Tenant within ninety (90) days after the date of the occurrence of such Casualty of Landlord's intention to either (i) repair such Casualty as soon as reasonably possible at Landlord's expense; or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to

repair the damage, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Landlord's Insurance pursuant to Section 7 above, on account of such damage, and if the restoration can be made under then existing Laws and can be completed within one hundred eighty (180) days after obtaining all necessary permits therefor, then Landlord shall restore the Premises (excluding Tenant's Property and any Tenant Improvements) to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within fifteen (15) days after Landlord determines that the restoration cannot be made as stated in this Section 14.1, Tenant may terminate this Lease immediately by giving written notice to Landlord. If the existing Laws do not permit the restoration, either party may terminate this Lease by giving ninety (90) days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually and materially interferes with Tenant's use of the Premises.

14.2 Tenant's Fault. If the Premises, the Property, or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage, Tenant shall have no right to terminate this Lease as provided in Section 14.1, and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds.

14.3 Repair Limitation. Notwithstanding anything in this Lease to the contrary, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant's Property or any Tenant Improvements, if any, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other improvements installed on the Premises by or for Tenant, unless and to the extent Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 7.5 above, and neither Tenant or Landlord has opted to terminate this Lease as provided in Section 14.1.

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

15. EMINENT DOMAIN.

15.1 Effect on Rights and Obligations. If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant may elect to terminate this Lease if 25% or more of the total square footage of the Premises (but expressly excluding parking areas, if any) is taken and if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within thirty (30) days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination

as designated by Tenant. If Tenant does not terminate this Lease within the thirty- (30) day period, this Lease shall continue in full force and effect, except that the Base Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

15.2 Award. In connection with any condemnation, Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise ("**Award**") and Tenant hereby irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully waives, releases, and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Term over the present value as of the termination date of the Rent payable for the remainder of the Term (commonly referred to as the "bonus value" of the Lease).

16. DEFAULT.

16.1 Events of Default. Where "default" is used in this Lease with reference to Tenant, default refers to any breach of Tenant's obligations under this Lease, however brief. Where Tenant's default continues for the period specified below, it shall, at Landlord's option, constitute an Event of Default giving rise to the remedies set forth in Sections 16.2 and 16.3 of this Lease. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default**":

16.1.1 Abandonment of or vacating the Premises, or cessation of Tenant's business operations therein, for a period of ten (10) consecutive calendar days;

16.1.2 Failure to pay Rent or other sums on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

16.1.3 Failure to perform Tenant's covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

16.1.4 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any Laws relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold; Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; Tenant taking any action toward the dissolution or winding up of Tenant's affairs; the cessation or suspension of Tenant's use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold; or

16.1.5 The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

16.2 Remedies.

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

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

(b) Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Laws, including the right to recover from Tenant: (i) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (iv) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (i) and (ii) above, shall be computed at the Applicable Interest Rate, and as used in (iii) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

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

17. ASSIGNMENT AND SUBLETTING.

17.1 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which Landlord may withhold in its sole absolute discretion, without any obligation to consider any proposed assignment, sublet or transfer in good faith or otherwise. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any other act Tenant proposes to do, Tenant shall pay to Landlord any attorneys' fees incurred by Landlord in connection with each such request.

18. ESTOPPEL, ATTORNMENT AND SUBORDINATION.

18.1 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed and acknowledged to any proposed mortgagee, beneficiary, purchaser, or Landlord, in a commercially reasonable form substantially similar to that requested and a statement certifying, without limitation: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; (v) no deposit of any nature has been made in connection with the Lease (other than deposits the nature and amount of which are expressly described in the Lease); and (vi) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 18 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises, the Property, any portion thereof, or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance; (iii) not more than one (1) month's rental has been paid in advance; and (iv) no deposit of any nature has been made in connection with the Lease except as represented by Landlord.

18.2 Subordination. This Lease shall be subject and subordinate to all ground leases, CC&Rs, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 18.2.

18.3 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if

requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for in Section 4.4 of this Lease or by operation of Law.

19. RELOCATION WAIVER.

19.1 Waiver. Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in Law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the relocation of Tenant's business operations, or the relocation of any person(s), business(es), or other occupant(s) located on within, on, or about, the Premises following the full or partial termination or expiration of Tenant's leasehold interest in the Premises (collectively, "**Relocation Claims**"), including waiver and release of any relocation rights under Government Code sections 7260 et seq. or any federal Laws (collectively, "**Relocation Assistance Law**"). Tenant acknowledges and agrees that the release and waiver set forth in this Section 19 is material consideration for Landlord's agreement to enter into this Lease, and that, but for this release and waiver, Landlord would not have entered into this Lease. By releasing and forever discharging the Relocation Claims, Tenant expressly waives any rights under California Civil Code section 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

20. REQUIRED ACCESSIBILITY DISCLOSURE

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

20.1.1 "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject Property 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 Property, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Property 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 Property." [Cal. Civ. Code Section 1938(e)]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to The City's prior written consent.

21. CITY NON-DISCRIMINATION ORDINANCE

21.1 Tenant hereby agrees to comply with the provisions of B.M.C. Chapter 13.26 as amended from time to time. In the performance of this Lease, Tenant agrees as follows:

21.2 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.

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

21.4 Tenant represents that it is subject to state and federal anti-discrimination laws, and maintains a policy of non-discrimination in admission, access, and treatment in its programs, activities, and employment, which fulfill the requirements of subdivision (a), above. Assuming, arguendo, that the requirements of Chapter 13.26 would otherwise apply, for purposes of this Lease the City agrees that the documentation contemplated in subdivision (b) will not be required of Tenant.

22. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

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

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

23. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

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

23.2 If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

23.3 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 and equity. Tenant's failure to comply with this Paragraph shall constitute default of the Lease.

23.4 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.

24. BERKELEY LIVING WAGE ORDINANCE (LWO)

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

24.2 Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the Property. These records shall include the total number of hours worked, the number of hours spent providing service on the Property, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the Lease. The records described in this paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 23 herein.

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

24.4 If Licensee fails to comply with the requirements of the LWO and this Lease the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall

constitute default of the Lease, upon which City may terminate this Lease pursuant to Paragraph 23.

24.5 In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of $50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay any of its eligible employees at least the applicable living wage 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 is not intended as a penalty of forfeiture for Licensee's breach.

25. OPPRESSIVE STATES

25.1 In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this Lease to forgo contractual relations to provide personal services to, the following entities:

25.1.1 The governing regime in any Oppressive State.

25.1.2 Any business or corporation organized under the authority of the governing regime of any Oppressive State.

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

25.2 For purposes of this Lease, the Tibet Autonomous Region and the provinces of Ado, Kham, and V-Tsang shall be deemed Oppressive States. Licensee's failure to comply with this paragraph shall constitute a default of this Lease and City may terminate this Lease. In the event that City terminates this Lease due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this Lease is terminated

26. CONFLICT OF INTEREST PROHIBITED

26.1 In accordance with Government code section1090, Berkeley City Charter section 36, and the Berkeley Municipal Code (B.M.C.) Chapter 3.64, neither Licensee nor any employee, officer, director, partner or member of Licensee, or immediate family member of any of the preceding, shall have served with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Lease.

26.2 In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family member of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if

it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

26.3 Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

27. MISCELLANEOUS.

27.1 General.

27.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property and the Premises, and there are no agreements either oral or written other than as set forth herein.

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

27.1.3 This subsection intentionally deleted.

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

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

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

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

27.1.8 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 17.

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

27.1.10 Memorandum of Lease; Title. Landlord may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises and the Property, as required, in recordable form, designating Landlord as transferee or grantee. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

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

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

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

27.1.14 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of Landlord; and Tenant shall look solely to the rents, issues, profits and other income generated by the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the other assets of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

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

27.1.16 Brokerage Commission. Landlord and Tenant each represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable

attorneys' fees, in connection with a claim by any person for a commission, Finder's Fee or other compensation based upon any statement, representation or agreement of Tenant.

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

27.1.18 Holding Over. If, with Landlord's express written consent, Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy on all the other terms and conditions of this Lease, except that Base Rent shall be equal to 125% of the Base Rent payable under this Lease for the last full month before the date of expiration or termination. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term, except as specifically set forth above. If Tenant remains in possession of the Premises after expiration or other termination of this Lease without Landlord's express written consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as Base Rent during the holdover period an amount equal to one hundred fifty percent (150%) of the Rent payable under this Lease for the last full month before the date of expiration or termination. If Tenant fails to surrender the Premises upon expiration or other termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or other termination of this Lease and any related attorneys' fees and brokerage commissions.

27.1.19 Surrender. Upon the expiration or other termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, broom-swept clean and in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

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

27.1.21 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

27.1.22 Force Majeure. For purposes of this Lease, the term "**Force Majeure**" shall mean and include the following: any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over any construction anticipated to occur thereon

or over any uses thereof, or by fire, flood, inclement weather, energy shortage, strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or governmental agency, or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure an adequate supply of water, electricity, fuel, materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of Hazardous Materials (as defined in paragraph 13.1), earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required.

27.1.23 Financial Statements. Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year, unless Tenant is in default), Tenant shall deliver to Landlord a current financial statement of Tenant and any guarantor of this Lease. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer or general partner of Tenant (if Tenant is a corporation or partnership, respectively).

28. SANCTUARY CITY CONTRACTING

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

A. "Data Broker" means either of the following:

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of the date written on number four (4) of the basic lease information sheet.

Approved as to form:

_____
City Attorney

CITY OF BERKELEY

By _____
City Manager

Registered by:

_____
City Auditor

Attest:

_____
City Clerk

Tenant
Sunny Patpatia, Patpatia & Associates, Inc.

By_____
Sunny Patpatia

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_____

EXHIBIT A-1

PROPERTY DESCRIPTION

The property is located within the Berkeley Waterfront in the City of Berkeley, CA. The premises include approximately 1,706 square feet comprising the northwestern portion of the 2nd floor of the building commonly known and referred to as 125-127 University Avenue, Berkeley, CA 94710.

EXHIBIT A-2

DEPICTION OF PREMISES

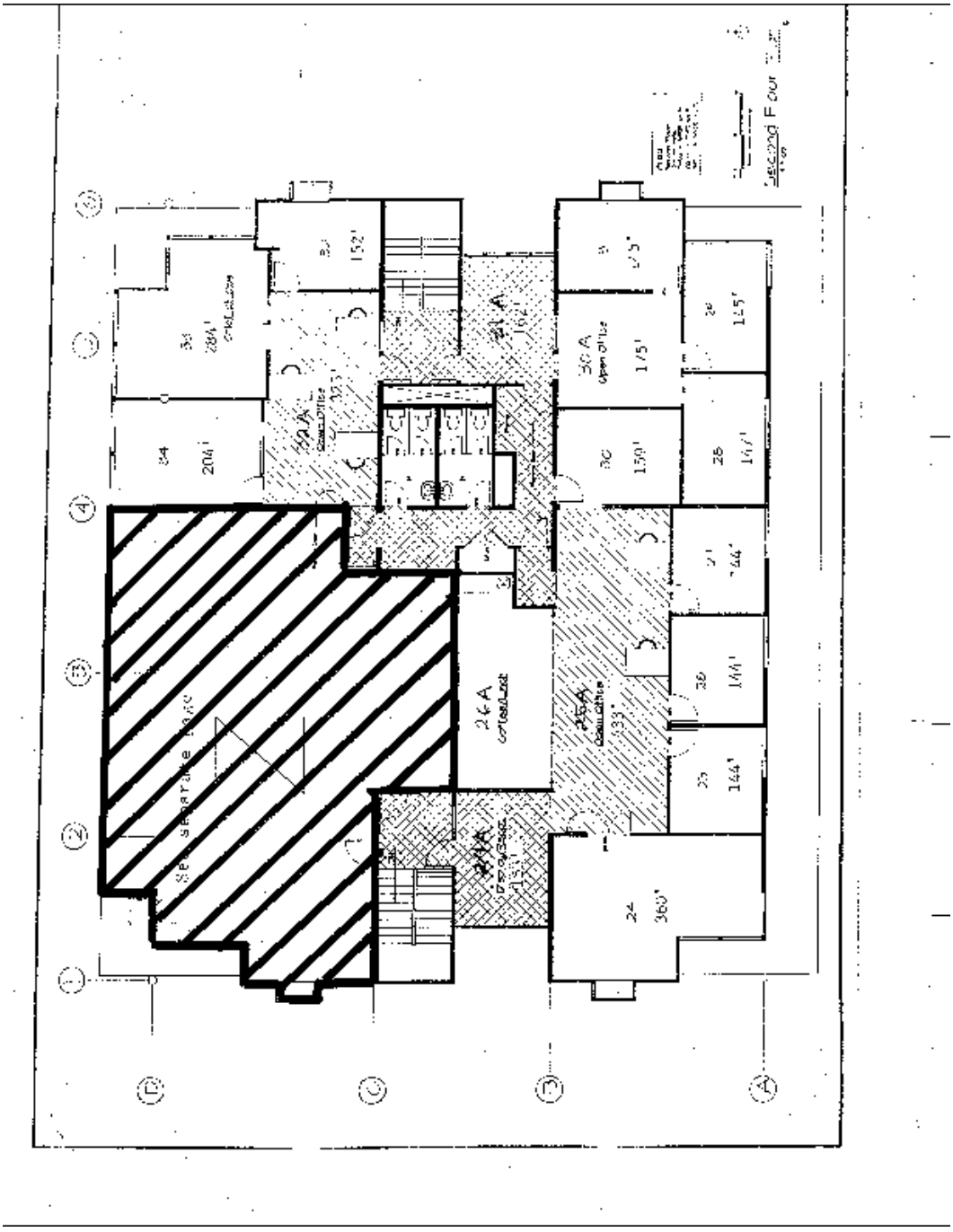


EXHIBIT B

RULES AND REGULATIONS

Tenant shall comply with the following Rules and Regulations (individually and collectively, "**Rules**"). Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules.

1. Locks; Keys. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys shall be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.

2. Doors Opening to Public Corridors; Protection of Premises. All doors opening to public corridors, if any, must be kept closed at all times except for normal ingress to and egress from the Premises. Tenant shall assume all responsibility, including keeping doors locked and other means of entry to the Premises closed, for protecting the Premises from theft, robbery, and pilferage.

3. Floor Loads. Landlord may prescribe the weight, size, and position of all safes, machinery, equipment, fixtures or other heavy property ("**Heavy Property**") brought into the Premises and the times and manner of moving those items within and out of the Premises. Tenant shall not overload any floor in the Premises or use or operate any machinery, equipment, or other device, even though its installation may have been permitted, that in Landlord's opinion is harmful to the Premises. If Tenant shall require Heavy Property, Tenant shall notify Landlord of such fact. If considered necessary by Landlord, Heavy Property must stand on supports that are adequate to distribute the weight properly and Tenant shall pay the cost of any necessary supports or structural bracing. Any damage to any property (whether or not belonging to Tenant), the Premises, the Property or any portion thereof, or its or their respective contents, or any harm to Tenant, its employees, agents, or any occupants or visitors caused by moving or maintaining any Heavy Property shall be the sole responsibility and expense of Tenant.

4. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord's address set forth in the Lease. Landlord's employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

5. Use of Plumbing Facilities; Responsibility for Damage. The plumbing facilities (including but not limited to restrooms, toilets, urinals, wash bowls, drains, and other apparatus) shall be used for no purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by Tenant.

6. Restrictions on Defacement; Maintenance of Premises. Tenant shall not mark, drive nails or screws into, or drill into the partitions, woodwork, or plaster, or in any way deface the

Premises, the Property or any portion thereof, without Landlord's prior written consent. Tenant shall maintain the Premises and all portions thereof in a safe, neat and clean condition.

7. Permitted Machines. No machines of more than one horsepower shall be installed, maintained, or operated on the Premises without Landlord's prior written consent.

8. Flammable or Combustible Fluids or Materials; Foul or Noxious Gases or Substances; Nontoxic Materials. Tenant shall not use or keep, or allow to be used or kept, in or on the Premises, the Property, or any portion thereof, any kerosene, gasoline, or other flammable or combustible fluid, material, or any foul or noxious gas or substance. All materials, fabrics, and products used in Tenant's furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord's architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing environmental matters and compliance, Hazardous Materials Laws, Hazardous Materials, or similar matters, or compliance with Laws. Any existing materials supplied or installed by Landlord in the Premises are exempt from this provision.

9. Cooking; No Use of Premises for Improper Purposes. No cooking shall be done or permitted on the Premises, except that Underwriters' Laboratory (UL)-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate, and similar beverages for employees and visitors. This use must be in accordance with all Laws. The Premises shall not be used for lodging, or for any improper, objectionable, or immoral purposes.

10. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof any person who, in Landlord's judgment, is under the influence of alcohol or drugs or commits any act in violation of any of these Rules.

11. Loitering Prohibited. Tenant and Tenant's Parties shall not loiter in or about the Property for the purpose of smoking tobacco products or for any other purpose unrelated to Tenant's use of the Premises.

12. Smoking; Illegal Substances. Smoking of tobacco products and use of illegal substances is strictly prohibited in or about the Property or any portion thereof.

13. Extermination. Tenant agrees not to permit the extermination of vermin to be performed in, on or about the Property or any portion thereof except at times and by a person or company reasonably designated by Landlord.

14. Obstructions. Tenant and Tenant's Parties shall not in any way obstruct the sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Property, and they shall use the same only as passageways to and from the Premises. At no time shall Tenant or Tenant's Parties be permitted to conduct work activity (except for normal loading and unloading of vehicles) nor store wooden pallets, boxes, goods or other materials outside the confines of Tenant's Premises.

15. Disposal of Trash and Garbage. Tenant shall store all trash, garbage and refuse ("**Trash**") within the interior of the Premises. Tenant shall not place or have placed in Trash

boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of Trash in the vicinity of the Premises. Tenant shall comply fully with all applicable Laws when disposing of Trash.

16. Provision of Information to Tenant's Employees. Tenant shall comply with requests by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.

17. Prohibited Uses and Activities.

17.1 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt, without proper mitigating measures in place;

17.2 Any use, operation or activity which causes or produces any emission into the air of any (i) noxious, toxic, hazardous or corrosive fumes or gases; (ii) excessive smoke, dirt or dust; or (iii) pollutants in violation of any local, state or federal standards;

17.3. Any use, operation or activity which causes or produces any discharge of Hazardous Materials (as defined in Lease Section 13.1) into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or groundwater;

17.4. Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to adjoining properties;

17.5. Uses in violation of any applicable Laws;

17.6. Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

17.7 Additional prohibited uses as determined by Landlord from time to time.

18. Conflict. In the event of any conflict between these Rules or any further or modified Rules from time to time issued by Landlord and the Lease provisions, the Lease shall govern and control.

19. Rule Changes; Waivers. Landlord reserves the right at any time to change or rescind any one or more of these Rules or to make such other and further reasonable Rules as, in Landlord's judgment, may from time to time be necessary for the operation, management, safety, care and cleanliness of the Property or any portion thereof, for the preservation of good order therein, or for the convenience of other occupants and tenants of the Property, if any. Landlord may waive any one or more of these Rules for the benefit of any particular tenant(s). Landlord further reserve(s) all the rights reserved to it or them by the provisions of the Lease, by any CC&Rs, or by operation of Law. No waiver by Landlord shall be construed as a waiver of those Rules in favor of any other tenant or occupant of the Premises or Property, and no waiver shall prevent Landlord from enforcing those Rules against any other tenant or occupant of the Property.

Landlord shall not be responsible to Tenant or to any other person for the non-observance or violation of the Rules by any other tenant, occupant, or other persons. Tenant shall abide by any additional rules or regulations which are ordered or requested by any governmental or military authority. Tenant shall be deemed to have read these rules and to have agreed to abide by them as a condition of Tenant's use and occupancy of the Premises

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract: Interface Engineering, Inc. and Salas O'Brien Engineers, Inc. for On-Call Citywide Electrical Engineering Services

RECOMMENDATION

Adopt two Resolutions authorizing the City Manager to execute a contract and any amendments with the following firms for On-Call Electrical Engineering Services for City-owned facilities in support of the City's annual Facilities Capital Improvement Program, each for the period April 1, 2021 through December 31, 2024

1. Interface Engineering, Inc., for an amount not to exceed $150,000.

2. Salas O'Brien Engineers, Inc., for an amount not to exceed $150,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding will be identified and requested for appropriation as projects arise with 70% of the funding from the T1 Fund (Fund 511) and 30% from the Capital Improvement Fund (Fund 501).

CURRENT SITUATION AND ITS EFFECTS

These contracts are essential since they provide electrical engineering consulting services for City facilities within the Public Works (PW) and Parks, Recreation, and Waterfront (PRW) Departments. The contracts also support the City's T1 Program and the Capital Improvement Program. A number of City facility electrical systems are outdated and in need of replacement or upgrade to meet current building codes, and are at risk of becoming safety problems. These on-call contracts will allow repair of problems before they occur and provide safe, reliable, and code-compliant facilities.

The City issued a Request for Qualifications (Specification No. 20-111364-C) on May 22, 2020 seeking firms or individuals to provide on-call electrical engineering services, and on June 18, 2020 received seven (7) proposals. A panel of City staff reviewed the proposals and developed a short list of two (2) firms.

If approved, these contracts will provide planning, design, inspection and construction phase expertise in areas pertaining to electrical engineering.

The provided services will support the Strategic Plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND
The City operates 95 facilities, not including Library facilities and those leased to other entities. The 95 facilities include 39 in PRW's inventory and 56 under Public Works. A number of these facilities have electrical systems that are outdated, at risk of becoming safety problems, and in need of replacement or upgrade to meet modern building codes.

The Departments of Public Works (Public Works) and Parks, Recreation, and Waterfront (PRW) require electrical engineering consulting services to assist in implementing departmental facility maintenance needs as well as the City's T1 Program and the Capital Improvement Programs.

It is anticipated that the consulting services will be shared with other departments, including PRW.

ENVIRONMENTAL SUSTAINABILITY
Work performed under this contract will assist the City in upgrading aging electrical systems and support the City's ongoing efforts to reduce greenhouse gas emissions by improving energy efficiency in City facilities, providing for photovoltaic systems, converting city facilities from gas to electric, and expanding EV charging stations to support electrification of the City's fleet vehicles.

RATIONALE FOR RECOMMENDATION
The recommended firms assembled highly qualified teams, with the expertise the City requires. This contract will complement the personnel and capacity available in Public Works Engineering.

ALTERNATIVE ACTIONS CONSIDERED
The City may choose not to approve these contracts. However, if City staff is not supplemented with outside electrical engineering consulting services, the condition of the City's facilities will likely worsen.

CONTACT PERSON
Andrew Brozyna, Deputy Director, Department of Public Works (510) 981-6396
Elmar Kapfer, Supervising Civil Engineer, Department of Public Works (510) 981-6435

Attachments:
1: Resolution: Contract Interface Engineering, Inc.
2: Resolution: Contract Salas O'Brien Engineers, Inc.

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

CONTRACT: INTERFACE ENGINEERING, INC. FOR ON-CALL ELECTRICAL ENGINEERING SERVICES

WHEREAS, on May 22, 2020, the City released a Request for Qualifications (Specification No. 20-111364-C) seeking firms or individuals to provide on-call electrical engineering services; and

WHEREAS, on June 18, 2020, the City received seven (7) submissions, which were reviewed and rated; and

WHEREAS, the submission from Interface Engineering, Inc. has been found to be fully qualified and responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise with 70% of the funding from the T1 Fund (Fund 511) and 30% from the Capital Improvement Fund (Fund 501).

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 Interface Engineering, Inc. for on-call electrical engineering services for City-owned facilities in an amount not to exceed $150,000 for the period April 1, 2021 through December 31, 2024. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: SALAS O'BRIEN ENGINEERS, INC. FOR ON-CALL ELECTRICAL ENGINEERING SERVICES

WHEREAS, on May 22, 2020, the City released a Request for Qualifications (Specification No. 20-111364-C) seeking firms or individuals to provide on-call electrical engineering services; and

WHEREAS, on June 18, 2020, the City received seven (7) submissions, which were reviewed and rated; and

WHEREAS, the submission from Salas O'Brien Engineers, Inc. has been found to be fully qualified and responsive to the City's request; and

WHEREAS, funding will be identified and requested for appropriation as projects arise with 70% of the funding from the T1 Fund (Fund 511) and 30% from the Capital Improvement Fund (Fund 501).

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 Salas O'Brien Engineers, Inc. for on-call electrical engineering services for City-owned facilities in an amount not to exceed $150,000 for the period April 1, 2021 through December 31, 2024. 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

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract No. 112783-1 Amendment: LAZ Parking LLC for Managing City-Owned Off-Street Parking Facilities

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112783-1 (Contract No. 10413A in FUND$) with LAZ Parking, LLC, a parking management company, to provide management services for the Telegraph Channing, Oxford, and Center Street Garages, extending the term to December 31, 2022 and increasing the contract amount by $3,556,756 for a total not-to-exceed of $11,089,951.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the duration of the contract amendment is available in the FY 2021 Parking program budget and programmed into baseline budgets for FY 2022 and FY 2023. Funding in FY 2022 and FY 2023 for this contract is subject to appropriation in each fiscal year in the Off-Street Parking Fund (Fund 627).

The General Fund commitment to overall parking operations support via the $3.24 million allocation of Excess Equity approved in the Adjustment to the Annual Appropriations Ordinance on December 15, 2020 ensures contract funding for the remainder of the FY 2021 is available via the Off-Street Parking Fund. FY 2022 and FY 2023 contract funding has been part of Public Works fiscal projections for the Off-Street Parking Fund and has been programmed and projected to be available. Monthly costs (and revenues) are expected to rise as additional garage capacity returns in September 2021, concurrent with the planned resumption of in-person instruction at UC Berkeley.

Current contract amount	$ 7,533,195
Amended contract amount	$ 3,556,756
Total NTE	$11,089,951

Amendment Costs by Facility

Parking Facility	Total Amendment Cost	FY 2021 Cost (2 months)	FY 2022 Cost (12 months)	FY 2023 Cost (6 months)	Average Monthly Cost
Center Street Garage	$2,065,764	$140,000	$1,245,214	$680,550	$103,288
Oxford Garage	$296,105	$0	$183,005	$113,100	$14,805
Telegraph Channing Garage	$1,194,887	$104,940	$714,923	$375,024	$59,744

CURRENT SITUATION AND ITS EFFECTS

LAZ Parking provides management, custodial, security, and limited maintenance services for the Telegraph Channing, Oxford, and Center Street Parking Garages. These "all inclusive" activities include all aspects of day-to-day operation of the three facilities.[1] The City's current contract with LAZ Parking expires September 30, 2021.

The City's contract with LAZ provides 10% contingency funding to cover ancillary costs associated with parking garage operations, like replacement parts. This flexibility allows the City to be able to purchase necessary equipment so the operation can continue without service interruptions. Unfortunately, this contingency budget was expended faster than anticipated. During the Center Street Garage reconstruction, certain finishing details related to parking operations were not included in the capital project budget. Items such as wheel stops and upgraded signage were funded via the LAZ contract. LAZ also purchased the parking guidance system installed at Oxford Garage.

Due to the pandemic, demand at the City's three garages has fallen. As a cost savings measure, the City has reduced capacity at Center Street and Telegraph Channing Garages by 60%, and these facilities close early at 8pm. Oxford Garage has been closed entirely since mid-March 2020. These service reductions have saved the City approximately $117,000 per month. However, as a result of the unforeseen capital expenditures, the City has already reached the current contract NTE and is unable to fund parking operations through the end of the contract term.

The recommended contract amendment is necessary to continue operations during the pandemic and would allow the City to resume full capacity over the next several months

[1] Activities include hiring staff to operate the garages for up to 17 hours per day, opening and closing the garages; conducting bookkeeping and record keeping; facilitating purchases of essential supplies like paper tickets as well as other replacement parts such as gate arms; and hiring security and janitorial staff.

as parking demand strengthens this fall with increased vaccinations and the return of UC Berkeley in-person instruction in September 2021.

Staff will continue to monitor parking demand as the pandemic subsides. Extending the contract term through December 31, 2022 will allow staff time to fully analyze COVID-19 financial impacts and/or changes in parking demand and issue a Request for Proposals (RFP) for the next multi-year parking management contract.

BACKGROUND

In September 2016, after a competitive Request for Proposals process, the City entered into a five-year contract with LAZ Parking, LLC to provide parking management, operations, and associated services for the City's three off-street parking facilities and the Berkeley Way Lot while the Center Street Garage was being reconstructed.[2]

ENVIRONMENTAL SUSTAINABILITY

As part of the goBerkeley demand-responsive parking program, the City's three parking garages play an important role in improving parking availability and reducing congestion in the Downtown Berkeley and Southside/Telegraph areas.

RATIONALE FOR RECOMMENDATION

The City is taking action to minimize costs under the pandemic. Temporary measures include closing the Oxford Garage, and reducing operating hours and capacity at the Center Street and Telegraph Channing Garages. Despite these measures, additional funding is urgently needed to keep parking garages operational due to premature depletion of the contract budget. Though the contract amendment calls for funding at full capacity, the City will continue to apply cost savings measures if demand remains low. City staff also need additional time to conduct a full RFP process for the parking garage management company, which typically takes at least a year including contracting procedures. Pandemic parking demand is highly changeable, and a more stable economy will help staff gauge what services the City will need for the next multi-year contract for LAZ Parking's possible successor.

Additionally, from July 2019 through February 2020, the City's three parking garages generated nearly $358,000 per month in gross revenue. LAZ Parking manages the day-to-day operations of these facilities, allowing the City to collect this revenue and support the City's current and future fiscal health.

ALTERNATIVE ACTIONS CONSIDERED

If this contract amendment is not approved, funding will be unavailable for operating the City's parking garages beginning in May 2021. The City is unable to conduct daily operations activities on its own. Closing these facilities would result in loss of revenue, risking the fiscal health of programs and bond payments reliant on this funding.

[2] September 27, 2016 City Council Meeting Agenda: https://bit.ly/3sJ8jTp

Reducing the amount and/or duration of the contract amendment has minimal effect on the overall cost. This option would also put undue stress on staff trying to conduct a full RFP process under constrained timelines while facing increasing parking demand as the local economy improves.

CONTACT PERSON

Farid Javandel, Manager, Transportation Division (510) 981-7061
Danette Perry, Manager, Parking Services (510) 981-7057

Attachment:
1: Resolution

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

CONTRACT NO. 112783-1 AMENDMENT: LAZ PARKING LLC FOR MANAGING CITY-OWNED OFF-STREET PARKING FACILITIES

WHEREAS, the City of Berkeley owns and operates three off-street public parking facilities; and

WHEREAS, the City of Berkeley is currently under contract with LAZ Parking, LLC to operate and maintain these facilities under an “all inclusive” scope of services; and

WHEREAS, FUND$ Contract No. 10413 was executed October 1, 2016 as authorized by Resolution No. 67,689-N.S., was subsequently amended on August 1, 2017 to include additional Payment Card Industry (PCI) Compliance information, and will expire September 30, 2021; and

WHEREAS, the existing contract budget was prematurely expended due to unanticipated costs related to the Center Street Garage construction project, and funding is needed to continue to provide access to functional off-street parking facilities throughout the duration of the contract; and

WHEREAS, extending the contract term until December 31, 2022 will allow staff adequate time to conduct an RFP process for a possible successor management company; and

WHEREAS, funding for the duration of the contract amendment is available in the FY 2021 parking program budget and programmed into baseline budgets for FY 2022 and FY 2023, and funding in FY 2022 and FY 2023 for this contract is subject to appropriation in each fiscal year in the Off-Street Parking Fund (Fund 627).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or City Manager designee is authorized to execute an amendment to Contract No. 112783-1 with LAZ Parking, LLC to provide management services for Oxford Garage, Telegraph Channing Garage, and Center Street Garage, increasing the contract amount by $3,556,756 for a total not-to-exceed of $11,089,951, and extending the contract term to December 31, 2022.

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Purchase Order: Pape Machinery, Inc. for One (1) John Deere 644L Hybrid Wheel Loader

RECOMMENDATION

Adopt a Resolution satisfying the requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell Contract No.032119-JDC and authorizing the City Manager to execute a purchase order for one (1) John Deere 644L Hybrid Wheel Loader with Pape Machinery, Inc. in an amount not to exceed $468,700.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of one (1) John Deere 644L Hybrid Wheel Loader will not exceed $468,700 and includes CA tire fees, extended warranty and sales tax. Funding is available in the FY 2021 equipment replacement fund (671-54-626-723-0000-000-473-664120).

CURRENT SITUATION AND ITS EFFECTS

This purchase will replace the existing wheel loader (Unit No. 6505) that has exceeded its useful life and is due for replacement. Berkeley provides its own refuse, recycling and food/green materials collection services for both residential and commercial community members. The City also operates a Solid Waste & Recycling Transfer Station to accept these same materials and third party delivered materials. The Wheel Loader is the primary equipment required to transfer these off-loaded materials from the Transfer Station's tipping floor into long haul tractor/trailer trucks (up to 20-ton capacity trailers) that transport refuse to the landfill; materials to recycling facilities for secondary sort; and green/food waste to composting locations.

This purchase supports the City's Strategic Plan Goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

Throughout the year, the Department of Public Works purchases vehicles and equipment for the City operating departments that are paid through the Equipment Replacement fund, which funds replacements as equipment reaches the end of its useful life. If the purchase request exceeds $25,000 the Department of Finance,

General Services Division solicits or “piggybacks” off competitively bid contracts to ensure the City’s departments receive the best pricing.

The City of Berkeley has been a no-cost member and participant of Sourcewell[1] (formerly National Joint Powers Alliance) (NJPA), a municipal contracting agency operating under the legislative authority of Minnesota Statue 123A.21. The original statue was revised in 1995 to allow government clients to better meet their specific needs through participation in service cooperative, rather than paying higher costs associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves all educational, government and no-profit agencies nationwide, and offers cooperative contracted products, equipment and service opportunities to government entities throughout the U.S.

All Sourcewell contracts have been competitively solicited nationwide. On January 31, 2019 Sourcewell released Request for Proposal No. 032119 for Heavy Construction Equipment with Related Accessories, Attachments, and Supplies. The solicitation was released for approximately fifty days and fifteen proposals were submitted and received. Upon proposal review the Sourcewell proposal evaluation committee selected John Deere Company as the best most responsive proposer to meet the specifications thusly awarding Contract No. 032119-JDC.

For all contracts Sourcewell charges an administrative fee based upon the percentage of the sale, and the fee is paid by the Contractor directly to Sourcewell. For this purchase the fee will be paid by John Deere Company and will not be passed on to the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY

The new Wheel Loader utilizes a Hybrid Drive Motor in combination with an engine powered by renewable diesel fuel. The combined systems will reduce fuel consumption by an estimated 25% and reduce greenhouse gar emission by as much as 50-80%. Usage of renewable diesel complies with the City’s Fossil Free recommendations. Additionally, the vehicle is equipped with a Tier 4 Final engine application that meets the strictest EPA emissions requirement for off-highway diesel engines.

Public Works staff have contacted heavy equipment manufacturing companies’ representatives from Case, Peterson Caterpillar, Doosan (Bobcat), Komatsu, Volvo, and Hitachi regarding the availability of fully electric versions of this equipment. These representatives confirmed there are no fully electric versions available for 20 ton Wheel Loader at this time.

[1] https://www.sourcewell-mn.gov/

In addition, the 2020 Municipal Fleet Electrification Assessment[2] recognizes that cost-effective electric heavy duty vehicles in these classes are not available at this time.

RATIONALE FOR RECOMMENDATION

Equipment must be replaced on a reasonable schedule to ensure the Public Works equipment operators can efficiently and effectively carry out their duties.

ALTERNATIVE ACTIONS CONSIDERED

None. Keeping equipment longer than its useful life results in higher maintenance costs and excessive downtime in order to keep it operating in a safe and serviceable manner.

CONTACT PERSON

Greg Ellington, Superintendent, Public Works Maintenance, (510) 981-6469

Attachment:
1: Resolution

[2] https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_26_Referral_Response__An_Action_Plan.aspx

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

PURCHASE ORDER: PAPE MACHINERY, INC. FOR ONE (1) JOHN DEERE 644L HYBRID WHEEL LOADER

WHEREAS, one (1) John Deere 644L Hybrid Wheel Loader is needed by the Public Works Department Zero Waste Division to transfer City curbside collected and third party delivered materials from the Transfer Station tipping floor into long haul tractor/trailers that transport these materials to landfills, recycling materials to secondary sort facilities, and compost locations; and

WHEREAS, equipment Unit Number 6505 is being replaced and has reached the end of its useful life; and

WHEREAS, equipment must be replaced on a reasonable schedule that allows equipment operators to efficiently and effectively carry out their work; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive process; and

WHEREAS, Sourcewell Contract No. 032119-JDC satisfies the procurement requirement of the City of Berkeley; and

WHERAS, the authorized John Deere Construction & Forestry Company dealer in the State of California, including the City of Berkeley is Pape Machinery, Inc. who is trained to sell, lease and rent John Deere Company products and will provide parts, service and warranty repairs; and

WHEREAS, funds in the amount of $468,700 are available in the FY 2021 Equipment Replacement Fund (671).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for one (1) John Deere 644L Hybrid Wheel Loader with Pape Machinery, Inc. in amount not to exceed $468,700 from the Equipment Replacement Fund (671).

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Purchase Order: National Auto Fleet Group for Four (4) Tractor Trucks and Trailers

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell (formerly NJPA) bid procedures, and authorizing the City Manager to execute a purchase order for four (4) Tractor Trucks and Trailers with National Auto Fleet Group in an amount not to exceed $1,200,000.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of four (4) Tractor Trucks and Trailers will not exceed $1,200,000 and includes CA tire fees, extended warranty and sales tax. Funding will be recommended for appropriation through the Second Amendment to the FY 2021 Annual Appropriation Ordinance (AAO2) in the Equipment Replacement Fund (671-54-626-723-0000-000-473-664120).

CURRENT SITUATION AND ITS EFFECTS

The purchase of four Tractor Trucks will replace four (4) existing Tractor Trucks (Unit Nos. 6048, 6049, 6050, 6051), and their corresponding Trailers (Unit Nos. 6008, 6009, 6010 and 6011). These Tractor Trucks and Trailers are utilized by Zero Waste Division of Public Works Department for transporting refuse to a landfill and recyclable materials to recycling facilities for secondary sort. The existing four (4) Tractor Trucks and Trailers currently in operation have reached the end of their economic and useful life and are due for replacement.

Electric/Hybrid Electric Evaluation

With all fleet purchases, Public Works staff research the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition from fossil fuels to renewable energy resources. Staff research and conversations with vehicle manufacturing representative found that multiple companies are at this time either testing prototypes or planning to test heavy-duty electric truck models in California. These are nationally and well known manufacturers, including Freightliner, Volvo, Peterbilt, and BYD.

Freightliner and Volvo are running pilot programs in Southern California, testing a variety of applications, including short distance freight, regional and local delivery, food and beverage distribution and parcel delivery. BYD will add four Heavy Duty EV's in Southern California early in 2021. Peterbilt intends to operate eight Heavy Duty EV trucks to run shipper transports out of Oakland in early/mid 2021. All the models currently being tested have a range between 125 to 250 miles. The City's long haul tractor trucks and trailers are averaging 300 miles per day. This volume of miles per day per tractor truck and trailer ensure the Transfer Station meets its CalRecycle permit requirements for removal of refuse and other materials daily. Additionally, the Transfer Station current electrical infrastructure cannot support a charging system without significant and costly improvements to a Transfer Station due for replacement.

These heavy-duty tractor truck and trailer vehicles have a projected useful life of 8-10 years. At the end of this lifecycle, the Transfer Station replacement will include sufficient electrical infrastructure to fully support the commercially-manufactured electric Heavy-Duty trucks that will be available by then.

The Transfer Station replacement project completed a Feasibility Study in late 2019 and began the CEQA permitting process in January 2021 for the facilities replacement of its 7.4 acre site, which will include infrastructure for future electrification of the Zero Waste Division's entire heavy-duty truck fleet. In addition, the Feasibility Study was presented at a November 5, 2019 City Council Work Session and highlighted the electrical infrastructure needed and to meet GHG emission reduction targets as part of the City's 2009 Climate Action Goals.

With completion of the CEQA compliance, the final design and engineering for construction specifications and City permitting requirements are projected for FY2026/2027 completion. Public Works is also applying for assistance from Pacific Gas & Electric, Co. to provide electric charging infrastructure for future medium and heavy-duty vehicle applications.

Renewable Fuel

The tractor trucks being replaced will be powered by 100% renewable diesel that reduces greenhouse gas emission by as much as 50-80%. Usage of renewable diesel also complies with the City's Fossil Free Recommendations. This purchase is in alignment with the 2020 Municipal Fleet Electrification Assessment that recognized the lack of commercially available and viable heavy-duty vehicles.

This purchase will support the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City. In addition, the 2020 Municipal Fleet Electrification

Assessment[1] recognizes that cost-effective electric heavy duty vehicles in these classes are not available at this time.

BACKGROUND

Throughout the year, the Department of Public Works purchases vehicles and equipment for City's operating departments that are paid through the Equipment Replacement Fund. City departments that use fleet vehicles pay into the equipment replacement fund, which funds vehicle replacement as they reach the end of their life. If a purchase request exceeds $25,000, the Department of Finance, General Services Division, solicits bids or "piggybacks" off competitively bid contracts to ensure the City's departments receive he best pricing.

The City of Berkeley is a no-cost member and participant of Sourcewell (formerly National Joint Powers Alliance (NJPA), a municipal contracting agency operation under the legislative authority of Minnesota Statue 123A.21. The original statue was revised in 1995 to allow government clients to better meet their specific needs through participation in a service cooperative, rather than paying the higher cost associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves all educational, government, and non-profit agencies nationwide, and offers cooperatively contracted products, equipment and service opportunities to government entities throughout the U.S.

All Sourcewell contracts have been competitively solicited nationwide. On April 16, 2020 NJPA released Request for Proposal No. 060920 for Class 4-8 Chassis with Related Equipment, Accessories, and Services. The solicitation was released for approximately fifty-five days. On June 9, 2020, twenty-five (25) proposals were submitted and upon their review, NJPA selected National Auto Fleet Group as the best most responsive proposer to meet the specifications thusly awarding Contract No. 060920-NAF.

For all contracts, Sourcewell charges an administrative fee based upon a percentage of the sale, and that fee is paid by the Contractor directly to Sourcewell. For this purchase the fee will be paid by Contract holder National Auto Fleet Group and this cost will not be passed on to the City.

ENVIRONMENTAL SUSTAINABILITY

Public Works Equipment Maintenance endeavors to procure the most fuel-efficient vehicles and equipment that are suitable for the required tasks. At present, the Solid Waste & Recycling Transfer Station is undergoing a replacement project that will

[1] https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_26_Referral_Response__An_Action_Plan.aspx

include electric vehicle charging capabilities that do not exist at this time. Electric heavy-duty trucks are in development and expected to be commercially available when site construction is completed.

The replacement tractor trucks for purchase now will be powered by 100% renewable diesel fuel designed to reduce greenhouse gas emission by 50-80%; theymeet the 2018 EPA and California Air Resources Board (CARB) requirements.

RATIONALE FOR RECOMMENDATION
Equipment must be replaced on a reasonable schedule to ensure the Public Works equipment operators can efficiently, safely, and effectively carry out their duties.

ALTERNATIVE ACTIONS CONSIDERED
Consideration was given to purchasing electric vehicles, but they do not currently exist in models that meet the City's mileage needs nor does the city's electric charging infrastructure exist to support the vehicles if they did exist. Keeping equipment longer than its useful life results in higher maintenance costs and excessive downtime in order to keep it operating in a safe and serviceable manner.

CONTACT PERSON
Greg Ellington, Superintendent, Department of Public Works (510) 981-6469

Attachment:
1: Resolution

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

PURCHASE ORDER: NATIONAL AUTO FLEET GROUP FOR FOUR (4) TRACTOR TRUCKS AND TRAILER TRUCKS

WHEREAS, four (4) Tractor Trucks and Trailers are needed by City of Berkeley Zero Waste Division for transporting refuse to a landfill and recyclable materials to recycling facilities for secondary sort; and

WHEREAS, equipment must be replaced upon a reasonable schedule that allows operators to efficiently and effectively carry out their duties; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, on April 16, 2020 NJPA released Request for Proposal No. 060920 for Class 4-8 Chassis with Related Equipment, Accessories, and Services. The solicitation was released for approximately fifty-five days. On June 9, 2020 twenty-five proposals were submitted and upon their review NJPA selected National Auto Fleet Group as the best most responsive proposer to meet the specifications, thusly awarding Contract No. 060920-NAF; and

WHEREAS, Sourcewell bid procedures satisfy the procurement requirements of the City of Berkeley; and

WHEREAS, funds in the amount of $1,200,000 will be recommended for appropriation through the Second Amendment to the FY2021 Annual Appropriation Ordinance (AAO2) in the Equipment Replacement Fund (671).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for four Tractor Trucks and Trailers with National Auto Fleet Group in an amount not to exceed $1,200,000.

Office of the City Manager

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Agreements with Union Pacific for Reimbursement for Construction of Safety Improvements for Pedestrians, Cyclists and Vehicular Traffic

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute reimbursement agreements and any amendments with Union Pacific Railroad Company to cause the Pacific Railroad Company to construct all necessary elements of the Gilman Interchange Improvement Project within the railroad easement subject to reimbursement by the City for actual costs incurred in connection with traffic safety improvement work at Gilman Street and at Camelia Street railroad crossings.

FISCAL IMPACTS OF RECOMMENDATION

The City will use existing railroad quiet zone and safety improvement grant funds as the primary funding source to reimburse Union Pacific Railroad Company (UPRR) for safety improvements to be constructed at Gilman and Camelia crossings based on the reimbursement agreement and closure agreement (Attachments 1 and 2). Doing so increases the likelihood of achieving a future quiet zone in the area. Additional funds to support these improvements are designated to come from the Measure BB Local Streets and Roads Direct Local Distribution funds received by the City of Berkeley from Alameda County Transportation Commission (ACTC) in exchange for funding for a sewer line extension to the Tom Bates Sports Fields, which the City has requested be constructed by the interchange project. ACTC has agreed to construct the sewer line extension using City of Berkeley T1 Bond funds and will reimburse the City for an equivalent cost towards construction of the railroad crossing improvement. ACTC will reimburse the City for the grant funds and the equivalent of the T1 Bond funds so that the City can fully reimburse UPRR for their work to design and construct the railroad crossing improvements. This arrangement removes the need for a complex and time consuming three party agreement between UPRR, ACTC, and the City for the railroad crossing improvements, which could have significantly delayed the entire project.

Funding for these agreements will be recommended for appropriation through the Second Amendment to the FY 2021 Annual Appropriation Ordinance (AAO2) and as part of the FY 2022 & 2023 Biennial Budget Process for the total City costs of the crossing improvements as outlined below:

Source of fund	**Amount**
Fund 307-Railroad Safety and Quiet Zone grant (conceptual design phase)	$270,000
Fund 307 - Railroad Safety and Quiet Zone City match (conceptual design phase)	$30,000
Fund 307 - Railroad Safety and Quiet Zone grant (engineering design phase)	$1,000,000
Fund 134 - Measure BB Local Streets and Roads Direct Local Distribution (City match)	$500,000
Fund 511 - ACTC reimbursement credit equal to T1 Bond funds for Gilman Sewer line extension to Tom Bates Regional Sports Complex*	$290,000
Total City cost **Net City cost after grants and reimbursements**	**$2,090,000** **$530,000**

**ACTC will reimburse the City for payments to UPRR in an amount equal to the City's payment of T1 bond funds to ACTC for the extension of the sewer line on Gilman to the Tom Bate Regional Sports Complex.*

CURRENT SITUATION AND ITS EFFECTS

I-80 Gilman Interchange Improvement Project, a City of Berkeley strategic goal, is progressing towards completion of 100% construction plans, with the goal of starting construction in Jun 2021. In addition to the interchange and roadway improvements to be constructed by a contractor under contract with Caltrans using designs and funds secured by ACTC, UPRR will be responsible for constructing all improvements within the existing railroad easement under a Construction and Maintenance Agreement with the City of Berkeley.

As part of the improvements for this project, enhanced pedestrian and bicycle crossings facilities will be constructed at the Gilman Street/UP railroad crossing, which include pedestrian and bicycle crossing gates, a shared bike and pedestrian path across the tracks, flashing signals, a new traffic signal at 4th St./Gilman Street intersection with signal interconnect to the railroad signals, and queue-cutter traffic loops. Also, as part of the safety improvements, the at-grade crossing of UP rail road corridor at Camelia Street will be closed to all types of traffic, allowing the City to bank credits towards a possible railroad quiet zone in the future. In order to construct these improvements the city needs to enter into a Construction and Maintenance agreement with UP. UP has already reviewed and approved the design plans, and has agreed to share the future maintenance of the crossing improvements in exchange for the planned improvements including the closure of the crossing at Camelia, which is a significant safety benefit sought by the Railroad.

Executing these agreements will support the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

BACKGROUND

I-80 Gilman Interchange Project proposes to improve vehicle, pedestrian, and bicycle operations at the Interstate 80 (I-80) / Gilman Street interchange in northwest Berkeley. The existing intersection controls, roadway geometry, and the high volumes of local and regional traffic on Gilman Street result in poor traffic operation and non-motorized access at and near the interchange. The proposed interchange project seeks to:

- Simplify and improve navigation and traffic operations on Gilman Street between the West Frontage Road and 2nd Street through the I-80 interchange so that congestion is reduced, queues are shortened, and merging and turning conflicts are minimized;
- Improve access for the bikes/pedestrians traveling between the Bay Trail and northern Berkeley;
- Improve safety at Gilman Street intersections between West Frontage Road and 4th Street;
- Improve mobility in the Gilman Street corridor;
- Create a gateway into North Berkeley.

ENVIRONMENTAL SUSTAINABILITY

Improving pedestrian and bicycle access and safety for residents of Berkeley and adjacent communities encourages non-motorized access to Tom Bates Soccer Fields and the Bay Trail. This is expected to have a positive impact on the environment by reducing motorized traffic to these recreational destinations.

RATIONALE FOR RECOMMENDATION

In order to construct safety improvements within Union Pacific operating environment a construction and maintenance agreement is required by Union Pacific as well as California Public Utility Commission.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Hamid Mostowfi, Supervising Traffic Engineer (510) 981-6403
Farid Javandel, Manager, Transportation Division (510) 981-7061

Attachment:
1: Resolution
2: Reimbursement Agreement for Gilman railroad crossing
3: Closure Agreement for Camelia railroad crossing

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

REIMBURSEMENT AGREEMENT WITH UNION PACIFIC RAILROAD

WHEREAS, I-80 Gilman Interchange Improvement Project, a City of Berkeley strategic plan goal, is progressing towards completion of 100% construction plans; and

WHEREAS, As part of the improvements for this project, enhanced pedestrian and bicycle crossings facilities need to be constructed at Gilman Street/Union Pacific Railroad crossing; and

WHEREAS, As part of the improvements for this project, Camelia Street at Union Pacific railroad crossing needs to be closed permanently and appropriate signage and fencing installed; and

WHEREAS, In order to construct these improvements the City needs to enter into a Construction and Maintenance agreements with Union Pacific Railroad; and

WHEREAS, Union Pacific Railroad has agreed to share future maintenance of the crossing in exchange for the planned improvements; and

WHEREAS, The City will use existing grant funds (Fund 307) for improvement of safety at railroad crossing as the primary funding source to reimburse Union Pacific Railroad for improvements done to the Gilman and Camelia crossing; and

WHEREAS, Additional funds to support these improvements are designated to come from the Measure BB Local Streets and Roads Direct Local Distribution funds (Fund 134) and T1 Bond Fund (Fund 511);

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that City Manager is authorized to execute a reimbursement agreement (Attachments 1 and 2) and any amendments with Union Pacific Railroad Company to cause sufficient funds to be appropriated through agreement with Alameda County Transportation Commission and Caltrans from funds for I-80 Gilman Interchange Project to reimburse UP and/or UP's third party consultant(s) for actual costs incurred in connection with traffic safety improvement work at Gilman St. and at Camelia St. intersections with UP rail road crossings.

AUTHORIZATION AND REIMBURSEMENT AGREEMENT PUBLIC ROAD CROSSING IMPROVEMENTS—SURFACE, SIGNAL AND SIGNAL INTERCONNECT

THIS AUTHORIZATION AND REIMBURSEMENT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, _____ ("**Effective Date**"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Railroad**"), and CITY OF BERKELEY, a municipal corporation or political subdivision of the State of California ("**Agency**").

RECITALS

In accordance with the terms and conditions of this Agreement, Agency and Railroad desire to improve the existing, at-grade crossing area (the "**Project**") along, over and across Railroad's track and Railroads operating property, as such crossing area is more particularly described on Exhibit A attached hereto (the "**Crossing Area**") For the purposes of clarity, the term “Railroad’s operating property” or variations thereof as used in this Section and throughout this Agreement shall mean the property where the Railroad conducts common carrier freight rail operations and activities related thereto.

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad agrees to perform (or cause to be performed) the Project work described on Exhibit B and, to the extent that the Project includes signal improvement work, Exhibit B-1 attached hereto (collectively, the "**Railroad Work**"). The Railroad, at Agency’s expense pursuant to the terms and conditions of this Agreement, shall develop the plans and specifications for the signal improvement work, to include any signal wiring diagram(s), if applicable, for the proposed Project. The final 100% approved plans for the signal improvement work are incorporated herein by reference and such final plans shall become Exhibit B-1.

2. To the extent that the Project includes (a) the interconnection of Railroad's grade crossing warning devices with Agency's highway traffic control signals and (b) coordinating the operation of such signals (collectively, the "**Signal Interconnect Work**"), such interconnection and coordination work shall be performed pursuant to the terms set forth in Exhibit C.

3. Railroad's estimated cost for the Railroad Work is included, as applicable, on Exhibit D (Surface Work Estimate) and Exhibit D-1 (Signal Work Estimate) attached hereto (collectively, the "**Estimate**") and may include, without limitation, costs of engineering review, construction, inspection, flagging, procurement and delivery of materials, equipment rental, manpower and all direct and indirect overhead labor/construction costs, including Railroad's standard additive rates. Such standard additive rates may be subject to upward or downward adjustment based on industry

standards and practices, and the parties acknowledge and agree that any such adjustment to standard additive rates may be made retroactively. Along with the development of plans and specifications for the signal improvement work, the Railroad, at Agency's expense pursuant to the terms and conditions of this Agreement, shall develop the cost estimate for the signal improvement work for the proposed Project. The Railroad's cost estimate for the signal improvement work, once developed, is incorporated herein by reference and shall become Exhibit D-1.

4. Agency has appropriated sufficient funds to complete the Project and shall reimburse Railroad and/or Railroad's third party consultant(s), as applicable, for actual costs incurred in connection with the Railroad Work, as such costs are more particularly set forth in the Estimate. Regardless of the amounts set forth in the Estimate, Agency hereby confirms that it shall be responsible for 100% of all actual costs and expenses for the performance of Railroad's work in connection with the Project. During the performance of the Railroad Work, Railroad will provide (and/or will cause its third party consultant(s) to provide) progressive billing to Agency based on actual costs in connection with the Railroad Work. Within one hundred twenty (120) days after completion of the Project, Railroad will submit (and/or will cause its third party consultant(s) to submit) a final billing to Agency for any balance owed in connection with the Railroad Work. Agency shall pay Railroad (and/or its third party consultant, as applicable) within thirty (30) days after Agency's receipt of any progressive and final bills submitted for the Railroad Work. Railroad shall provide backup documentation of progressive and final bills as requested by Agency. The Agency acknowledges that no Project costs and expenses are to be borne by the Railroad, including without limitation, any cost and expense for work required in accordance with the signal improvement work set forth in Exhibit B-1 and Exhibit D-1.

5. If Agency will be performing any Project work, such work is described on Exhibit B attached hereto ("**Agency Work**"). Agency shall perform the Agency Work, if any, at its sole cost, and Railroad consents to Agency (or any contractor or other agent hired by Agency) performing the Agency Work within the Crossing Area, subject to complying with the terms and conditions of this Agreement. Agency shall be responsible for the safe conduct and adequate policing and supervision of the Agency Work, and Agency acknowledges and agrees that the Agency Work shall be performed so as to not obstruct, endanger, interfere with, hinder or delay maintenance or operation of Railroad's track or facilities, any communication or signal lines, installations or any appurtenances thereof or the operations of others lawfully occupying or using Railroad's property or facilities. Railroad's consent shall not be deemed to grant Agency (or any contractor or other agent hired by Agency) any property interest in the Crossing Area or other Railroad property.

6. If Agency hires a contractor or other agent to perform the Agency Work, Agency shall require such contractor or agent to execute Railroad's then current form of Contractor's Right of Entry Agreement ("**CROE Agreement**") and to comply with the requirements set forth therein. If Agency performs the Agency Work, Agency shall comply with the safety standards set forth in the CROE Agreement.

7. No work of any kind shall be performed, and no person, equipment, machinery, tools, materials, vehicles or other items shall be located, operated, placed or stored within twenty-five (25) feet of any track at any time for any reason except as otherwise provided

herein. Prior to commencing any Agency Work within the Crossing Area, and if the performance of any Agency Work requires any person or equipment to be within twenty-five (25) feet of any track, Agency shall provide Railroad at least thirty (30) working days advance notice of the performance of such proposed work, and upon Railroad's receipt of such notice, Railroad will determine and inform Agency whether a flagman need to be present or whether Agency needs to implement any special protective or safety measures. In the event that flagging or other special protection or safety measures are required to be performed in connection with the Railroad Work specifically or the Project generally, and regardless if the costs for such measures are included in the Estimate, Agency shall be responsible for such costs incurred in connection therewith in an amount proportionate to Agency's share of actual costs for the Railroad Work, as such percentage is more particularly set forth in the Estimate. As an example and for purposes of clarification only, if Agency is responsible for one hundred percent (100%) of actual costs for the Railroad Work as set forth in the Estimate, then Agency would be responsible for one hundred percent (100%) of the costs for flagging or any other special protection or safety measures.

8. Prior to commencing any Agency Work, Agency shall telephone (or shall cause its contractor or agent to telephone) Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central time, Monday through Friday, except holidays) at 1-800-336-9193 to determine if fiber optic cable is buried anywhere on Railroad's property to be used in connection with the Agency Work. If fiber optic cable is present, Agency (or its contractor or agent, as applicable), at Agency's sole cost, will telephone the telecommunication company(ies) involved and make arrangements for a cable locator and, if applicable, for relocation or other protection of fiber optic cable. Agency and/or its contractors or agents, as applicable, shall not commence any Agency Work until the process set forth in this Section has been completed.

9. Railroad shall maintain grade crossing warning devices located within the Crossing Area (if any), and Agency hereby agrees to reimburse Railroad for costs to maintain any such grade crossing warning devices in accordance with the provisions set forth in Exhibit E attached hereto. Agency, at its sole cost, shall maintain any highway traffic control signals at the Crossing Area.

10. Agency, for itself and for its successors and assigns, hereby waives any right of assessment against Railroad, as an adjacent property owner, for any and all improvements made under this Agreement.

11. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

12. This Agreement sets forth the entire agreement between the parties regarding the Project and the installation and maintenance of the Project improvements within the Crossing Area. To the extent that any terms or provisions of this Agreement regarding the installation and maintenance of such Project improvements are inconsistent with the terms or provisions set forth in any existing agreement affecting the Crossing Area, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF BERKELEY, CALIFORNIA

Signature

Printed Name

Title

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Signature

Printed Name

Title

Exhibit A

Description of Crossing Area

Gilman Street At-Grade Public Road Crossing
(DOT No. 751199P)
Mile Post 7.06 – Martinez Subdivision
City of Berkeley, County of Alameda, State of California

Exhibit B

Scope of Work

Railroad Work:

1. Installation of lights and gates for roadway, sidewalk and shared path. Installation of advanced preemption.
2. Installation of the necessary relays and other materials required to interconnect and coordinate the operation of the signals
3. Installation of 97.5’ of concrete crossing surface through crossing (four tracks)

Agency Work:

1. Install highway traffic control signals at the Crossing Area in accordance with the Designs

2. Install conduit with the necessary wiring within the Crossing Area in accordance with the Plans
3. Install 4’ pedestrian swing gates with emergency exit push sings, tactile warning strips for the pedestrian walkways, and pedestrian guard railing at all quadrants of the crossing in accordance with the Plans
4. Install hot-mix asphalt paving on approaches in accordance with the Plans
5. Install street lighting, raised curd medians, pavement delineation, and traffic signs in accordance with the Plans
6. Provide a median opening and install traffic signs and channelization to indicate right-turn entrance only and one way southbound movement for the driveway on the southwest quadrant of the Crossing; and provide a mountable median opening for access to the Berkeley Recycling Center Driveway on northwest quadrant
7. Install galvanized expanded fencing 12’ offset from the centerline of the westernmost tracks between Gilman and Camelia Street. Fencing height to be 3’ within 250’ of Gilman Street edge of travel lane; and 8’ high elsewhere in accordance with the Plans

Exhibit B-1

Signal Front Sheet

(see attached)

Exhibit C

Signal Interconnect Work Terms

1. Plans. Agency, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Signal Interconnect Work and submit such plans and specifications to Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include, as applicable, traffic signal timing and wiring diagram for the traffic controller unit, the installation method for any work that involves boring under the track, and specifications for underground wireline facilities crossing Railroad tracks and right-of-way. Agency agrees to provide the traffic signal timing and wiring diagram for the traffic controller unit to Railroad at least two (2) months prior to the traffic signal controller bench testing and/or four (4) months prior to the proposed cutover with Railroad. The final one hundred percent (100%) completed plans for the Signal Interconnect Work that are approved in writing by Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to collectively as the "**Plans**" and specifically include the signal design schematic marked Exhibit C-1 (the "**Designs**") and the under-track boring drawing marked Exhibit C-2 (the "**Standard Drawing**"), with both exhibits being attached hereto. No changes in the Plans shall be made unless Railroad has consented to such changes in writing. Railroad's review and approval of the Plans will in no way relieve Agency (or any contractor or other agent hired by Agency) from its responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by Agency (or any contractor or other agent hired by Agency) on the Plans is at the risk of Agency (or any contractor or other agent hired by Agency).

2. Condition Precedent to Performance of Agency Work. Prior to commencement of the portion of the Agency Work related to the Signal Interconnect Work by Agency (or any contractor or other agent hired by Agency) in the Crossing Area, Agency shall, or shall require its contractor or agent to, (a) obtain Railroad approval of the Plans in accordance with Section 1 of this Exhibit C, including the installation method for underground wireline facilities and/or any work that involves boring under the track, and (b) notify Railroad pursuant to the terms and conditions of this Agreement.

3. Signal Failure/ Interference. Each of Railroad (with respect to its grade crossing warning devices) and Agency (with respect to its highway traffic control signals) shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communication lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference. Except as set forth in this Section, Agency shall not be liable to Railroad on account of any failure of Railroad's warning devices to operate properly, nor shall Railroad have or be entitled to maintain any action against Agency arising from any failure from Railroad's warning devices to operate properly. Similarly, Railroad shall not be liable to Agency on account of any failure of Agency's traffic signal to operate properly, nor shall

Agency have or be entitled to maintain any action against Railroad arising from any failure of Agency's traffic signal to operate properly.

Exhibit C-1

Designs

(see attached)

CURVE DATA

No. ⊗	BC Sta AND OFFSET/Elev	EC Sta AND OFFSET/Elev	R	Δ	T	L
1	11.46′ Rt "GS" 15+67.25/11.66′	9.46′ Rt "GS" 15+69.38/11.77′	2′	93°44′10"	2.13′	3.27′
2	9.46′ Rt "GS" 15+70.85/11.78′	8.82′ Rt "GS" 15+75.88/11.85′	20′	13°31′05"	2.37′	4.72′
3	8.82′ Rt "GS" 15+75.88/11.85′	5.53′ Rt "GS" 15+83.24/12.08′	20′	22°11′19"	3.92′	7.75′
4	5.53′ Rt "GS" 15+83.24/12.08′	4.97′ Rt "GS" 15+94.04/12.35′	10′	65°27′53"	6.43′	11.43′
5	4.97′ Rt "GS" 15+94.04/12.35′	9.75′ Rt "GS" 16+00.31/12.06′	30′	15°07′07"	3.98′	7.92′
6	9.75′ Rt "GS" 16+00.31/12.06′	11.46′ Rt "GS" 15+99.61/12.09′	1′	135°07′24"	2.42′	2.36′
7	3.25′ Rt "GS" 16+19.16/13.26′	1.71′ Rt "GS" 16+20.01/13.31′	1′	122°07′26"	1.81′	2.13′
8	1.71′ Rt "GS" 16+29/13.67′	2.71′ Rt "GS" 16+30/13.70′	1′	90°00′02"	1′	1.57′
9	11.71′ Rt "GS" 16+29.01/13.67′	10.71′ Rt "GS" 16+30/13.70′	1′	90°21′50"	1.01′	1.58′
10	10.99′ Rt "GS" 16+22.60/13.35′	11.71′ Rt "GS" 16+23.57/13.38′	1′	74°06′58"	0.76′	1.29′
11	3.25′ Rt "GS" 16+19.16/13.26′	10.99′ Rt "GS" 16+22.60/13.35′	30′	16°14′26"	4.28′	8.50′
12	9.60′ Rt "GS" 16+76/13.85′	11.60′ Rt "GS" 16+77.99/13.85′	2′	90°19′40"	2.01′	3.15′
13	2.60′ Rt "GS" 16+76/13.86′	1.60′ Rt "GS" 16+77/13.85′	1′	90°04′00"	1′	1.57′
14	1.60′ Rt "GS" 17+01.92/13.33′	2.42′ Rt "GS" 17+04.06/13.24′	3′	46°59′04"	1.30′	2.46′
15	5.04′ Rt "GS" 17+06.64/13.11′	7.14′ Rt "GS" 17+07.50/13.04′	3′	44°29′48"	1.23′	2.33′
16	8.10′ Rt "GS" 17+07.50/13.01′	9.60′ Rt "GS" 17+09/12.92′	1.5′	90°00′07"	1.50′	2.36′
17	9.60′ Rt "GS" 17+31.47/12.74′	10.10′ Rt "GS" 17+31.97/12.72′	0.5′	89°59′55"	0.50	0.79′
18	11.60′ Rt "GS" 17+31.47/12.66′	11.10′ Rt "GS" 17+31.97/12.68′	0.5′	90°00′05"	0.5′	0.79′

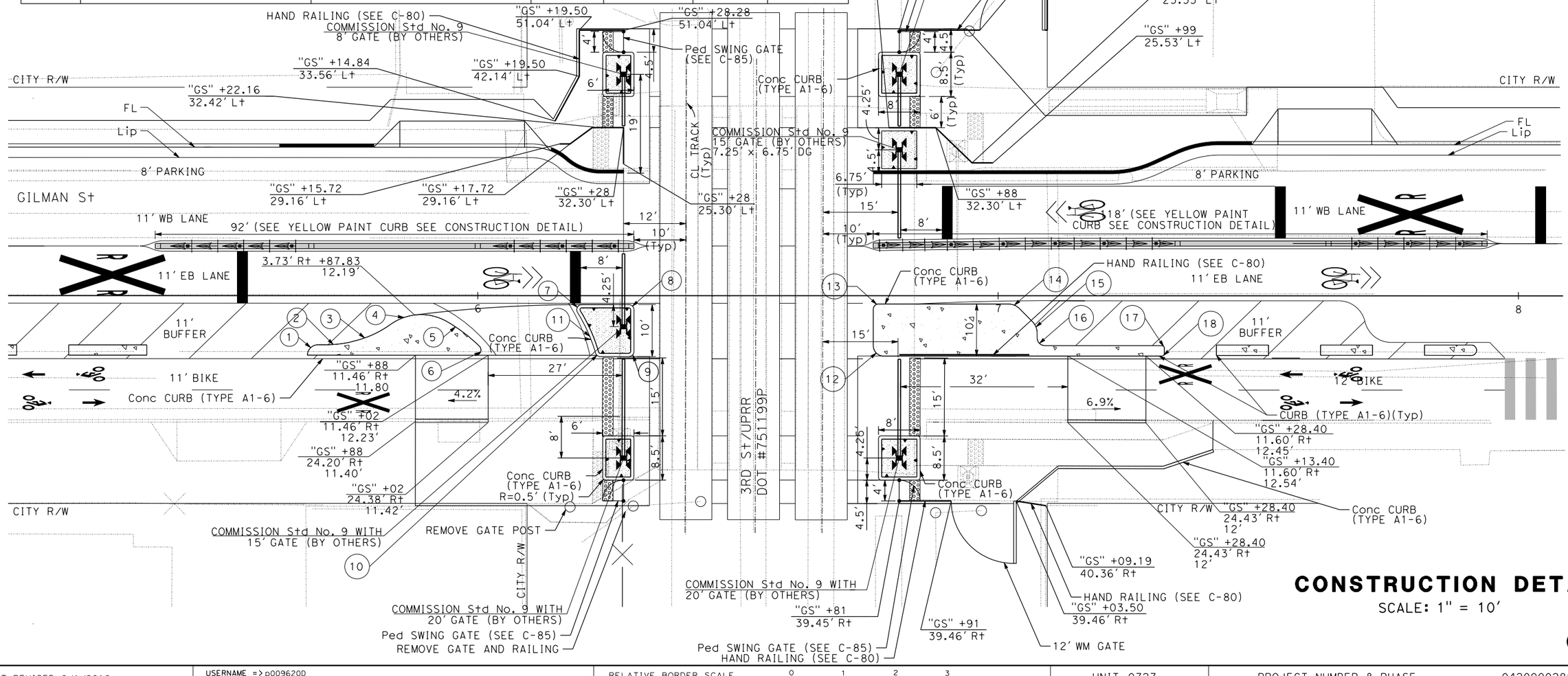
NOTES:

1. FOR ACCURATE RIGHT OF WAY DATA, CONTACT RIGHT OF WAY ENGINEERING AT THE DISTRICT OFFICE.
2. FOR ELECTRICAL INFORMATION, SEE SIGNAL AND LIGHTING SHEETS.

LEGEND:

2" DECOMPOSED GRANITE

DETECTABLE WARNING SURFACE (2′ WIDE), INSTALL 2′ AHEAD OF WARNING DEVICES



CONSTRUCTION DETAILS

SCALE: 1" = 10′

C-71

302

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TOTAL SHEETS
04	Ala	80	6.4/6.8		

REGISTERED CIVIL ENGINEER DATE

PLANS APPROVAL DATE

REGISTERED PROFESSIONAL ENGINEER — SASAN DANESHVAR — No. 89660 — Exp. 3-31-21 — CIVIL — STATE OF CALIFORNIA

THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.

PARSONS
555 12TH ST, STE 1850
OAKLAND, CA 94607

ALAMEDA CTC
1111 BROADWAY #800
OAKLAND, CA 94607

CALCULATED-DESIGNED BY	CHECKED BY	REVISED BY	DATE REVISED
SASAN DANESHVAR	DANIEL KACHI	DK	1-8-21

CONSULTANT FUNCTIONAL SUPERVISOR: CHRIS SEGUR

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION

Caltrans

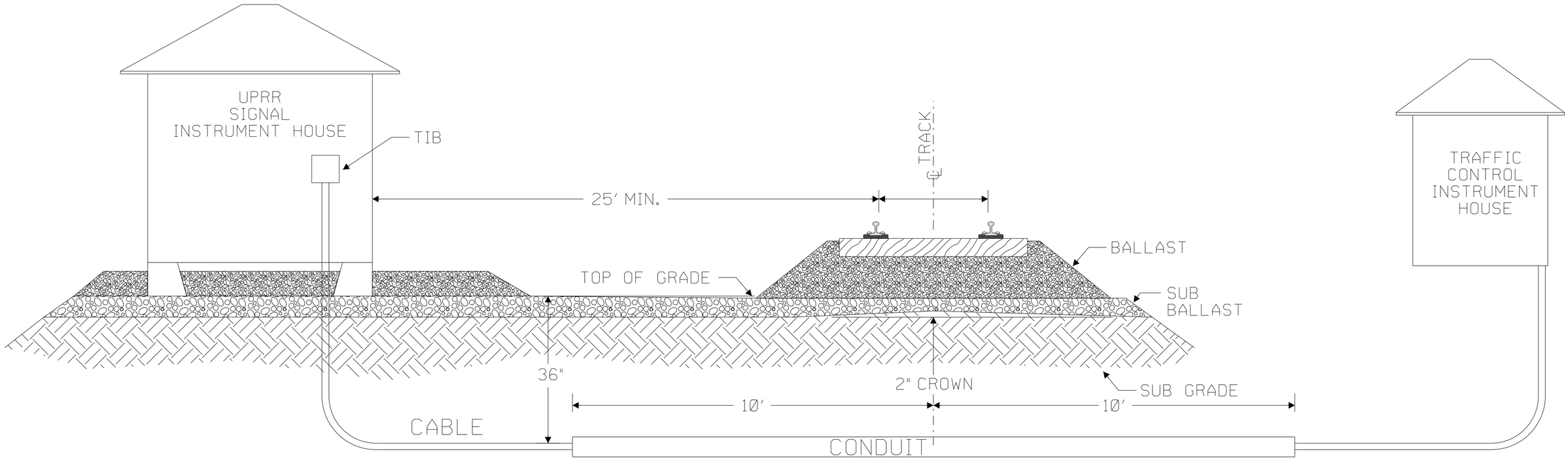
LAST REVISION DATE PLOTTED => 07-JAN-2021
10-30-20 TIME PLOTTED => 18:13

BORDER LAST REVISED 8/1/2016 | USERNAME => p009620D | DGN FILE => 0420000288ga071.dgn | RELATIVE BORDER SCALE IS IN INCHES 0 1 2 3 | UNIT 0727 | PROJECT NUMBER & PHASE 04200002881

Exhibit C-2

Standard Drawing

(see attached)



NOTES:

1. LOCAL ANGENCY IS TO PROVIDE ALL LABOR, MATERIAL, EQUIPMENT AND SUPERVISION FOR THE INSTALLATION OF TRAFFIC INTERCONNECT OR TRAFFIC PREEMPTION WIRE. UPRR FORCES MUST BE PRESENT PRIOR TO AND DURING ANY WORK ON UPRR RIGHT OF WAY.
2. CONDUIT REQUIRED TO EXTEND A MINIMUM OF 10′ FROM CENTER OF TRACK.
3. TRENCH INTERCONNECT WIRING A MINIMUM OF 36" BELOW TOP OF GRADE.
4. CABLE IS TO DEMARK AT UPRR PROVIDED TIB ON UPRR SIGNAL ENCLOSURE.
5. GROUND TESTS MUST BE TAKEN PRIOR TO WORK AND AFTER WORK IS COMPLETED.
6. PRIOR TO CUTOVER, UPRR SIGNAL AND LOCAL TRAFFIC DEPARTMENTS MUST REVIEW THE INSTALLATION.
7. DURING CUTOVER, UPRR SIGNAL AND LOCAL TRAFFIC DEPARTMENTS MUST BE PRESENT.

926115UP

REV. DATE
09-03-15
06-08-15

STANDARD DRAWING

UNDER-TRACK BORING FOR TRAFFIC INTERCONNECT OR TRAFFIC PREEMPTION WIRING

	FILE OWNER: UPRR	DATE: 06-08-15
	REV. NO.: 2	DWG NO: 926115UP

926115UP.dgn 9/3/2015 7:25:21 AM

Exhibit D

Surface Work Estimate

(see attached)

Material And Force Account Estimate

ACTC

Estimate Number: 128146 Version: 1

Standard Rates: **Labor Additive = 222.97%**

Estimate Good Until 10/15/21

Location: MARTINEZ SUB, NO 1, 7.04-7.08

Description of Work: 751199P Gilman Street Berkeley CA 7.06 Martinez Sub

Prepared For: ACTC

Buy America: Yes

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %100	Agcy %0
ENGINEERING										
		Engineering	1	LS	53,974.00	53,974	0	53,974	0	53,974
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	5,218.66	0	5,219	5,219	0	5,219
					Sub-Total =	**53,974**	**7,019**	**60,993**	**0**	**60,993**
TRACK CONSTRUCTION - COMPANY										
	RDXING	RDXING 136# CON10W PP PAN COMPLETE	288	TF	872.20	149,826	101,369	251,194	251,194	0
	TRACK	136# CWRIS0 24-8'6" PPHWD N 16 TP	192	TF	495.27	67,353	27,738	95,091	95,091	0
	COMPJT	Transition Rail - 136#	12	PR	6,976.89	39,613	44,110	83,723	83,723	0
					Sub-Total =	**256,791**	**173,217**	**430,008**	**430,008**	**0**
TRACK REMOVAL - COMPANY										
	RDXING	Remove road crossing - concrete	210	TF	49.01	10,292	0	10,292	10,292	0
	TRACK	Remove Track	270	TF	24.16	6,524	0	6,524	6,524	0
					Sub-Total =	**16,817**	**0**	**16,817**	**16,817**	**0**
SITE WORK - CONTRACT										
		Traffic Control - Detour Signs & Coordination	1	LS	100,000.00	0	100,000	100,000	0	100,000
					Sub-Total =	**0**	**100,000**	**100,000**	**0**	**100,000**
Total Wgt. in Tons = 1,094					**Totals =**	**327,582**	**280,235**	**607,817**	**0**	**607,817**

Est. Annual Mtc. = $10,872

Grand Total = $607,817

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, ACTC will pay actual construction costs at the current rates effective thereof.

Exhibit D-1

Signal Work Estimate

(see attached)

Material And Force Account Estimate
CPUC

Estimate Creation Date: 3/20/2020 Number: 128665 Version: 2

Standard Rates: 116.95%

Estimate Good Until 04/09/21

Location: MARTINEZ SUB, NO 1, 7-29.95

Buy America: No

Description of Work: BERKELEY, CA, GILMAN ST MP 7.06, MARTINEZ SUB, DOT# 751199P, AWO# 51078

SIGNAL

COMMENTS	Description	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
MP 7.06	Xing - 2 Trk CWE w/Gates	1	EA	152,876.00	48,800	104,076	152,876
	Xing - Track Card (Main and Stand-by) New Cable	2	EA	12,889.00	12,000	13,778	25,778
Gate C & D	Xing - Add Gates Existing Location (pair)	1	EA	58,483.00	26,000	32,483	58,483
Gate E & F	Xing - Pedestrian Gates (pair)	1	EA	57,283.00	22,393	34,890	57,283
	Xing - External SSCC	1	EA	3,955.00	0	3,955	3,955
	Xing - Dax Cable 1000'	2.7	EA	6,440.00	10,800	6,588	17,388
MP 7.06	Signal - 2 Trk Back To Back Signal w/DED	1	EA	166,516.00	94,932	71,584	166,516
	IJ (pair)	2	EA	23,186.00	37,780	8,592	46,372
	Signal - Bridge	64	LF	1,700.00	32,000	76,800	108,800
	Signal - Additional Head	8	EA	18,738.00	94,840	55,064	149,904
	Underground Cable/1000'	2.6	EA	11,000.00	16,900	11,700	28,600
	Permit - NEPA	1	LS	15,000.00	15,000	0	15,000
	Xing - Track Filter/Battery Choke	6	EA	240.00	0	1,440	1,440
	Xing - Boring	1	LS	20,000.00	0	20,000	20,000
	Xing - Fill/Rock/Gravel	1	LS	10,000.00	0	10,000	10,000
	Xing - Meter Service	1	LS	10,000.00	0	10,000	10,000
	Xing - Contract Services for Preempt Cutover	1	LS	20,000.00	0	20,000	20,000
	Xing - Engineering Design	1	LS	25,000.00	25,000	0	25,000
Federal W/O @ 110.43%	Xing - Labor Additive	1	LS	481,967.00	481,967	0	481,967
				Sub-Total =	**918,412**	**480,950**	**1,399,362**

Totals = 918,412 480,950 1,399,362

Grand Total = $1,399,362

Disclaimer: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in cost or amount of material or labor required, Agency will pay actual costs at rates effective at the time of construction.

Exhibit E

Reimbursement for Grade Crossing Warning Device Maintenance Costs

Railroad shall maintain, in compliance with applicable laws or regulations as determined by Railroad, the grade crossing warning devices located within the Crossing Area as long as they remain in place. The cost of maintaining said signals shall be apportioned between Agency and Railroad in accordance with Sections 1202.2 and 1231.1 of the California Public Utilities Code. The precise manner and method of determining applicable charges, manner and method of payment and other procedures under said sections shall be governed by the statutes, as supplemented by any decisions of the California Public Utilities Commission applicable to such statutes.

CLOSURE AND REMOVAL AGREEMENT
PUBLIC ROAD CROSSING

THIS CLOSURE AND REMOVAL AGREEMENT (this "Agreement") is made and entered into as of _____, _____ (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad") and CITY OF BERKELEY, a municipal corporation or political subdivision of the State of California ("Agency").

RECITALS

In accordance with the terms and conditions of this Agreement, Agency desires to permanently close the existing, at-grade road crossing (“Project”) more particularly described on Exhibit A attached hereto and made a part hereof (collectively, the "Road Crossing").

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Agency shall take all actions necessary to vacate all rights that Agency may have in and to Railroad's operating property in connection with the Road Crossing and to permanently close the Road Crossing. Such Agency actions may include adoption of an ordinance or resolution by Agency's governing body and/or obtaining any required approvals from a public utilities commission or any other applicable governmental entity authorizing and directing the vacation and permanent closure of the Road Crossing. For the purposes of clarity, the term “Railroad’s operating property” or variations thereof as used in this Section and throughout this Agreement shall mean the property where the Railroad conducts common carrier freight rail operations and activities related thereto.

2. If Agency will be performing any Project work, such work is described on Exhibit B ("Agency Work") and depicted on Exhibit B-1, with both exhibits attached hereto. Agency shall perform the Agency Work, if any, at its sole cost, and Railroad consents to Agency (or any contractor or other agent hired by Agency) performing the Agency Work at the Road Crossing, subject to complying with the terms and conditions of this Agreement.

3. If Agency hires a contractor or other agent to perform the Agency Work, Agency shall require such contractor or agent to execute Railroad's then current form of Contractor's Right of Entry Agreement (the "CROE Agreement") and to comply with the requirements set forth therein. If Agency performs the Agency Work, Agency shall comply with the safety standards set forth in the CROE Agreement.

4. Following completion of the Agency Work, Railroad agrees to perform the Project work described on Exhibit B attached hereto the ("Railroad Work"). Railroad's estimated cost for the Railroad Work is included on Exhibit C attached hereto ("Estimate") and may include without limitation costs of engineering review, construction, inspection, flagging, procurement and delivery of materials, equipment rental, manpower and all direct and

indirect overhead labor/construction costs, including Railroad's standard additive rates. Such standard additive rates may be subject to upward or downward adjustment based on industry standards and practices, and the parties acknowledge and agree that any such adjustment to standard additive rates may be made retroactively.

5. Agency has appropriated sufficient funds to complete the Project and shall reimburse Railroad for costs incurred by Railroad in connection with the Railroad Work in accordance with Exhibit D attached hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Title: _____

CITY OF BERKELEY, a municipal corporation or political subdivision of the State of California

By: _____
Title: _____

Exhibit A

Camelia Street At-Grade Public Road Crossing
(DOT No. 751198H)
Mile Post 6.93 – Martinez Subdivision
City of Berkeley, County of Alameda, State of California

Exhibit B

Railroad Work:

1. Project management.
2. Remove signals.
3. Remove surface between track tie ends.
4. Final inspection.

Agency Work:

1. Install, maintain, repair and renew permanent barricades on both sides of the Road Crossing with such barricades to be located off of Railroad's property and to be in compliance with the plans marked Exhibit B-1, and also all applicable standards and guidelines contained in the current Manual on Uniform Traffic Control Devices (“MUTCD”).

2. Provide and install new advance street signs and pavement markings to indicate that the Road Crossing is closed, with such signage to be in compliance with applicable current MUTCD standards and guidelines.

3. Remove all Road Crossing approach surfaces up to the track tie ends.

Exhibit B-1

Plans Cover Page

(See attached)

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET No.	TOTAL SHEETS

REGISTERED CIVIL ENGINEER DATE

PLANS APPROVAL DATE

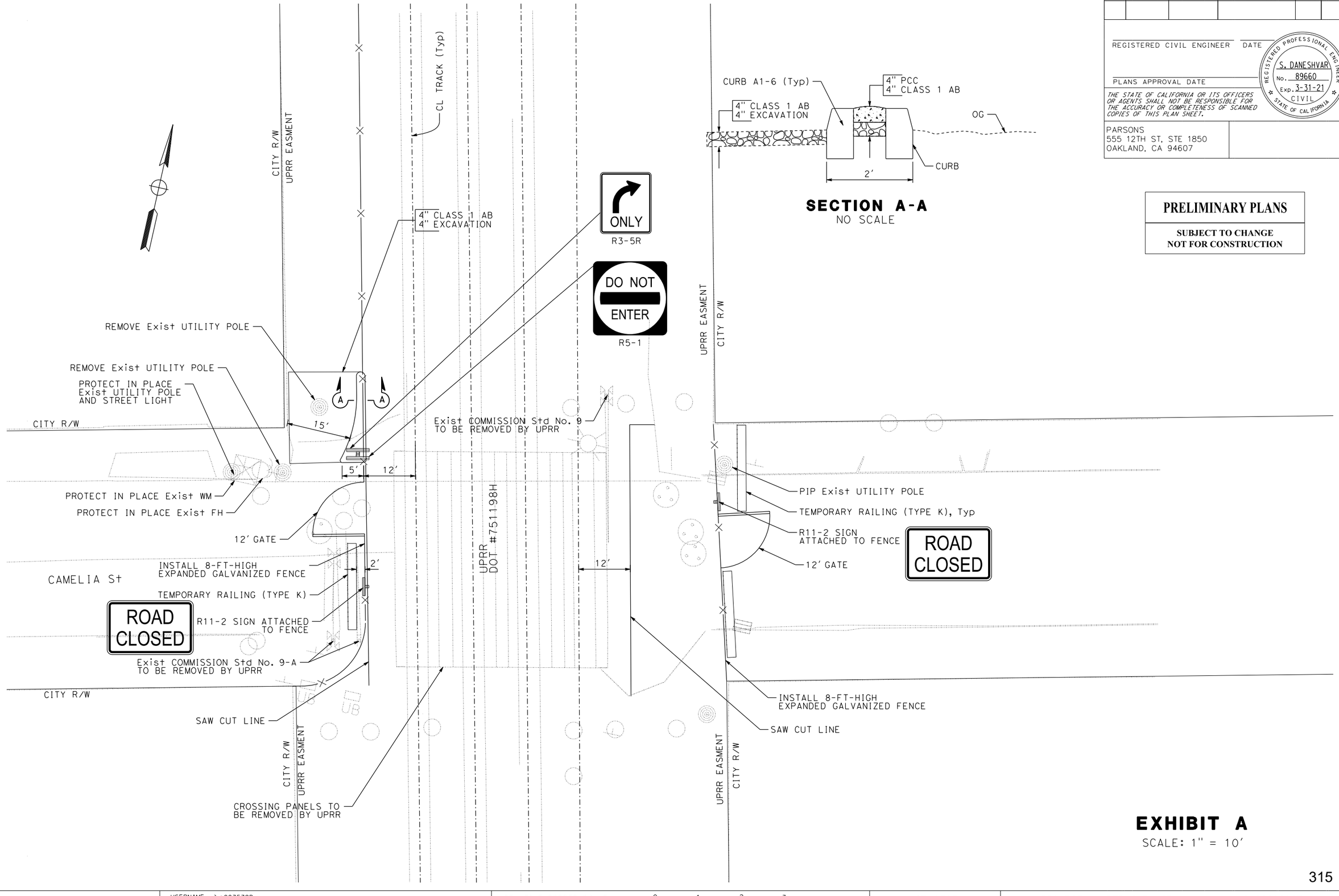
REGISTERED PROFESSIONAL ENGINEER — S. DANESHVAR — No. 89660 — Exp. 3-31-21 — CIVIL — STATE OF CALIFORNIA

THE STATE OF CALIFORNIA OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF SCANNED COPIES OF THIS PLAN SHEET.

PARSONS
555 12TH ST, STE 1850
OAKLAND, CA 94607

PRELIMINARY PLANS

SUBJECT TO CHANGE
NOT FOR CONSTRUCTION



SECTION A-A
NO SCALE

EXHIBIT A
SCALE: 1" = 10'

315

LAST REVISION	DATE PLOTTED => 8/4/2020
00-00-00	TIME PLOTTED => 11:38:38 AM

REVISED BY | DATE REVISED | CALCULATED-DESIGNED BY | CHECKED BY | CONSULTANT FUNCTIONAL SUPERVISOR

BORDER LAST REVISED 8/1/2016 | USERNAME => p003539D | DGN FILE => C2-Camelia Construction Details.dgn | RELATIVE BORDER SCALE IS IN INCHES 0 1 2 3 | UNIT 0727 | PROJECT NUMBER & PHASE 04200002871

Exhibit C

Estimate Cover Page

(See attached)

EXHIBIT C-1

ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE:
1/15/2021

LOCATION:	**SUBDIVISION**	**STATE:**
Camelia Street.		
DOT: 751198H	**Martinez Sub.**	**CA**

DESCRIPTION	**LABOR**	**MATERIAL**	**UP %0**	**Agency % 100**	**TOTAL**
ENGINEERING					
Project Management	$ 8,000	$ -	$ -	$ 8,000.00	**$ 8,000**
UPRR Track, Crossing Removal	$ 15,000	$ -	$ -	$ 15,000.00	**$ 15,000**
UPRR Signal, Warning Device Removal	$ 25,000	$ -	$ -	$ 25,000.00	**$ 25,000**
Final Inspection	$ 2,000	$ -	$ -	$ 2,000.00	**$ 2,000**
TOTAL PROJECT:	**$ 50,000**	**$ -**	**$ -**	**$ 50,000.00**	**$50,000**

TOTAL ESTIMATED COST: **$50,000**

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION.
IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, THE RAILROAD WILL BILL FOR ACTUAL COSTS AT THE CURRENT RATES EFFECTIVE THEREOF.

Flagging may be performed by a third-party contractor. Any flagging performed by a third-party contractor will be billed at said third-party contractor rate not included in the above estimate. Alternatively, the Agency may enter into a separate agreement with third-party contractor and will be responsible for all actual costs incurred.

Exhibit D

Reimbursement Method

Agency agrees to reimburse Railroad for One Hundred Percent (100%) of actual costs incurred by Railroad in connection with the Railroad Work. During the performance of the Railroad Work, Railroad will provide progressive billing to Agency based on Railroad's actual costs. Within one hundred twenty (120) days after completion of the Project, Railroad will submit a final billing to Agency for any balance owed Railroad in connection with the Railroad Work. Agency shall pay Railroad within thirty (30) days after Agency's receipt of any progressive and final bills submitted by Railroad.

Commission on Disability

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Commission on Disability

Submitted by: Alex Ghenis, Chairperson, Commission on Disability

Subject: Service Animals Welcome Training

RECOMMENDATION

That the City Council refer to the City Manager a request to implement education and training provisions of the Service Animals Welcome Policy and Program:

a. Work with Business Improvement Districts and Commercial District Organizations to provide opportunities for businesses to learn about their responsibilities regarding service animals in their places of business.
b. Provide information on Service Animals and Access Rights of Persons with Disabilities accompanied by a Service Animal as required staff training on non-discrimination under applicable federal, state and local statutes, regulations and policies.
c. Provide necessary and adequate support to the Disability Compliance Program. (Motion: Walsh, Second: Singer, Ghenis: Aye, Smith; Aye, Ramirez: LOA, Leeder: LOA, No: None)

POLICY COMMITTEE RECOMMENDATION

On January 25, 2021, the Health, Life Enrichment, Equity and Community Policy Committee sent the item to Council with a qualified positive recommendation to take the following action:

Refer to the City Manager to review existing information provided to businesses on the Service Animals Welcome Policy and Program as well as other information related to the rights of people with disabilities (pursuant to the Americans with Disabilities Act) and to continue efforts to create an online training.

Further, refer to the City Manager to: (a.) Work with Business Improvement Districts, the Chamber of Commerce, and other business organizations to provide opportunities for businesses to learn about their responsibilities regarding service animals in their places of business and the rights of people with disabilities, using, for example, the business license renewal as an opportunity to communicate to businesses; (b) Provide information on Service Animals and Access Rights of Persons with Disabilities accompanied by a Service Animal as required City staff training on nondiscrimination under applicable federal, state,

and local statutes, regulations and policies. (c) Provide necessary and adequate support to the Disability Compliance Program. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION
Staff time.

CURRENT SITUATION AND ITS EFFECTS
The 2019 Berkeley Business License Renewal Packet contained information on the Service Animals Welcome Policy and guidance from the U.S., Department of Justice Civil Rights Division on Service Animals in places of public accommodation.

Most Berkeley Business License holders received the 2019 packet but may not have seen or read the materials on Service Animals. As recently as October 2018, a case was documented of a Berkeley Business License holder who refused access and services to a person with a disability accompanied by a service animal (dog) trained to assist her relative to her specific disability and functional limitations. The License Holder stated that she was unaware of City policy or applicable law regarding Service Animals.

According to update information from staff as recently as September 2018, there has been no formal provision of training to City staff, especially for departments and positions with whom face-to-face contact with the public is required. This information is also important for staff in various City Departments who interact with businesses .e.g. Business Improvement District contract staff, the Berkeley Police Department, contracted health and community services providers. Such training can be most efficiently provided online to City staff.

Service Animals Welcome training is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

BACKGROUND
On May 12, 2012, the City Council adopted the Service Animals Welcome Policy and Program, Resolution Number 65,751-N.S. The City Manager was directed to take certain implementation steps including:

a. Incorporate educational materials in the Business License Tax process to inform business owners of their responsibilities regarding service animals;
b. Include content about service animals and the responsibilities of Berkeley Businesses on the City's website; also include the phone number for the Disability Services Specialist;
c. Provide signs for businesses to voluntarily put in their windows regarding service animals; and
d. Work with Business Improvement Districts (BIDs)and Commercial District Organizations (CDOs) to provide opportunities for businesses to learn about their responsibilities regarding service animals in their places of business

ENVIRONMENTAL SUSTAINABILITY
Unknown.

RATIONALE FOR RECOMMENDATION
As defined under the 2010 revision of the Americans with Disabilities ACT implemented in March 2012, denying a disabled person access to goods or services, in city and local

governments or places of public accommodation based on being accompanied by a service animal is unlawful.

The Disability Compliance Program only has authority to enforce Title II of the Americans with Disabilities Act as it relates to programs and services. However it can provide information and training to encourage compliance.

Implementation of training will significantly contribute to decreased incidences of discrimination in Berkeley based on a person's disability. It will significantly contribute to increasing and enhancing access for the persons with disabilities accompanied by a Service Animal who live, work and visit Berkeley.

ALTERNATIVE ACTIONS CONSIDERED
Do not provide Service Animals Welcome Training.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON
Dominika Bednarska, Disability Services Specialist, Public Works, (510) 981-6418

Community Environmental
Advisory Commission

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Community Environmental Advisory Commission

Submitted by: Ben Gould, Chairperson, Community Environmental Advisory Commission

Subject: Prohibition on the Use of City Streets for Operating, Parking, or Idling Combustion Vehicles by 2045

RECOMMENDATION

Review and refer to the City Attorney for finalization the attached ordinance prohibiting the use of City-owned streets for the operation, parking, or idling of combustion vehicles beginning in 2045, and establishing an offset-driven fee-based enforcement mechanism.

POLICY COMMITTEE RECOMMENDATION

On January 20, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee moved to send the item with a positive recommendation for Council to take no action on the item but to provide the item to staff as background for consideration, particularly as the Federal landscape changes under the new administration and to explore whether the City has the legal authority to pursue. Vote: All Ayes

SUMMARY

Achieving carbon neutrality by 2045 and an 80% reduction in greenhouse gas emissions by 2050 will require aggressive policies to phase out the use of fossil fuels for transportation. This proposed ordinance would prohibit vehicles which rely on burning fossil fuels (or other carbon-based fuels) from operating, parking, or idling on local City-owned streets. Enforcement is proposed to be through a fee structure similar to a congestion pricing zone, with pricing set to cover the cost of enforcement and of purchasing carbon offsets in order to achieve carbon neutrality.

FISCAL IMPACTS OF RECOMMENDATION

Some staff time for review. Additional staff time may be required leading up to 2045 to develop and establish a carbon offset program for combustion vehicles, though any such program would also be required for offsetting any residual emissions present in the

city at such time. No ongoing net fiscal impacts, as any fiscal impacts associated with enforcement or program management are to be offset by levied fees.

Adoption of the ordinance may expose the City to other potential direct or indirect fiscal impacts, including a potential lawsuit, or impacts to sales, property, and other tax or fee revenues resulting from public behavior changes.

CURRENT SITUATION AND ITS EFFECTS

Citywide, transportation is the single largest source of greenhouse gas (GHG) emissions, contributing 60% of the city's total emissions. The City of Berkeley has adopted goals of being a Fossil Fuel Free city and becoming a net carbon sink by 2030, achieving carbon neutrality by 2045, achieving an 80% reduction in GHG emissions by 2050, and has declared a Climate Emergency, calling for "a just citywide emergency mobilization effort to end citywide greenhouse gas emissions as quickly as possible." However, greenhouse gas emissions from transportation are currently expected to grow.

Berkeley's Strategic Plan sets the goal of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment. In line with this, City staff are working aggressively to develop a comprehensive action-based Electric Vehicle (EV) roadmap to find opportunities to increase equitable access to EV's within Berkeley's diverse community. This roadmap – currently in draft form – identifies the key barriers to electric mobility adoption, analyzes equity challenges and opportunities, and provides a comprehensive set of strategies to expand access to electric mobility choices throughout the city, including approaches which specifically tackle equity concerns in electric mobility, work towards net zero carbon, expand alternatives to driving, and call for city leadership.

In preparing this roadmap, staff has found that in order to reach the goal of carbon neutrality by 2045, given current vehicle turnover rates, the rate of EV uptake would need to accelerate dramatically, reaching 100% of new vehicle registrations by 2030 in order to achieve roughly 100% electrification by 2045. To achieve the City's voter-ratified goal of an 80% reduction in greenhouse gas emissions by 2050, roughly 100% of new vehicle registrations would have to be EVs by 2035.

Berkeley's current rate of EV uptake is not high enough to achieve this without significant policy changes. In 2017, only 16% of new personal vehicle registrations in Berkeley were EVs. This is a significantly higher adoption rate than much of the rest of California, but achieving Berkeley's goals would require this to be accelerated further still. At the current rate of uptake growth, Berkeley's newly registered vehicles would be

100% EVs in 2055. Assuming an average vehicle lifespan of ~15 years[1], there would still be combustion vehicles registered in Berkeley through at least 2070 – 25 years past the target date for carbon neutrality.

Expanding equitable access to electric mobility options for Berkeley residents is critical for driving uptake, including improving alternatives to driving and expanding public charging infrastructure. The EV roadmap currently being prepared will be effective in the 5-10 year timeline it considers, and will help to substantially move the needle on Berkeley residents' EV uptake.

While the EV roadmap's efforts are critical, they will still fall short in achieving overall carbon neutrality. Many people who work, shop, or study in Berkeley either cannot afford or choose not to live in Berkeley, and so are less likely to be directly impacted by the EV roadmap's initiatives. Most other Bay Area cities have EV uptake rates even lower than Berkeley's, and are often doing less to accelerate the transition to EVs. In addition, Berkeley is served by numerous freight and delivery trucks bringing goods to Berkeley's businesses and residents, and these trucks are unlikely to be impacted by the EV roadmap.

The limited scope of the EV roadmap means it is unable to address the entire picture of Berkeley's greenhouse gas emissions from transportation, and should not be considered as the only set of approaches Berkeley can take. Other policies which support and align with the EV roadmap can help add to its effectiveness.

Without significant action, including the proposals in the EV Roadmap and more, it is extremely unlikely that Berkeley will be able to achieve the dramatic reduction in greenhouse gas emissions called for by the voters and its carbon neutrality goal.

At a regular meeting on Thursday, November 14, 2019, the Community Environmental Advisory Commission unanimously approved a motion to send the *Prohibition on the Use of City Street for Operating, Parking, or Idling Combustion Vehicles by 2045* recommendation to City Council (M/S/C) Gould, Hetzel. Ayes: Simmons, Varnhargen, Hetzel, Goldhaber, Gould. Abstained: De Leon. Absent: Ticconi.

BACKGROUND

In 2006, Berkeley voters overwhelmingly supported Measure G, calling to reduce greenhouse gas emissions by 80% below 1990 levels by 2050. Berkeley's original award-winning Climate Action Plan was built around this goal.

[1] Based upon DMV data on roughly 30 million registered automobiles and light trucks (https://www.dmv.ca.gov/portal/wcm/connect/5aa16cd3-39a5-402f-9453-0d353706cc9a/official.pdf?MOD=AJPERES), and California New Car Dealers Association data on roughly 2 million new vehicle sales annually (https://www.cncda.org/wp-content/uploads/Cal-Covering-2Q-19.pdf), the lifespan of a typical vehicle in California is roughly 15 years.

Following this, on June 12, 2018, Berkeley City Council unanimously declared a Climate Emergency, calling for “a just citywide emergency mobilization effort to end citywide greenhouse gas emissions as quickly as possible.” Berkeley also set a goal of being a Fossil Fuel Free city, becoming a net carbon sink by 2030, and achieving carbon neutrality by 2045.

Citywide, transportation is the single largest source of greenhouse gas emissions, contributing 60% of the city’s total emissions. Berkeley is home to, and a route for, tens of thousands of combustion-powered automobiles, trucks, and other vehicles which annually emit roughly 360,000 metric tons of carbon dioxide and other greenhouse gases. Unfortunately, this share – and the total level of emissions – is currently expected to grow.

The generally accepted accounting methodology for greenhouse gas emissions, which was used to generate this estimate, only considers vehicle trips on public roads which either start or end within city limits as affecting the City’s overall greenhouse gas emissions. In order to achieve carbon neutrality under that accounting methodology, therefore, the City must ensure that vehicle trips which start or end within city limits, traveling upon City streets, are carbon neutral by 2045.

The proposed policy would prohibit the use of City-owned streets for operating, parking, or idling combustion vehicles[2] beginning in 2045. Under the policy, combustion vehicles found to be operating, parked, or idle would be levied a fee to cover the cost to the City of purchasing a carbon offset to neutralize the emissions (along with an administrative fee to cover the cost of enforcement). In effect, this policy creates a zero-emission zone covering all local surface streets in Berkeley (with exceptions for state and federal highways), similar to congestion pricing zones in other cities.

This would be a novel and unprecedented policy approach which relies upon the principle of local police power over city streets to regulate the operation of certain vehicles. While this policy is novel, it effectively works as a zero-emission pricing zone – similar to a congestion zone, where vehicles are charged for their use of limited streetscape, vehicles are instead charged to offset the impact of their emissions. Vehicle operators who choose to operate a combustion vehicle do *not* face criminal penalties.

This unusual policy raises numerous questions and special considerations, which are elaborated upon in Attachments 2 and 3.

[2] A combustion vehicle is defined in the policy as any on-road land motor vehicle which relies upon the combustion or oxidation of any carbon-based fuel (such as gasoline, diesel, or compressed natural gas [CNG]) for power or propulsion. Combusting or oxidizing carbon-based fuels results in the creation of carbon dioxide, regardless of whether it is emitted.

ENVIRONMENTAL SUSTAINABILITY

Prohibiting the use of City streets for the operation, parking, or idling of combustion vehicles within City limits will reduce fossil fuel use and prevent the release of greenhouse gases into the atmosphere. Requiring violators to cover the cost of carbon offsets would, if effective, ultimately bring the overall environmental impacts of combustion transportation down to effectively zero. Driving consumer shifts towards non-combustion vehicles, like electric vehicles, will reduce overall greenhouse gas emissions globally: on a life-cycle basis, electric vehicles have significantly lower overall greenhouse gas emissions[3,4].

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed policy is categorically exempt from CEQA under CEQA Guidelines Sections 15307 and 15308.

RATIONALE FOR RECOMMENDATION

CEAC recommends adopting the attached ordinance to prohibit the use of City streets for the operation, parking, or idling of combustion vehicles beginning in 2045, with certain exemptions, in order to achieve the City's carbon reduction and fossil-fuel-free goals.

In order to reach carbon neutrality without a significant, dramatic, and costly annual expenditure in carbon offsets to neutralize emissions, Berkeley needs a long-term strategy to both drive behavior change among all who work, play, or frequent our city, and to raise any funds that may be required to procure the necessary offsets in 2045. This proposed policy achieves that without encountering insurmountable legal barriers.

Berkeley is extremely unlikely to meet its carbon reduction and fossil-free goals without aggressive action on transportation decarbonization. Expanding efforts to drive EV uptake is critical, and CEAC believes that setting a sunset date for combustion vehicles will dramatically improve the success of EV uptake efforts. It may ultimately be the only way to ensure a full citywide transition to decarbonized transportation.

Structuring enforcement of the prohibition as enforcement of an emissions-free zone throughout most streets in the city, with a fee to enter with a combustion vehicle, aligns the policy with existing domestic and international legal precedent for congestion and low-emission zones, and ensures it is not a de facto mandate or an undue burden. Depositing any excess fees collected into a restricted fund for sustainability projects and programs, and particularly zero-emission transportation initiatives, ensures the fees are used appropriately.

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[3] Cleaner Cars from Cradle to Grave, Union of Concerned Scientists: https://www.ucsusa.org/clean-vehicles/electric-vehicles/life-cycle-ev-emissions (accessed September 2019)
[4] Life Cycle Analysis of Electric Vehicles, University of British Columbia: https://sustain.ubc.ca/sites/default/files/2018-63%20Lifecycle%20Analysis%20of%20Electric%20Vehicles_Kukreja.pdf (accessed September 2019)

In order to ensure full compliance with all applicable state and federal law and precedents, CEAC recommends a limited set of exemptions to minimize undue burdens to interstate commerce, ensure ongoing public services and public safety, and comply with other state and federal preemptions.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no immediate action and instead waiting to see the impacts of the City's planned EV roadmap. However, upon consideration and recognition of the roadmap's finding that consumers must begin planning for full decarbonization 15-20 years in advance, we determined that waiting 5-10 years to evaluate the impacts of the EV roadmap strategy would not ensure Berkeley is able to meet its carbon neutral target. Instead, CEAC believes that this policy would lend weight and import to the EV roadmap strategy, as it is short- to medium-term plans like the EV roadmap that will make this larger, full decarbonization effort feasible in 25 years – without both working together, neither are likely to be successful.

CEAC considered a gradual, phased approach that would restrict combustion vehicles on a narrower set of streets initially, and over time expand that to include more of the city. While the city can expect a gradual, phased increase in the use of electric vehicles, it is likely to be dispersed throughout the city as residents, apartments, and businesses install chargers or purchase vehicles over time. Other policies, such as those proposed in the EV roadmap, will help encourage and accelerate this gradual uptake; however, phasing certain streets into a combustion-free zone did not provide a clear benefit and could, ultimately, reduce in an *increase* in greenhouse gas emissions as combustion vehicles attempt to route around limited areas which are combustion-free.

CEAC also considered a less stringent enforcement mechanism, but determined that weaker enforcement would dramatically reduce the effectiveness of the policy. CEAC also recognizes the ability of Council to direct the City Manager on enforcement priorities.

CEAC considered leaving excess fees collected as unrestricted revenue, but determined that would potentially hamper the ability of the city to achieve a just citywide zero-emission mobility transition.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Ben Gould, Chair, Community Environmental Advisory Commission, 510-725-9176

Attachments:
1: Ordinance
2: Frequently Asked Questions
3: Analysis of Legal Considerations

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 14 TO PROHIBIT THE OPERATION OF COMBUSTION-POWERED VEHICLES

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

Section 1. That the Berkeley Municipal Code Chapter 14.94 is added to read as follows:

Chapter 14.94
OPERATION OF COMBUSTION VEHICLES

Sections:

14.94.010 Findings
14.94.020 Purpose
14.94.030 Definitions
14.94.040 Prohibition
14.94.050 Enforcement
14.94.060 Exemptions
14.94.070 Severability

14.94.010 Findings

A. Climate change, caused by the generation of carbon dioxide and other greenhouse gases, is harmful to human health and public safety, acting through increased risks of wildfire, drought, landslides, heat stress, sea level rise, disease, pests, environmental degradation, and other pathways.

B. The City of Berkeley has adopted a goal of carbon neutrality by 2045, becoming a fossil fuel free city, and reducing greenhouse gas emissions by 80% below 1990 levels by 2050.

C. The State of California has adopted the goal of carbon neutrality by 2045, and reducing greenhouse gas emissions by 80% below 1990 levels by 2050.

D. Combustion vehicles are responsible for over 60% of the greenhouse gas emissions attributable to the City of Berkeley.

E. At present, over 95% of all vehicles traveling through the City of Berkeley are combustion vehicles. In 2017, only 17% of new vehicles registered in the City of Berkeley were plug-in vehicles.

F. In order to reach carbon neutrality by 2045, projections show that there must be an aggressive and unprecedented transition to electric vehicles.

G. Berkeley's current rate of uptake is not projected to reach the goal of carbon neutrality before 2045.

H. The California Vehicle Code (CVC § 21101 (c)) grants cities the authority to regulate the use of certain roads by certain vehicles.

I. The City of Berkeley is a charter city with jurisdiction over municipal affairs, including the use of public right of way.

J. Due to improvements in battery technology and declining costs, the prices of electric vehicles are expected to decline, becoming cost-competitive with traditional combustion vehicles in under 10 years and likely subsequently declining further, while the available range continues to further increase.

K. Disadvantaged and low-income communities have traditionally shouldered the brunt of the impacts associated with combustion vehicles.

L. Combustion vehicles, by the mechanics of their engine operation, exacerbate noise and heat issues in already increasingly noisy, hot cities and neighborhoods.

M. Combustion vehicles, by necessity of their design, transport and store hazardous, polluting chemicals as fuel – such as gasoline – which pose risks of contamination to air and water.

N. Combustion vehicles, by necessity of their design, transport and store hazardous polluting chemicals as fuel which pose serious risks of fire and explosion, threatening health, property, and public safety.

O. Advancing the adoption of non-combustion vehicles helps make them more affordable and supports the expansion of supportive infrastructure.

P. The State of California, as well as Bay Area counties, cities, and community choice energy providers are working to increase equitable access to alternatives to combustion vehicles, such as by supporting electric vehicles and charging infrastructure.

Q. Achieving a transportation system which is nearly 100% decarbonized is feasible and viable by 2045.

R. Significant action at the local and state level is required to drive full decarbonization by 2045.

14.94.020 Purpose

The purpose of this chapter is to promote the health and safety of Berkeley residents and visitors, to address environmental impacts and prevent climate change from the emission of greenhouse gases resulting from the combustion of fossil fuels used for transportation, and to fulfill upon the intent of the voters as expressed in Berkeley's 2006 Measure G.

14.94.030 Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

A. "Combustion vehicle" shall mean any on-road land motor vehicle which uses the combustion or oxidation of any carbon-based fuel to provide power or propulsion.

B. "Carbon offset" shall mean a competitively procured, third-party verified project or program which, with the funding provided through the purchase of the offset, results in the permanent, indefinite storage or sequestration of carbon dioxide.

C. "Greenhouse gas" shall mean any planet-warming chemical which is a gas at standard temperature and pressure, and for which anthropogenic sources are disproportionately responsible for their presence in the atmosphere including, but not limited to, carbon dioxide, methane, nitrous oxides, hydrocarbons, hydrofluorocarbons, hydrochlorofluorocarbons, and others.

D. "Combustion Vehicle Carbon Offset Program" shall be any program through which the City of Berkeley assesses its attributable share of emissions from any combustion vehicles passing through its city limits using a standard and widely accepted methodology, and acquires and retires carbon offsets equal to the attributable emissions from those combustion vehicles.

E. "Green Initiative Fund" shall be any program through which the City of Berkeley dedicates and allocates funding for programs and projects which improve environmental sustainability, including but not limited to reducing greenhouse gas emissions, improving energy efficiency, reducing or diverting waste, reducing or cleaning up pollution, reducing or cleaning stormwater runoff, improving resiliency, and reducing dependency on automobiles.

14.94.040 Prohibition

Beginning January 1st, 2045, it shall be unlawful to operate any combustion vehicle upon any public streets or highways exclusively under the jurisdiction of the City of Berkeley.

Beginning January 1st, 2045, it shall be unlawful to park or idle any combustion vehicle upon any public street or highway exclusively under the jurisdiction of the City of Berkeley.

14.94.050 Enforcement

A. Beginning January 1st, 2045, any combustion vehicle operating, parked, or idling upon any public street or highway exclusively under the jurisdiction of the City of Berkeley shall pay a fine for each calendar day in which it is found operating, parked, or idling.

B. The City of Berkeley shall set the fine amount annually based upon the cost of operating the Combustion Vehicle Carbon Offset Program and the cost of enforcing and collecting the fine.

C. Fines collected shall be used to pay for the Combustion Vehicle Carbon Offset Program and the staff time required to enforce and collect the fines.

D. At the end of each fiscal year, any fines collected in excess of those needed to cover the full cost of the Combustion Vehicle Carbon Offset Program and the staff time spent enforcing and collecting the fines, shall be deposited into the City's Green Initiative Fund, to support programs and projects which facilitate and encourage the use of zero-emission modes of transportation, including but not limited to pedestrian improvements, bicycle and scooter lanes, public transit infrastructure, public electric vehicle charging, and/or educational programs.

E. Fines shall be levied equally across all combustion vehicles, independent of vehicle make, manufacturer, type, class, model year, date of manufacture, date of sale, operator, place of registration, or other factor.

14.94.060 Exemptions

This Section shall not apply to:

A. Combustion vehicles owned or operated by: government bodies, utilities or telecommunications providers, healthcare providers, emergency services, paratransit services, or passenger stage corporations (as defined in PUC § 1031).

B. Combustion vehicles operating, parked, or idling upon the I-80/I-580 corridor, State Route 123 (San Pablo Ave), State Route 13 (Ashby Ave, and Tunnel Road between Claremont Ave and Hiller Dr.), or other designated state or federal highways at the time of enforcement.

C. New motor vehicles, as defined in the Clean Air Act under 42 U.S. Code § 7550(3), where "the term 'new motor vehicle' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser." However, for imported vehicles, the term "new motor vehicle" means "mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under [42 U.S. Code § 7521]… which is applicable to such vehicle or engine (or which would be

applicable to such vehicle or engine had it been manufactured for importation into the United States).”

14.94.070 Severability

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. In addition, the City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Frequently Asked Questions

Is this even legal?
In developing this approach, several potential legal barriers were considered and evaluated. None were found to expressly prohibit, and several actually reinforce the underlying legal principles behind this approach. See Appendix 2 (Attachment 3) for more information.

Why set policy so far in advance? Why not take a more incremental approach?
Traditional policy approaches have worked on much narrower time horizons, such as 3-5 years. However, traditional policy approaches have never attempted a wholesale transformation as complete and thorough as that which we must achieve within the next 30 years to maintain a habitable planet. Nor have the stakes ever been this high.

Fundamentally, this policy is intended to help reshape public expectations and decision-making at a grand scale – while traditional policies have aimed to achieve incremental, progressive improvements, this one aims to achieve a world in which we truly achieve zero emissions. The types of decisions and planning which must be made to achieve that cannot be affected by implementing this policy one street at a time.

Electric vehicles are expensive. Won't this disproportionately impact low-income and disadvantaged communities?
An additional concern raised by this proposed policy is equity concerns and access to electric vehicles by low-income and disadvantaged communities.

Electric vehicles across all on-road types are expected to be widely available and achieve cost parity, if not savings, within the next decade (by 2030). Both Bloomberg and the International Council for Clean Transportation expect price parity for passenger vehicles to be achieved between 2022[5] and 2028[6], respectively. Bloomberg has already found that electric buses are cheaper today, in 2019, on a total cost of ownership basis across nearly all use cases, and will achieve unsubsidized parity by around 2030[7]. For trucks, McKinsey Energy Insights expects light- and medium-duty trucks running regional and urban trips to reach cost parity by roughly 2028. Long-haul trips and heavy-duty trucks may not achieve cost parity until after 2030, although they have economical use cases much sooner[8].

Because EVs are anticipated to reach parity before 2030, there is almost certain to be a wide variety of options available, both new and used, at a mix of price points, by the

[5] https://about.bnef.com/blog/bullard-electric-car-price-tag-shrinks-along-battery-cost/
[6] https://theicct.org/publications/update-US-2030-electric-vehicle-cost
[7] https://about.bnef.com/blog/electric-buses-cities-driving-towards-cleaner-air-lower-co2/
[8] https://www.mckinseyenergyinsights.com/insights/new-reality-electric-trucks-and-their-implications-on-energy-demand/

time this policy takes effect in 2045. Furthermore, the availability of EVs for low-income communities in 2045 depends heavily on consumer and government choices over the next 25 years; a policy like this would likely only expand the availability of EVs compared to a business-as-usual scenario.

Low-income and disadvantaged communities today are disproportionately impacted by the effects of air pollution and climate change. Implementing this policy will result in significant benefits to these communities.

How will this be enforced? Won't it disproportionately impact low-income and disadvantaged communities?
As 2045 approaches, Berkeley could further ensure the policy will be enforced in an equitable fashion by adding flexibility through amendments or direction to the city Manager on enforcement approaches.

A variety of mechanisms exist for enforcement. Because any combustion vehicle has a tailpipe, it is relatively easy to spot a combustion vehicle during ordinary parking enforcement activities or on standard police patrols, minimizing surveillance concerns. If Berkeley chooses to invest in automated billing systems (such as for a congestion pricing zone), or if vehicle position information is shared on a network (such as for autonomous vehicles), billing could be done automatically.

Equity and affordability challenges could be addressed by setting a cap on fees levied annually based on a certain percentage of household income, or a permitting system could be established to grant exemptions to enforcement. Either of these approaches would work with a variety of enforcement mechanisms. Due to the likelihood of significant technological change in the intervening decades, and the uncertainty around non-combustion vehicle uptake and availability for low-income households, these issues would need to be evaluated at a future date.

Furthermore, low-income and disadvantaged communities today are disproportionately impacted by the effects of air pollution and climate change. Implementing this policy will result in significant benefits to these communities.

Where will all these electric vehicles charge? What about people who can't charge at home?
City staff are in the process of developing an EV Roadmap, which will include recommendations for expanding EV charging citywide, particularly to serve low-income and multi-unit building residents. These approaches will include expanded workplace and public charging (e.g., at grocery stores and parking garages), as well as curbside charging in neighborhoods and commercial districts. Over the next 25 years, Berkeley should have ample time to prepare for a dramatic increase in the usage of electric vehicles.

Have other cities enacted similar policies?
The City of London has enacted a low-emission zone[9] and, within it, an ultra-low emission zone[10]. These zones charge fees to drivers of polluting vehicles on a daily basis to drive within the zone, with a comprehensive program for enforcement across vehicle types and considering needs for discounts and exemptions. Numerous additional cities in Europe have created low-emission zones[11], frequently targeting diesel vehicles (which are more prevalent due to the popularity of diesel automobiles). The city center of Paris prohibits larger and older vehicles[12], while Barcelona is in the process of establishing a similar low-emission zone[13] for older vehicles which do not meet more modern emission standards.

No city has yet enacted a low-emission zone in the United States, though New York has discussed congestion pricing[14] and San Francisco has set forth the goal of achieving 100% of trips taken by sustainable modes by 2040[15]. Berkeley could be the first city in the world to pass a law establishing a future zero-emission zone, and play a leadership role in supporting other cities regionally, nationally, and globally in moving towards a clean and sustainable future for transportation. Berkeley's unique political environment empowers it to advance groundbreaking, socially conscious environmental policy, helping clear the way for other cities to follow suit.

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[9] Transport for London, "Low Emission Zone": https://tfl.gov.uk/modes/driving/low-emission-zone.
[10] Transport for London, "Ultra Low Emission Zone": https://tfl.gov.uk/modes/driving/ultra-low-emission-zone.
[11] Wikipedia, "Low-Emission Zone": https://en.wikipedia.org/wiki/Low-emission_zone.
[12] Environmental Badge, "Ecological zone Paris": https://www.environmentalbadge.com/eco-zone-paris/.
[13] Distintivo-Ambiental.es, "The LEZ Barcelona/City environmental zone": https://www.distintivo-ambiental.es/en/info-menu/die-umweltzonen/barcelonacity-lez.html
[14] The New York Tiems, "Confused about congestion pricing? Here's what we know": https://www.nytimes.com/2019/04/24/nyregion/what-is-congestion-pricing.html
[15] Mayor's Electric Vehicle Working Group Electric Mobility Subcommittee, "Proposed Electric Vehicle Roadmap for San Francisco": https://www.sfmta.com/sites/default/files/reports-and-documents/2019/07/evroadmap_final_june2019.pdf

Analysis of Legal Considerations
In reviewing the potential legal barriers to implementation, CEAC consulted with environmental lawyers with particular expertise in clean air and transportation issues from Coltura, EarthJustice, Sierra Club, and Environmental Defense Fund. The considerations identified are explained below.

Federal Preemption
Federal laws which conflict with state or local laws trump those laws, under the Supremacy Clause of the U.S. Constitution. There are several federal laws which may potentially conflict with this proposed policy. Fortunately, in determining federal preemption, the courts generally start “with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470, 485 (1996).

In passing the Clean Air Act, Congress found that “air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments” (42 USC § 7401(a)(3)). In *Huron Portland Cement Co.* v. *Detroit,* 362 U.S. 440, 442 (1960), the Supreme Court found that "Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power.”

As a result, local laws to regulate air pollution, such as the emission of carbon dioxide and other greenhouse gases, fall under the traditional scopes of local authorities. Federal laws which may conflict must demonstrate clear legislative intent to supersede this authority.

Relating To Consideration
When federal laws are intended to preempt local regulations, they frequently prohibit states and cities from implementing laws “related to” the area under federal concern. For example, the Clean Air Act prohibits states and cities from adopting standards “relating to” the control of emissions; the Energy Policy Conservation Act prohibits states and cities from adopting laws “related to” fuel economy standards; and the Federal Aviation Administration Authorization Act (FAAAA) prohibits states and cities from enacting laws “related to” the price, route, or service of any motor carrier.

Under an extremely broad interpretation of “related to”, it is possible that just about any policy could be construed as “related to” a preempted area, as it could have indirect effects on that area. For instance, the recent increase in bridge tolls throughout the Bay Area to raise funds for public transportation could be construed as “related to” the price of motor carriers, as higher bridge tolls leads to higher prices, and thus it could be argued that it would be pre-empted under the FAAAA.

However, prior case law indicates that laws and regulations which are not directly related are not preempted. For example, in *Californians for Safe and Competitive Dump Truck Transportation v. AFL CIO*, the Ninth Circuit Court of Appeals found that while California's Prevailing Wage Law has effects on price, routes, and services of motor carriers, it is only an indirect, remote, and tenuous effect and thus not pre-empted by the FAAAA.

More broadly, the Supreme Court decision in *California Division of Labor Standards Enforcement et al. v. Dillingham Construction, N.A., Inc., et al* provides further precedent as to what laws are considered "related to" under federal preemption: the unanimous opinion finds that laws are preempted if they impose requirements by reference to, or a connection with, an area of preemption. In a concurring opinion, Justice Scalia, joined by Justice Ginsburg, wrote that "the 'relate to' clause of the pre emption provision is meant, not to set forth a test for pre emption, but rather to identify the field in which ordinary field pre emption applies."

As a result, "related to" can broadly be understood to apply if the laws under question are within the field identified by the area of preemption, and if the laws also impose requirements by reference to, or in connection with, an area of preemption.

Potential Federal Preemption

Clean Air Act (CAA)

The Clean Air Act grants the federal government authority to set emission standards for new vehicles (and provides California the opportunity to set its own, subject to findings by the EPA). Local jurisdictions are expressly prohibited from setting emission standards for, or otherwise regulating emissions of, new vehicles, as stated in 42 U.S. Code § 7543(a): "No state or any political subdivision thereof shall adopt or enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part."

Two key components of § 7543(a) must be further defined. Firstly, as used in this section, a "standard relating to the control of emissions" means an emission standard, as defined in 42 U.S. Code § 7602(k): "The [term]… 'emission standard' mean[s] a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter."

Secondly, 42 U.S. Code § 7550(3) defines "new motor vehicles" as "…a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser."

Ultimately, this means that states and cities are clearly preempted from setting standards that affect how vehicles are manufactured (with the exception that California may be granted a waiver from this preemption). Case law[16,17] has found that requirements to purchase certain vehicles based upon emissions is similarly subject to preemption.

This policy does not attempt to enforce standards for how vehicles are manufactured or sold based on emissions. Berkeley does not need to, and should not, make any attempt to set or enforce standards for emissions from new vehicles.

To achieve its goal of carbon neutrality under the standard greenhouse gas accounting methodology, Berkeley need only address the use of combustion vehicles for trips which start or end in Berkeley. However, combustion vehicles may be sold in Berkeley and stored or used on private property, or transported outside of the city and operated elsewhere, while having no impact on the city's overall emissions.

As a result, new vehicles (following the definition in § 7550(3)) are explicitly exempted from this policy (14.94.060.C).

As far as state and national emission standards for new motor vehicles are concerned, Berkeley's state and national elected leaders are champions for the environment and public health, and the city can reasonably rely upon them to advocate for the city's best interests in setting state and national policies on new vehicle emission standards.

Under the Clean Air Act, 42 U.S. Code § 7543(d) states that "Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles."

While the Clean Air Act does preempt cities from regulating new vehicles, it largely defines those as unsold vehicles. Otherwise, it reinforces the principle that cities are permitted to use local police power to regulate the operation of vehicles.

<u>Energy Policy and Conservation Act (EPCA)</u>
The EPCA grants the federal government authority to set fuel economy standards for new vehicles, and subsequently prohibits local jurisdictions from "adopt[ing] or enforc[ing] a law or regulation related to fuel economy standards…" (49 U.S. Code § 32919(a)).

Berkeley is unconcerned with fuel economy (distance traveled per unit of energy), and this proposed policy has no relation to fuel economy standards.

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[16] *Engine Manufacturers. Association. v. South Coast Air Quality Management District*, 2004
[17] *Metropolitan Taxicab Board of Trade v. City of New York*, 2009

As with the Clean Air Act, Berkeley is concerned with the emission of greenhouse gases associated with the operation of combustion vehicles. The fuel economy of a new vehicle is not relevant. Furthermore, vehicles sold in Berkeley could be transported and operated outside of the city, or on private property, or pass through without stopping, without affecting the City's greenhouse gas emissions, and so Berkeley does not need to, and should not, make any attempt to regulate fuel economy of new vehicles.

This policy does not attempt to do so.

FAA Authorization Act (FAAAA)

The FAA Authorization Act (49 US Code § 14501) prohibits states and cities from enacting laws related to the price, route, or service of any motor carrier (a person providing motor vehicle transportation for compensation).

As previously discussed, under an extremely broad interpretation of "relating to", it is possible that this policy could be construed as "relating to" price, route, or service, as it could have indirect effects on prices or routes, or service (if the vehicle's method of propulsion is considered an element of a motor carrier's service).

However, this policy does not specifically reference or have a direct connection to motor carriers; nor does it directly affect prices, routes, or services; nor is it within the field of preemption intended under the FAAAA. As a result, under the precedent for areas of "related to" preemption, it is unlikely to be found to be in violation of the FAAAA.

Interstate Commerce

The "dormant commerce clause," derived from inferences of the Commerce Clause of the U.S. Constitution, requires that any local or state law which affects interstate commerce must not discriminate against out-of-state commerce, and must not be unduly burdensome, with exceptions available if there is no other way to achieve an important goal.

This policy may have impacts on interstate commerce, as either individuals or goods may travel across state lines to conduct business in Berkeley using a combustion vehicle. However, Berkeley's voters clearly consider reducing greenhouse gas emissions and achieving carbon neutrality to be an important goal, as evidenced by the overwhelming 82% support from voters for the 2006 Measure G. As Berkeley cannot physically prevent combustion vehicles from entering the city, there is no other way to achieve carbon neutrality without collecting the revenue necessary to offset the emissions associated with combustion vehicle trips.

The burden on interstate commerce is minimized by exempting the state and federal highways passing through Berkeley, and ensuring there are no criminal penalties associated with operating a combustion vehicle. Furthermore, Berkeley is a city well-

served by exceptional local and regional transit services, as well as bicyclist and pedestrian infrastructure, reducing the need to drive into or within the city. It is also in close proximity to ports, freight rail yards, and regional distribution centers, reducing the need for goods to be delivered by long-haul truck directly from the point of origin, and thereby reducing any burden from haulers which choose to switch to a zero-emission vehicle for final delivery within the city to avoid the carbon offset fee.

Potential State Preemption

Municipal Affairs

Generally, local jurisdictions are preempted from regulating in areas which are subject to state control. Charter cities like Berkeley are granted authority over municipal affairs, but what exactly is considered a municipal affair is typically decided by the courts on a case-by-case basis. Frequently, courts will overturn arguments based upon municipal affairs if the state has already issued extensive regulations or legislation on the issue, or if there exists a paramount need for state control over the subject.

To date, the State of California has taken a mixed approach to achieving its statewide emissions reductions goals. In some areas, like energy, the State has taken a highly regulatory approach, setting renewable portfolio standards and implementing cap-and-trade. However, in areas relating to transportation, and in particular the strategies that local governments can deploy to reduce greenhouse gas emissions from transportation, the State has to date treated it as a municipal affair. SB 375, the Sustainable Communities and Climate Protection Act of 2008, has served as the cornerstone of the State's strategy for reducing vehicle miles traveled for over a decade. SB 375 directs the California Air Resources Board to set targets for regional emissions reductions from passenger vehicles, and subsequently wholly recognizes the right of regional and local governments to custom-tailor their approach to reducing VMT and transportation GHGs based upon local conditions and needs. Berkeley has traditionally set policies regulating the use of its local roads to achieve GHG and VMT reductions as though it is a municipal affair.

Berkeley's voters also clearly consider local reductions in greenhouse gas emissions to be a municipal affair. In 2006, an overwhelming 82% of Berkeley's voters supported Measure G, which proposed establishing a goal of 80% reduction in greenhouse gas emissions by 2050 and advising the Mayor to work on a Climate Action Plan. This direct mandate by Berkeley's voters calls for the city to take aggressive action, particularly if it finds the state's actions alone will not achieve the city's goals.

California Vehicle Code

The state's vehicle code generally sets the rules of the road and requirements for vehicles to ensure safety. In addition, CVC § 21101 (c) states "Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters… Prohibiting the use of particular highways by certain vehicles," except for passenger stage corporations, as provided in the Public

Utilities Code. Passenger stage corporations are granted an exemption from the proposed policy.

Based upon this section, it appears that the State considers regulating the use of local streets to be a municipal affair, and that prohibiting the use of local city streets by combustion vehicles is an application of local police power authorized under both state and federal law.

No other applicable laws, legal principles, examples from case law, or precedents were identified. As such, based upon review of the above considerations, there do not appear to be insurmountable existing federal or state legal barriers to implementing a policy of this type.

Community Environmental
Advisory Commission

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Community Environmental Advisory Commission

Submitted by: Ben Gould, Chairperson, Community Environmental Advisory Commission

Subject: Prohibition on the Sale of Gasoline, Diesel, and Other Carbon-Based Transportation Fuels by 2045

RECOMMENDATION

Review and refer to the City Attorney for finalization the attached ordinance prohibiting the sale of gasoline, diesel, and other carbon-based transportation fuels effective January 1st, 2045.

POLICY COMMITTEE RECOMMENDATION

On January 20, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee moved to send the item with a positive recommendation for Council to take no action on the item but to provide the item to staff as background for consideration, particularly as the Federal landscape changes under the new administration and to explore whether the City has the legal authority to pursue. Vote: All Ayes

FISCAL IMPACTS OF RECOMMENDATION

Some staff time for review and finalization of the ordinance. Adoption of the ordinance itself may expose the City to potential fiscal impacts, including risk of a lawsuit and, if ultimately enforced, additional fiscal impacts from impacts to sales, property, and other tax or fee revenues.

CURRENT SITUATION AND ITS EFFECTS

Numerous Berkeley businesses are fossil fuel dealers, promoting the sale and use of carbon-based transportation fuels which are known to pollute our air, water, and soil; pose major fire risks; contribute to the risk of cancer; and are either potent greenhouse gases or, upon combustion, leading contributors to climate change.

These carbon-based transportation fuel dealerships – colloquially known as gas stations – are known to cause significant traffic and congestion, generate elevated levels of carcinogenic air pollutants in their local neighborhoods, and are frequently found to have leaked toxic chemicals into the ground, contaminating our soil and groundwater.

In 2018 alone, according to California Energy Commission data, over 20 million gallons of gasoline was sold in Berkeley at roughly 15 gas stations throughout the city. Ten of these gas stations had unresolved CalEPA violations as of October 2019.

The transportation of these fuels is also extremely dangerous. Vehicles transporting or storing fossil fuels regularly collide, leading to fuel spills or leaks – further contaminating water and/or soil and/or air – and posing major risks of fire or explosion, with the potential for significant damage to property and harm to public safety. Alternatively, even if the vehicles themselves do not themselves have fuel leaks, the firefighting materials that must be used to prevent serious fires or explosions are themselves hazardous and difficult to clean up.

These fuels are typically used to power the operation of roughly 97% of all vehicles registered in the City of Berkeley. However, the City, County, and State are all working to dramatically increase the use and availability of vehicles which do not rely upon these hazardous chemicals. One such alternative – electric vehicles – are expected to reach price parity with traditional combustion-powered vehicles by roughly 2025. In addition, the City of Berkeley has adopted the goal of carbon neutrality by 2045, which – if successful – will require ending the use of these fuels.

There are also numerous other fossil fuel dealerships located outside of Berkeley, ensuring that these fuels are still accessible to anyone who is either unable or chooses not to switch to alternatives.

At a regular meeting on Thursday, November 14, 2019, the Community Environmental Advisory Commission unanimously approved a motion to send the *Prohibition on sales of Carbon-Based Transportation Fuels by* 2045 recommendation to City Council (M/S/C) Gould, Hetzel. Ayes: Simmons, Varnhargen, Hetzel, Goldhaber, Gould. Abstained: De Leon. Absent: Ticconi.

BACKGROUND

Berkeley has permitted and even encouraged the sale of transportation fuels for decades. In recent years the cumulative harmful impacts of these chemicals across environmental, health, and safety impacts has become clear, and recently the City Council adopted a Fossil Fuel Free Berkeley resolution, setting the goal of eliminating fossil fuels – the majority of which are carbon-based transportation fuels – in Berkeley.

Gasoline, diesel, and other carbon-based transportation fuels are known to be harmful chemicals, posing a variety of risks to human health, public safety, and the environment,

both of their own virtue and as a result of their combustion or oxidation for powering transportation[1,2,3].

These chemicals have the same health and safety risks and environmental impacts regardless of the source or feedstock – benzene, found in gasoline, is a known carcinogen whether it is derived from petroleum or from corn, and biodiesel poses the same fire risks as regular diesel. As a result, truly addressing the health and safety impacts of these chemicals requires addressing the chemicals regardless of their origination source.

The hazards of these chemicals are significant and acute, and even if the chemicals themselves do not escape into the environment or catch fire, the risk of them doing so is so severe that efforts to control or prevent them from doing so is similarly damaging.

In one recent instance in Berkeley, the cargo of a recycling truck caught fire. This recycling truck was also carrying compressed natural gas (CNG), a type of carbon-based transportation fuel. In a memo by the city manager, this fire was described as "extremely dangerous," a "highly explosive threat to nearby people and homes," and a "potentially explosive, deadly disaster," due to the risk of the CNG either catching fire or heating up to the point of explosion. According to the memo, a similar garbage truck fire in 2015 created "an explosion that sent shrapnel in 360 degrees, including one compressed natural gas tank that flew a quarter of a mile."

To put out this fire fast enough to prevent this potentially deadly explosion, the firefighting team deployed special foams originally designed to fight wildfires. These foams spilled into a storm drain and polluted Berkeley's natural waterways, leading to the death of 63 threatened Central Coast California Steelhead Trout.

Even if Berkeley's trucks were fueled with a renewable, non-fossil CNG, this near-disaster – and the lesser disaster that resulted from it – would have happened regardless. The health and safety risk derives from the chemical nature and composition of the fuels, not the feedstock used to create them.

ENVIRONMENTAL SUSTAINABILITY

Banning the sale of gasoline, diesel, and other carbon-based transportation fuels will improve local air quality, protect our soil and waterways, and improve public health and safety.

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[1] Material Safety Data Sheet: Gasoline, All Grades, Vermillion County, IL: https://www.vercounty.org/MSDS/EMA/9950allgradesgasoline.pdf (accessed September 2019)
[2] Safety Data Sheet: Diesel Fuels, Valero: https://www.valero.com/en-us/Documents/OSHA_GHS_SDS/SDS%20US%20-%20102-GHS%20DIESEL%20FUELS%20rev2%205-14.pdf (accessed September 2019)
[3] Safety Data Sheet: Natural Gas Odorized, Hess Corporation: https://www.hess.com/docs/us-safety-data-sheets/natural-gas.pdf?sfvrsn=2 (accessed September 2019)

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
The proposed policy is categorically exempt from CEQA under CEQA Guidelines Sections 15307 and 15308.

RATIONALE FOR RECOMMENDATION
Eliminating the sale of these carbon-based transportation fuels will reduce one of the major environmental, public health, and safety hazards currently prevalent in the City of Berkeley.

Providing a 25-year phaseout period will ensure a smooth transition that businesses and individuals can successfully plan for without unconstitutionally taking or eliminating economic uses of property.

ALTERNATIVE ACTIONS CONSIDERED
CEAC considered taking no action, but determined that continuing to permit the sale of carbon-based transportation fuels would not achieve a fossil fuel free Berkeley, as set forth in the Fossil Fuel Free Berkeley resolution.

CEAC considered providing a carve-out exemption for carbon-based transportation fuels that are derived from non-petroleum / fossil sources. CEAC determined that such an exemption would be prohibitively difficult to enforce, and would not achieve the desired goal of reducing health and safety risks.

CEAC considered prohibiting only certain carbon-based transportation fuels, but did not find substantial health and safety, or environmental reasons which would justify permitting gasoline, diesel, or compressed natural gas but not the others.

CEAC considered a shorter phase-out period (such as 2040 or 2030) or a more extended one (such as 2050 or 2055) but determined that 2045 best aligned with other policies and programs in place, proposed, or likely at the local, regional, state, and national level to ensure that an adequate supply of vehicles and infrastructure to support non-combustion vehicles. However, it is possible that all of Berkeley's fossil fuel dealerships could go out of business sooner than 2045, due to a transition away from combustion fuel usage, in which case this policy would have no significant effect.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON
Ben Gould, Chair, Community Environmental Advisory Commission, 510-725-9176

Attachments:
1: Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 9 TO PROHIBIT THE SALE AND TRANSPORTATION OF FOSSIL FUELS.

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

Section 1. That the Berkeley Municipal Code Chapter 9.98 is added to read as follows:

Chapter 9.98
SALE OF TRANSPORTATION FOSSIL FUELS

Sections:

9.98.010 Findings
9.98.020 Purpose
9.98.030 Definitions
9.98.040 Prohibition
9.98.050 Severabiity

9.98.010 Findings

A. Carbon-based transportation fuels, such as gasoline, diesel, and others, are known to be harmful and hazardous chemicals, contributing to cancer, climate change, and known to pollute our local air, water, and soil.

B. Carbon-based transportation fuels pose major fire and explosive hazards, with risk to public health and safety.

C. The transport, storage, and sale of transportation fuels exacerbates all risks associated with these chemicals.

9.98.020 Purpose

The purpose of this chapter is to promote the health and safety of Berkeley residents and visitors, and to address environmental impacts and public health and safety impacts from transportation fuels.

9.98.030 Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

A. “Transportation fuel” shall mean any gasoline, diesel, compressed natural gas, or other carbon-based fuel which is intended to provide power or propulsion to any land motor vehicle through its combustion or oxidation.

9.98.040 Prohibition

Beginning January 1st, 2045, it shall be unlawful to sell, trade, or distribute any transportation fuel by any means anywhere within the City of Berkeley.

9.98.050 Severability

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. In addition, the City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

[First Last name]
Councilmember District [District No.]

SUPPLEMENTAL REVISED AGENDA MATERIAL

for Supplemental Packet 2

Meeting Date: **February 4, 2020**

Item Number: **2**

Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: **Councilmember Hahn**

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder 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.

SOPHIE HAHN
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ACTION CALENDAR
February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION
This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder 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.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.[1] They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.[2] Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

[1] http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf
[2] http://www2.oaklandnet.com/w/OAK052051

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, […] delivered, by any means […] to a person's residence, place of employment or business, or post office box."[3] Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.[4] Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost $5,000+, and an electronic mail service subscription typically costs $10 (for the most basic service) to $45 per month, a cost of $120.00 to over $500 per year - in personal funds.

[3] http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html
[4] http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.[5] For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - *anyone*. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, *elected officials cannot raise money for any expenses whatsoever, from any source, while community*

[5] Councilmembers receive annual compensation of approximately $36,000, while the Mayor receives annual compensation of approximately $55,000.[5]

members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to "speak" and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State's restrictions, to ensure funds are not used for things like family members' travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.[6]

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

[6] http://www2.oaklandnet.com/w/OAK052051

Fair Campaign Practices Commission

SUPPLEMENTAL AGENDA MATERIAL

for Supplemental Packet 2

Meeting Date: **February 4, 2020**

Item Number: **2**

Item Description: **Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12**

Submitted by: **Samuel Harvey; Deputy City Attorney / Secretary, Fair Campaign Practices Commission**

Attachment 4 to the report ("Memorandum signed by City Attorney Manuela Albuquerque") included an attachment which was erroneously omitted from the Council item. Attached is Attachment 4 (for context) along with the additional pages which should be included to appear as pages 16 -17 of the item.

Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.[1] For similar reasons, the BERA does not

[1] However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

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E-mail: attorney@ci.berkeley.ca.us • TDD: 510 644-6915

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12..050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aide of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.[2] Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aide of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the $250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: II.E.1. and III.G.

CC:bl

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[2] Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) $250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's $250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's $250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than $250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the $250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

> "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

> in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

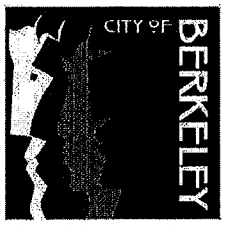
Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its $250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.[1/] (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's $1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

[1/] I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.



Office of the City Auditor
Ann-Marie Hogan, City Auditor

MEMORANDUM

Date: March 14, 2017

To: Councilmember Harrison

From: Ann-Marie Hogan, City Auditor

Re: Council Expense Reimbursement Guidance

The purpose of this memo is to provide you with forms for, links to, and general guidance on Council expense and reimbursement policies. In some cases, the restrictions on expenses for Council Members are more restrictive and more complex than those for City employees, because of state law. You must contact my office prior to incurring expenses for attendance at a conference, seminar, or training, or making travel arrangements. The purchase of routine office supplies should be made using the City's standard procurement procedures and vendors, using a purchase order, but on those occasions when you must pay for something personally and then request reimbursement, you will also need to submit the request to my office. For information regarding the City's procurement procedures, see Administrative Regulation 3.4[1]. Once your City email is active, we'll send this memo to you via email, so you can click on the links to the City's intranet. Please feel free to contact me if you or your staff have questions.

In July 2006, the Berkeley City Council passed Resolution No. 63,412–N.S. to comply with state bill AB1234, which requires all cities to adopt an expense reimbursement policy for legislators in local government, and sets specific requirements for that policy. In September 2013, at the recommendation of the City Attorney, Council rescinded Resolution No. 63,412–N.S. and replaced it with Resolution No. 66,295–N.S. (See attached.) Council adopted the new resolution to incorporate a budget relinquishment and grant policy, and also to clarify the criteria and spending limitations associated with reimbursements for the Mayor and Council Members. Some of the spending limitations include:

- **Mileage and Transit-**: Mileage is reimbursed at the current year's IRS mileage rate and must be accompanied by supporting documentation, such as a Google Maps printout. Use the most economical mode of transportation practical.
- **Meals:** Meals are reimbursed at the per diem rates set forth in City Administrative Regulation 3.9, or the actual cost of the meal, whichever is *lower*.[2] The per diem rate covers the meal, tax,

[1] Administrative Regulation 3.4: http://icobweb/AR/PDF/AR3-4.pdf
[2] Administrative Regulation 3.9: http://icobweb/AR/PDF/2016/Administrative Regulation 3.9.pdf

tip, and nonalcoholic beverages (alcoholic beverages are not reimbursable). The per diem rate also applies when Council Members are requesting reimbursement for meals paid on behalf of individuals who are conducting city related business, such as Legislative Assistants. Council Members must submit original receipts, a list of attendees and the Statement of Municipal Purpose form (explaining how the expense benefits the City), as part of the reimbursement request. Any expense in excess of the individual meal allowance will not be reimbursed. The current per diem rates are:

- Breakfast $10
- Lunch $15
- Dinner $26

- **Airfare:** Airfare is reimbursed based on the most economical mode and class of transportation reasonably consistent with scheduling needs. We suggest that you attach a printout of available fares with your request. Please note that the current language in Resolution No. 66,295–N.S. is out of date because it references a program that is no longer available. This will be corrected in Council's next revision of that resolution.

- **Lodging:** Lodging for conferences will be reimbursed at the available group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or the government rates published by the U.S. General Services Administration, whichever is greater. Where no conference rate is published, the reimbursement rate will be based on the government rate or the median rate listed on discount travel websites, whichever is greater. Trivago, Priceline, Kayak, Orbitz, Travelocity, and Expedia are examples of travel sites that provide discount rates and may be used to identify a reasonable median rate. Include a printout of the published conference rate, government rate, or travel site rates with the reimbursement request as applicable. Council Members can look up rates by using the U.S. General Services Administration's Per Diem Rates Look-Up tool.[3] Council Members should select the specific location they are traveling to in the look-up tool.

- **Registration:** Generally, Council Members should use a purchase order for conference, seminar, and training registrations as defined by Administrative Regulation 3.9. However, Council Members may use their credit card to register, if that is the vendor's required form of payment. Council Members may not submit their reimbursement request until after the event has taken place, and must include proof of payment, and should include evidence of attendance with their request. Resolution No. 66,295–N.S. also requires that Council members provide a report to Council on training they attend, but we will be recommending that this requirement be deleted since it is not required by AB1234.

[3] Hotel fee tool: http://www.gsa.gov/portal/category/100120

When completing a reimbursement request, Council Members must complete and provide the following:

1. FN-024 payment voucher: available in Administration Regulation 3.14[4], on the City's intranet[5], or by contacting Accounts Payable at (510) 981-7310. All three sources provide guidance for completing this form.
2. Statement of municipal purpose form: available in City Auditor's Groupware section or by contacting the City Auditor's Office at (510) 981-6750 or auditor@cityofberkeley.info.
3. Supporting documentation: Council member original receipts, proof of payment, official per diem rates, etc.

Council Members must include account codes on the FN-024 payment voucher. The City's standard account codes are *14 digits* long and include both an element and an object code as the last four digits. The most commonly used element and object codes are:

- 4064: mileage/transportation (including taxi or ride-sharing service, such as Uber or Lyft)
- 4063: registration
- 4062: meals and lodging related to conferences, seminars, training, workshops, and similar
- 4061: airfare
- 5550: meals and food for city business, events, functions, and similar business meals

City Administrative Regulation (A.R.) 3.9 establishes the policies and procedures for reimbursing expenses incurred by City staff to attend conferences, meetings, seminars, trainings, and workshops. The regulation complements Resolution No. 66,295–N.S., which establishes the procedures for Council Members. A.R. 3.9 includes the following exceptions for Mayor and Council Members' expenses:

- **Attendance and travel request form:** The Mayor, Council Members, and Legislative Assistants are not required to submit an Attendance and Travel Request form. (A.R. 3.9, page two)

- **Paying for another employee's expenses:** The Mayor, Council Members, and Legislative Assistants may be reimbursed for paying for other legislative staff's or Council Members' expenses incurred for city related business. This is an exception to A.R. 3.9, noted on page three.

- **Business meals:** The Mayor and Council Members may be reimbursed for meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents). City Auditor review and approval is required. Council Members must describe the purpose of their business meal, e.g. issues discussed and how they relate to adopted priorities of Council, on the Statement of Municipal Purpose form and list the attendees. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower*. (A.R. 3.9, page four) **Note that AB1234 requires that members of a legislative body shall**

[4] A.R. 3.14: http://icobweb/AR/PDF/AR3-14.pdf
[5] City Intranet: http://icobweb/finance/GroupwareAP.FN-024&PettyCash.htm

provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.

- **Receipts:** The Mayor, Council Members, and Legislative Assistants must submit meal receipts. *Meals are reimbursed at the per diem rates as listed above, or the actual cost of the meal, whichever is lower.* (A.R. 3.9, page four)

cc: Sheila Soo, Administrative Assistant, Auditor's Office

RESOLUTION NO. 66,295–N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412–N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to $1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under $5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to $1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

* * * * * *

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Tom Bates, Mayor

Attest:
Mark Numainville, CMC, City Clerk

Exhibit A

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function *as a municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

> The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
> (*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

> The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
> (*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	**Purpose**
The City (*e.g.*, the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (*e.g.*, Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (*e.g.*, affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

A.R. NUMBER:	**3.4**
ORIGINAL DATE:	07/94
POSTING DATE:	4/14/2009
PAGE 1 of 5	PAGES

SUBJECT: Purchasing Policy & Purchasing Manual

PURPOSE

To ensure that the City receives the most favorable price, quality, and/or service available for all purchases, while adhering to City Council directives. The Precautionary Principle (PP) and Environmentally Preferable Purchasing Policies (EP3) should be considered whenever feasible, and in accordance with the adopted budget. Furthermore, the complete AR provides City employees with appropriate procedures to knowledgeably participate in the procurement process. This is the Executive Summary of AR 3.4, with an introduction to procedures for the City's Purchasing Policy. The Purchasing Manual is the full AR 3.4, and includes the complete policy and procedures. The City Purchasing Manual can be found online at Groupware – Finance: Purchasing Manual.

POLICY

It is the policy of the City Manager that all City purchases, with only specified and approved exceptions, shall be made through a competitive process. Regardless of the value of the purchase, more than one documented quotation, bid, or proposal is strongly encouraged. The City Council periodically sets or adjusts cost levels of purchases for Council review and approval, and the parameters for the formally documented competitive processes.

Responsibility for City Purchases rests with designated positions for implementation of this policy:

1. The City maintains a centralized General Services office through which all purchases of goods and services are processed. Each Department originates requests for procurement.

2. Departments are responsible for requesting the type and quality of product or service required. Sole and single source contracts are discouraged, but may be utilized if approved as provided in the Purchasing Manual. The FUND$ system maintains lists of vendors cross-referenced to commodities and services.

3. The General Services Division is ultimately responsible for determining the means of purchase and the appropriate vendor. All purchases made will be of a quality consistent with the ultimate use intended and will be based on best value to the City of Berkeley, not necessarily on the lowest obtainable price.

4. Only the City Manager has the authority to enter into a contract/agreement, except purchase orders, with a vendor. The authority to enter into a Purchase Order has been delegated to the General Services Manager.

5. A comprehensive list of City restrictions on procurement are addressed in Section I of the manual. In addition to those restrictions prescribed by law the following are prohibitions requested by City Council.

A) On January 29, 2008 Council requested the City Manager prohibit purchases from Chevron Corporation whenever possible.

B) On October 28, 2008 Council requested the City Manager research limiting the purchase of bottled water. In response, the City Manager directed staff to eliminate as much as possible the purchasing of individual bottles of water. Bottled water can still be purchased for emergency preparedness and for field events where health and safety are a concern. For all other events, carafes and tap water should be used.

PROCEDURE

See the current version of the City Purchasing Manual, available online at Groupware – Finance: Purchasing Manual, for complete information and procedures. The following is the table of contents for the Purchasing Manual:

I. General Procedures, Responsibilities and Requirements
II. Purchasing Requirements by Price
III. Purchasing Procedures
IV. Glossary of Terms
V. Frequently Asked Questions (FAQs)
VI. Requirement on Contracting with Certain Entities (Forms & Council Actions)
VII. Council Guidelines on Purchasing Services and Goods
VIII. How to Guide
IX. Reports (In Development)
X. Forms

DEFINITIONS

1. Procurement: Procurement refers to the process of managing activities associated with an organization's need to obtain the goods and services required for its operation. To ensure that the correct amount of the product or service is received at the appropriate time, specific steps are taken in the procurement process, including: value assurance; determining which commodities or services are best; choosing the right suppliers and vendors; negotiating the best prices; and awarding contracts. For General Services to conduct the procurement process responsibly, its functions include spend analysis, sourcing, supplier implementation, transaction management, category management, and supplier performance management.

2. Purchasing: The processing of a purchase order. The key steps in the process are: departments place and approve requisitions; General Services or departments find the item (sourcing); General Services issues the purchase order (PO); and General Services sends PO to vendor. Upon fulfillment of the order, the City is invoiced and the vendor is paid.

3. Purchasing Requisition (PR): A purchasing requisition is a document that instructs General Services to spend a designated and approved amount from a specific department/division budget account for needed goods or services.

4. Purchase Order (PO): A purchase order is used for the purchase of goods. The PO represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

5. Blue-Backed Contract: A blue backed contract is used for the purchase of services. A blue-backed contract represents a contractual agreement that is enforceable under law. To have an enforceable contract there must be agreement of the parties, which consists of an offer by one party, acceptance of that offer by the other party, and mutual consideration.

Attachments:

1. Purchasing Thresholds: Ordinance No. 6,875 – N.S.
2. Purchasing Thresholds: Ordinance No. 7,035 – N.S.

RESPONSIBLE DEPARTMENT: **Finance Department** **TO BE REVIEWED/REVISED:** Every year	Approved by: Finance Director City Manager

ATTACHMENT 1

ORDINANCE NO. 6,875–N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010B REGARDING EXPENDITURES FOR SPECIFIC IMPROVEMENTS, INCLUDING PLAY AREA IMPROVEMENTS AND EQUIPMENT WHICH EXCEED $200,000; AMENDING SECTION 7.18.010C REGARDING EXPENDITURES FOR THE PURCHASE OF SUPPLIES, EQUIPMENT, AND MATERIALS WHICH EXCEED $100,000; AND AMENDING SECTION 7.18.020A REGARDING EXPENDITURE LIMITATIONS IN CASE OF EMERGENCY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of $25,000 shall require Council approval.

B. Expenditures for specific improvements (public projects), including play area improvements and equipment in public parks which exceed the amount of $200,000 shall require Council approval pursuant to Article XI, Section 67 of the Charter of the City of Berkeley.

C. Expenditures for the purchase of supplies, equipment, and materials which exceed the amount of $100,000 shall require Council approval.

Section 2. That Berkeley Municipal Code Section 7.18.020A is amended as follows:

Section 7.18.020 Expenditures pursuant to Charter Article XI, Section 67.4 Emergencies.

A. Expenditures pursuant to Article XI, Section 67.4 of the Charter of the City which exceed the amount of $100,000 shall require Council approval; and expenditures for public construction projects and playground improvements and equipment which exceed the amount of $200,000 shall require Council approval.

B. Notwithstanding subsection A of this section, in the event of a declared emergency under Chapter 2.88, the expenditure limitation under Article XI, Section 67.4 of the Charter of the City shall be an amount not exceeding the amount appropriated by the Council in the most recent appropriation ordinance for the fund from which an expenditure is made and for the purpose authorized for such fund.

C. Whenever purchases are made pursuant to this section, the City Manager shall promptly inform the Council as to the nature and amount.

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

* * * * * *

ATTACHMENT 2

ORDINANCE NO. 7,035–N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 7.18.010 REGARDING EXPENDITURES FOR SERVICE CONTRACTS TO INCREASE CITY MANAGER'S AUTHORITY

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

Section 1. That Berkeley Municipal Code Section 7.18.010 is amended to read as follows:

Section 7.18.010 Expenditures pursuant to Chapter Article XI, Sections 67 and 67.5.

A. Except as otherwise provided in this Title, expenditures pursuant to Article XI, Sections 67 and 67.5 of the Charter of the City of Berkeley, which exceed the amount of $50,000 shall require Council approval.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 22, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

At a regular meeting of the Council of the City of Berkeley held on May 6, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Wozniak and Bates.

Noes: Spring and Worthington.

Absent: None.

Tom Bates, Mayor

ATTEST: _____
Deanna Despain, Deputy City Clerk

Date signed: 9 May 08

A.R. NUMBER: 3.9
ORIGINAL DATE: 07/94
POSTING DATE: 11/3/16
PAGE 1 of 9 PAGES

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS

SUBJECT: Attendance and Payment of Expenses Associated with Conferences, Meetings, Seminars, Trainings, and Workshops

PURPOSE

To establish policies and procedures for City staff to obtain approval to attend conferences, meetings, seminars, trainings, and workshops; and to establish procedures for the City's direct payment of authorized expenses incurred by an individual for attendance at an approved event or meeting. Obtaining approval of an Attendance & Travel (A&T) Request for an event or meeting, along with associated expenses, ensures that appropriate supervisors and Department Directors have determined an employee's attendance at an event or meeting benefits the City, and that expenses are consistent and in line with the department's adopted budget.

This Administrative Regulation (AR) also complements **Resolution No. 66,295, City Council Expenditure and Reimbursement Policies** for the Mayor and Council (Attachment B); and **Resolution No. 63,413, Establishing Travel and Training Reimbursement Policy for Board and Commission Members** of the Rent Stabilization Board, Board of Library Trustees, and members of other boards or commissions (Attachment C).

POLICY

It is the policy of the City Manager to authorize Department Directors and Supervisors to approve an employee's request to attend, and to receive payment for expenses associated with conferences, meetings, seminars, training, and workshops.

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I. APPROVALS

Note: Employee Must Submit and Obtain Approval for A&T Request before incurring any allowable expenses

City Approval to attend and incur authorized expenses for an eligible event is based on the following factors:

A. Expectation that the City will derive a specific benefit from staff attendance.

B. Employee submission of the authorized A&T Request form (the current version in Groupware), and receipt of approval from her/his Supervisor &/or Department Director in advance of an authorized event, including approval for all associated expenses.

C. All expenditures and reimbursements for the Mayor and Council must adhere to Resolution No. 66,295 and be approved by the City Auditor.

D. For routine and, or, recurring meetings an A&T Request must be submitted, approved, and on file in the department in advance of the initial date, and must be renewed annually for each fiscal year.

E. Department Directors are to complete and submit an A&T Request; no other signature is required for approval.

F. Exceptions to use of the A&T Request form are: Mayor, Council, and Legislative Assistants (when allowed under Resolution No. 66,295); and members of the Rent Stabilization Board, and Board of Library Trustees. Resolution No. 66,295 or Resolution No. 63,413 governs their approvals, expenditures, and related matters.

G. Expenditures are provided for in the adopted budget for the employee's department. For specific procedures, see item III. Allowable Expenses.

II. EXPENDITURES BASICS

Expenditures must be documented in accordance with all related City ARs and other associated policies, using current forms (published in Groupware), including and not limited to:

- AR 3.4 Purchasing Manual: Employees and Mayor/Council must make full use of the City's Procurement procedures and submit purchase requisitions to generate payment for registration prior to travel. Note: Expenses for Board/Commission members and other non-staff or elected officials eligible to attend an event pursuant to the standards in Resolution No. 63,413 must have payments processed by the designated board or commission Secretary, using FN-024 Payment Vouchers through Accounts Payable.
- AR 3.14 FN-024 Voucher Processing
- AR 7.2 Use of Private Vehicles and Mileage Reimbursement
- Auto Record for Mileage Reimbursement: for further details, see AR 7.2 and Transportation: Private Vehicle, below.

- City Council Resolution No. 66,295 City Council Expenditure and Reimbursement Policies.
- City Council Resolution No. 63,413 Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

In addition:

- Statement of Expense forms and receipts, for reconciliation of an advance &/or reimbursement of expenses incurred, must be submitted to Finance – Accounts Payable within 60 calendar days (30 days for Council/Commission, unless revised) after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and individuals assume full, personal responsibility for the costs they incurred.
- Advances or reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of any other employee. Exception to this restriction is for reimbursements only of expenses for Mayor and Council and their Legislative Assistants.

See item V. Advance Payments and Reconciliation.

III. ALLOWABLE EXPENSES

Expenditures should adhere to the following guidelines. In the event that expenses are incurred that exceed these guidelines, the cost borne or reimbursed by the City will be limited to those that fall within these guidelines, unless approved by an appropriate, designated authority. Proof of payment for all expenses must be provided when reconciling the Statement of Expense form, except as indicated.

A. **Registration:** Registration fee charged for an authorized conference, meeting, seminar, training or workshop is allowable. Employees should register in a timely manner to take advantage of registration discounts. Payments can be made by Purchase Orders (PO). See also: Payments by Check Using a Purchase Order, below.

B. **Transportation:** Employees must use the most economical mode and class of transportation reasonably consistent with scheduling needs, coordination with other employees traveling together, and cargo space requirements, and following the most direct and time-efficient route incorporating these factors. If an employee chooses a more expensive mode of travel based on personal criteria, reimbursement will be for the lesser cost of transportation.

1. **Public Transit** should be used for travel to events and meetings outside the City of Berkeley and in other locations, where accessible by transit. Receipts are not required for these expenses.
2. **Fleet Vehicle**: see AR 7.1 Use of Fleet Vehicles for details.
3. **Private Vehicle**: see AR 7.2 Use of Private Vehicles & Mileage Reimbursement for details. If use of a private vehicle is authorized, mileage is reimbursed at IRS

rates currently in effect, in addition to parking fees, bridge and road tolls, which are also reimbursable.

- Unless an alternative is proposed by a department and acceptable to Accounts Payable, expenses for approved use of a private vehicle should be submitted with other expenses associated with attendance at an authorized event or meeting on the Statement of Expense.

4. **Rental Vehicle** charges may be reimbursed under this provision with Department Director approval. Rental fees, receipted fuel expenses, and authorized parking fees, **bridge and road tolls will be reimbursed.**
5. **Air/Train** fares for reimbursement under this policy should be the most economical and reasonable amount available after the Attendance and Travel Request is approved.
6. **Travel to/from Airports: Employees will be reimbursed for the most economical and** appropriate means; if there's any question about this, obtain department approval before incurring the expense.
7. **Taxi or Shuttle** fares may be reimbursed with receipts.

C. **Lodging:** Cost of accommodations will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay.

1. When travel status is more than twelve (12) hours; or when the location is more than 50 miles from the employee's worksite and residence based on odometer, MapQuest or other reliable documentation; or when an event begins before 8:00am or ends after 5:00pm and a documented evening event requires the employee's attendance.
2. If lodging is associated with a conference, employees should register in a timely manner to take advantage of discounts or conference rates. Lodging expenses that exceed the group rate published by the conference sponsor must be approved by an appropriate, designated authority.
3. For non-conference lodging, travelers must request government rates, when available and must be authorized by Department Director.
4. Costs to upgrade rooms from the basic accommodations provided are not reimbursable, unless authorized by the Department Director.

D. **Meals: Meals are reimbursable only if travel status is over twelve hours or requires overnight lodging.**

1. **Meal expenses**, including non-alcoholic beverages, tax, and tips, are reimbursable up to a total per diem of $51: the amounts per meal are $10 breakfast; $15 lunch; $26 dinner; and receipts are not required. Expenses above the authorized amounts are the responsibility of the employee.
2. **Breakfast &/or evening meetings with meals**, which are scheduled before conferences or meetings commence, or after they adjourn, and that require the employee's attendance, will be considered for reimbursement when

documentation is submitted reflecting the requirement of the employee's attendance for the meeting and location.

3. **Meals included with registration or lodging that are taken at additional expense** will only be considered for reimbursement at the authorized per diem by approval of the Department Director when documentation is submitted reflecting the necessity of this expense, such as:
4. **Meals during approved travel time** to/from an event or meeting destination may be reimbursable with approval by the employee's Department Director, at the authorized amount for the individual meal(s) (see Meal expenses, above).
5. **NOTE:** Business meals with other employees, commissioners or elected officials of the City of Berkeley are specifically NOT reimbursable. Exceptions for Mayor and Council must be reviewed and approved by the City Auditor. City funds may also NOT be used for expenses related to holiday activities or other office parties or events, unless exempted by AR 3.3.

E. **Other Travel Related Expenses:** Expenses for which City staff or officials receive reimbursement from another agency are not reimbursable.

IV. PAYMENTS BY CHECK USING A PURCHASE ORDER

Generally, General Services – Procurement will process a PO within three working days, and a check could be issued in the next AP check run. It is the department responsibility to notify Procurement staff when the requisition is approved to ensure timely processing of the PO in order to issue the check promptly. Departments may have internal procedures that require additional time, and employees are expected to familiarize themselves with these internal deadlines.

A. Expenses for registration should be paid by check using a Purchase Order (PO). This includes online registration when "pay by check" is an option.

B. Use of an employee's credit card or personal check for registration is only permitted and eligible for reimbursement when time does not permit issuing a City check for payment, and is approved by the Department Director.

C. Resolution No. 66,295 or Resolution No. 63,413 governs any exceptions for Mayor and Council, or for the Rent Stabilization Board or Board of Library Trustees.

D. Expenses for accommodations, if lodging is included in the event package, should be paid with the registration fee using a Purchase Order (PO).

V. ADVANCE PAYMENTS & RECONCILIATION

An approved A&T Request is required for any request for an advance. Advances are extended only to employees in classifications that are not included on the list of **Classifications NOT eligible for advances**. Advances are limited to approved air/train fare and lodging only.

In addition:

- Registration or meals, and other transportation expenses may not be advanced to any employee.
- Advances to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.
- Departments must maintain a Tracking Worksheet that documents employees' advance requests and reconciliations. These Worksheets must be submitted to the Auditor's Office by the 10th working day of each calendar quarter (January, April, July, October), along with copies of correspondence to those employees who have advance reconciliations outstanding. The Auditor's Office will review departmental travel advance worksheets on a sample basis.
- If an advance is issued to an employee and the employee does not attend the event, whether due to personal circumstances, the event being cancelled, or the City intervened to cancel the employee's attendance, the employee must seek recovery of charges and remit the full refunded amount to the City.

A. Requesting an Advance

1. Requests for an advance must be submitted to Finance – Accounts Payable at least 10 working days before the event start date. Employees are expected to familiarize themselves with any additional internal deadlines or procedures their departments may require.
2. Requests for an advance must include:
3. Approved Attendance and Travel Request, with documentation showing dates and time, and rates offered for travel and accommodations, including meals provided with the event.
4. Completed FN-024 Payment Voucher (current version on Groupware) with required signatures of approval and all specified back-up documentation. See AR 3.14 for details.

B. Reconciling an Advance

1. Each travel advance must be reconciled before an employee can request another; employees are not eligible for multiple advances.
2. Attendance must be documented in the form of a receipt, sign in sheet, or certificate of attendance.
3. Employees must submit a Statement of Expense and receipts to appropriate department staff within 60 calendar days of conclusion of the event (30 days for Council/Commission, unless revised). Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred. If an employee fails to reconcile an advance within this timeframe, the City may take disciplinary action.

4. When an advance exceeds the expenses incurred, the employee is responsible for paying the difference by cash or check payable to the City of Berkeley for the balance at the time of reconciliation. Payment is submitted to the City Treasury and a copy of the CR edit report must be attached to the employee's Statement of Expense, in addition to all required original receipts.
5. When an advance is less than the expenses incurred, departments submit an FN-024 Payment Voucher payable to the employee for the difference, along with the employee's Statement of Expense and original receipts for expenses incurred.

VI. EXPENSE REIMBURSEMENT

See Allowable Expenses, above, for expenses that qualify for reimbursement, and the acceptable rates and limitations for those expenses. To obtain reimbursement of approved expenses incurred:

A. Employees must submit a completed FN-024 Payment Voucher, and Statement of Expense, and receipts to appropriate department staff within 60 calendar days after conclusion of the event. Statement of Expense forms and receipts submitted after this date may not be processed, and the employee assumes full, personal responsibility for the costs she/he incurred.

B. Reimbursements to an employee are restricted to expenses for that employee only – they may not cover the expenses of another employee.

C. Tips, except where documented, are not reimbursable.

D. Reimbursements are processed by FN-024 Payment Voucher (see AR 3.14) and must include:

1. Authorized signature/s (see AR 3.12).
2. Attendance and Travel Request approved by Supervisor &/or Department Director.
3. Documentation of attendance at the event or meeting (receipt, certificate, sign-in sheet).
4. Statement of Expense, completed with all required original receipts.
5. Auto Record for Mileage Reimbursement, if use of a private vehicle was authorized (see AR 7.2 for details and instructions) and these are the only expenses for reimbursement associated with the event.

VII. OTHER EXCEPTIONS

Any exception not already identified within other sections of this AR must be submitted to, and approved by the employee's Department Director. For Mayor, Council, Legislative Assistants, Rent Stabilization Board or Board of Library Trustees, exceptions must be approved as set forth in the appropriate Resolution.

Employees may request an exception to the reimbursement rules when original receipts, or other proof of payment such as a canceled check, cannot be provided to verify expenses. The Supervisor and Department Director (or designee) must approve requests for an exception that require the "Approval of Payment Exception" portion of the Statement of Expense and state the necessity for the exception. In addition, the Finance Director must also approve any payment exceptions.

VIII. DEFINITIONS (related to Attendance at Conferences, Workshops, Training, Seminars, Meetings)

Advance: Payment to an employee with an approved Attendance & Travel Request to purchase air/train travel and qualifying lodging reservations and incur expenses associated with attending the forthcoming event or meeting. See procedures for Requesting an Advance, and Reconciling an Advance.

Event: Conference: A gathering of persons associated with a professional, membership or support organization for discussing matters of common concern, which may include presentations, programs and exhibits related to municipal government &/or related functions.

Event: Workshop, Training Session, or Seminar: A usually brief intensive educational program for a relatively small group of people that focuses on techniques and skills in a particular field.

Meeting: Non-Routine Meeting: A formally arranged gathering for a common purpose that the City will derive a specific benefit from staff attendance.

Meeting: Routine or Recurring Meeting: A gathering that occurs in predictable intervals for a common purpose, where attendance is part of the employee's usual role and responsibilities.

Overnight Stay: Out-of-town accommodations (room and specified meals) required for an employee to attend an approved event or eligible meeting (see Allowable Expenses for details).

Payment Documentation: Documentation is required to provide tangible proof of payment for approved goods or services, and usually specifies: issuer and receiver of receipt; date; purpose or commodity; and dollar amount of the expense. Acceptable back-up for reimbursable expenses includes: original receipts, cancelled checks (copies of front and back), proof of credit card charge and payment (receipt and copy of statement), and printed online payment confirmation with name and amount. Photocopies of receipts are not acceptable.

Point of Origin: Location, if other than Worksite, from which authorized travel may originate or to which travel may conclude, related to attendance at an approved event and calculation of expenses for reimbursement.

Worksite: Main office or work location where an employee usually performs her/his regular job duties with the City of Berkeley.

IX. ATTACHMENTS/LINKS

A. Classifications NOT eligible for advances
B. Resolution 66,295 (Mayor/Council Departments)
C. Resolution 63,413 (Rent Board/Library Trustees)
D. Attendance & Travel Request
E. Statement of Expense
F. AR 7.2 Use of Private Vehicles & Mileage Reimbursement
G. Auto Record for Mileage Reimbursement
H. FN-024 Payment Voucher

RESPONSIBLE DEPARTMENT: **Finance Department** **TO BE REVIEWED/REVISED:** Every year	Approved by: Finance Director D. Williams-Ridley City Manager

Attachment A

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1350	M	Accounting Manager
1317	M	Animal Services Manager
1213	Z1	Assistant City Attorney
1118	Z1	Assistant City Manager
8174	Z1	Assistant Fire Chief
1801	Z1	Assistant to the City Manager
1301	Z1	Audit Manager
1323	Z1	Budget Manager
1306	M	Building and Safety Manager
1320	Z1	Capital Improvement Programs Manager
1107	Z1	City Attorney
1102	Z1	City Auditor
1120	Z1	City Clerk
1101	Z1	City Manager
1315	M	Customer Services Manager
2303	Z2	Deputy City Attorney II
2311	Z2	Deputy City Attorney III
1366	Z1	Deputy City Auditor for Payroll Mgmt.
1219	Z1	Deputy City Clerk
1103	Z1	Deputy City Manager
1227	Z1	Deputy Director of Finance
1229	Z1	Deputy Director of Health & Human Services
1211	Z1	Deputy Director of Library Services
1228	Z1	Deputy Director of Parks, Recreation & Waterfront
1230	Z1	Deputy Director of Planning
1205	Z1	Deputy Director of Public Works
1209	Z1	Deputy Director of Public Works (Reg)
1204	Z1	Deputy Fire Chief
8182	B	Deputy Fire Marshal EMT
1203	Z1	Deputy Police Chief
1123	Z1	Director of Community Development
1104	Z1	Director of Finance
1125	Z1	Director of Health and Human Services
1126	Z1	Director of Housing
1108	Z1	Director of Human Resources
1127	Z1	Director of Information Technology
1115	Z1	Director of Library Services
1112	Z1	Director of Parks, Recreation & Waterfront
1124	Z1	Director of Planning
1111	Z1	Director of Public Works
1374	Z1	Economic Development Manager
2923	M	Economic Development Project Mgr.
1417	Z1	Emergency Services Manager
1402	Z1	Employee Relations Officer
1426	M	Energy Officer
1348	M	Equipment Superintendent
1121	Z5	Executive Director of Rent Board
1344	M	Facilities Maintenance Superintendent
8155	B	Fire Apparatus Operator EMT
8167	B	Fire Captain EMT
1105	Z1	Fire Chief
8158	B	Fire Lieutenant EMT
8164	B	Fire Lieutenant Training EMT
8160	B	Fire Prevention Inspector I EMT
8161	B	Fire Prevention Inspector II EMT
1418	Z1	Fire Prevention Manager
1321	M	General Services Manager
1377	M	Hazardous Materials Manager
1223	Z1	Health Officer
1224	Z1	Health Officer (Cert)
1363	M	Housing Authority Manager
1352	M	Housing Services Manager
1380	Z1	Human Resources Manager
1221	Z1	Information Systems Manager
1354	M	Land Use Planning Manager
1803	Z5	Library Building Project Manager
1466	Z2	Library Financial Manager
1465	Z5	Library Network Administrator
1373	M	Manager of Economic Development
1310	M	Manager of Engineering
1368	M	Manager of Environmental Health
1360	M	Manager of Health Promotion
1339	M	Manager of Mental Health Services
1362	M	Manager of Program Planning and Administration
8186	Z1	Paramedic Program Supervisor
8111	B	Paramedic Supervisor I
8113	B	Paramedic Supervisor II
1327	M	Parking Services Manager
1332	M	Parks Superintendent
1326	M	Planning Manager

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1307	M	Disability Programs Manager
8148	E	Police Captain
1110	Z1	Police Chief
8145	F	Police Inspector
8147	F	Police Lieutenant
1473	Z1	Police Review Commission Officer
8142	F	Police Sergeant
2458	Z1	Psychiatrist Supervisor
1322	M	Public Safety Business Manager
1312	M	Public Works Maintenance Superintendent
1475	M	Real Property Administrator
2890	M	Recycling Program Manager

JOB CODE	REP UNIT	CLASSIFICATION TITLES INELIGIBLE FOR A TRAVEL ADVANCE
1353	M	Revenue Collection Manager
2716	Z2	Senior Human Resources Analyst
1325	M	Seniors Program Administrator
1314	M	Solid Waste and Recycling Manager
2316	Z2	Staff Attorney II
2317	Z2	Staff Attorney III
1404	M	Supervising Civil Engineer
1476	M	Supervising Systems Analyst
1340	M	Supervising Traffic Engineer
2712	Z2	Training Officer
1369	M	Waterfront Manager

Attachment B

RESOLUTION NO. 66,295–N.S.

CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, adopted in 2005 and codified as Government Code Sections 53232, et. seq., requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses; and

WHEREAS, on July 25, 2006, the City Council adopted Resolution No. 63,412-N.S. to establish the expenditure and reimbursement policy required by state law; and

WHEREAS, the Councilmember Office Budget Relinquishment and Grant Policy generally falls under the purview of the existing City Expenditures and Expense Reimbursement for Mayor and Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A is incorporated by reference into the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

BE IT FURTHER RESOLVED that Resolution No. 63,412–N.S. and any amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that the policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I. City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product, good, or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under "Authorized Activities."

A. Authorized Activities.

Travel, meals and/or other food, incidentals, and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business;
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulated municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure. The policy for relinquishments and grants from Councilmember office budgets is enumerated in Exhibit A.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related

expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy. Reimbursement for travel must not exceed the rates available through the League program as published by the California Department of General Services.
4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.
5. **Car Rental.** Rental rates that are equal or less than those published by the California Department of General Services shall be considered the most economical and reasonable for purposes of reimbursement under this policy.
6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than

the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rates. If lodging at the conference rate is not available, reimbursement will be based on either the published conference rate or government rates as published by the Federal General Services Agency, whichever is greater. Where no conference rate is published, the reimbursement will be based on the government rate or the median rate listed on priceline.com or similar service, whichever is greater.
8. **Meals.** Meal expenses and associated gratuities will be reimbursed at the rate set forth in Administrative Regulation 3.9.
9. **Telephone/Fax/Cellular.** Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.
10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.
11. **Other Travel Related Expenses.** Baggage handling fees of up to $1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.
12. **Miscellaneous Office Products.** Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy for Airfare and Hotel Only (per A.R, 3.9)

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.
2. Officials must submit their Statement of Expense reports to the Auditor's Office within 60 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under $5 are not required.
3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification by the City Auditor of compliance with this policy.

G. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

H. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

I. Violation of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

1. loss of reimbursement privileges;
2. a demand for restitution to the City;
3. the City's reporting the expenses as income to the elected official to state and federal tax authorities;
4. civil penalties of up to $1,000 per day and three times the value of the resources used; and
5. prosecution for misuse of public resources.

* * * * * *

The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Tom Bates, Mayor

Attest: Mark Numainville, CMC, City Clerk

Exhibit A

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function *as a municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

> The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
> (*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

> The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
> (*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be "pre-approved" each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (*e.g.*, the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (*e.g.*, Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (*e.g.*, affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.

Attachment C

RESOLUTION NO. 63,413–N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law, requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorize their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members' performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

TRAVEL AND TRAINING REIMBURSEMENT FOR BOARDS/COMMISSIONS

A. Authorized Activities.

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children or pet-related expenses;

4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;

5. Alcoholic beverages;

6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and

7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. **Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.

2. **Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.

3. **Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.

4. **Automobile.** Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.

5. **Car Rental.** Rental rates that are equal or less than those available through the State of California's website (http;//www.catravelsmart.com/default.htm) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. **Taxis/Shuttles.** Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. **Lodging.** Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.

8. **Meals.** Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at **www.irs.gov** or **www.policyworks.gov/perdiem**).

9. **Telephone/Fax/Cellular.** Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.

10. **Airport Parking.** Airport parking must be used for travel exceeding 24-hours.

11. **Other Travel Related Expenses.** Baggage handling fees of up to $1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2006 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Tom Bates, Mayor

Attest: Sherry M. Kelly, City Clerk

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

A.R. NUMBER: 3.14
ORIGINAL DATE: 03/01/96
POSTING DATE: 08/30/07
PAGE 1 of 7 PAGES

SUBJECT: FN-024 Voucher Processing

PURPOSE

This AR establishes criteria and procedures for payments using an FN-024.

POLICY

It is the policy of the City Manager that an FN-024 Payment Vouchers (see Groupware – Finance) is limited to making payments for the following purposes.

A. City Employees, Mayor and Councilmembers, Commissioners[1], or Library Trustees:
   1. Employee travel advances and reimbursements (see AR 3.9 and forms in Groupware – Finance)
   2. Employee reimbursements for authorized use of a private vehicle (see AR 7.2 &/or AR 3.19 in process and form Auto Record for Mileage Reimbursement published in Groupware – Finance)
   3. Mayor and Council reimbursement for authorized expenses[2] (see Resolution 63,412-NS)
   4. Commissioner and Library Trustee[3] payments Note (see AR 3.2 for eligibility criteria; and Resolution 63,413-NS)

B. Refunds

C. Other Designated Payments:
   1. State and Federal taxes
   2. Loan repayment
   3. Various payments associated with payroll and employee benefits
   4. Certain 1-time miscellaneous items under $5,000
   5. Police Department Special Enforcement Unit Cash Fund (Special Investigative Bureau/SIB)*

[1] "Commissioner" includes Rent Stabilization Board Commissioners for reimbursements or other approved payments.

[2] Requires review by the City Auditor; SIB reimbursement payment also requires approval by City Auditor.

[3] These payments to Commissioners (not including Rent Board) and Library Trustees, are for "... authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria ..." See AR 3.2 for complete details.

All other goods and services, including subscriptions and membership dues, must be paid by Purchase Order (see AR 3.4 and the online Purchasing Manual). The Director of Finance must approve any exceptions before purchases are made on behalf of the City.

See AR 3.3, Petty Cash Accounts and forms in Groupware – Finance, for reimbursement for purchases $50 and under.

PROCEDURE

These steps take you through how to make correct entries and complete an FN-024 Payment Voucher; note that WORDS PRINTED LIKE THIS designate a field for your entries on the Voucher form.

- FN-024 Payments
- Payments to City Employees, Elected Officials, or Qualifying Commissioners
- Payments for Refunds
- Other Designated Payments
- Additional Instructions for all FN-024 Payment Vouchers
- Check Printing & Disbursement
- Related items on Groupware – Finance

FN-024 Payments

Use FUND$ GMBA Master Inquiry [FUND$ > 7 > 1 > 2] to confirm all vendor information, including the designated Name on Checks field displayed at the bottom of the FUND$ screen.

1. For an existing vendor/payee: if there are any differences between the data in GMBA Vendor Master file and the remittance information: please notify Finance – General Services: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and use this form to update/correct the vendor information, and submit it to General Services.

2. For any new vendor or payee: an original and signed Vendor Information Application and/or W-9 (as applicable for vendor/payment) must be on file with Finance – General Services. In the interim, fax a copy to General Services; then attach a copy of completed Vendor Application and/or W-9 to the FN-024; the signed original/s must be mailed within 3 days.

   a. Vendor Information Application: go to Groupware > Finance > Procurement Materials & Forms: Vendor Information Application, and have the vendor/payee complete this form.

   b. Tax Payer ID & Certification Form W-9, or go to http://www.irs.gov/pub/irs-pdf/fw9.pdf.

Payments to City Employees, Elected Officials, Qualifying Commissioners, or Library Trustees

A. Vendor Information

1. VENDOR NAME: enter the name of individual, followed by "EMPLOYEE," "MAYOR," "COUNCIL," "COMMISSIONER," "RENT BOARD" or "LIBRARY TRUSTEE," as applicable, and highlight the individual's designation.

2. VENDOR NO.: enter the number for the individual, as found in FUND$ GMBA Vendor Master Inquiry.
3. ADDRESS: enter the department and division of payee or Commissioner's mailing address.
4. Payments to employees, Mayor and Council must be picked up from AP: complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

   Payments to qualifying Commissioners[4] or Library trustees will be mailed. If payment will be picked up rather than mailed out, complete the line for Pick Up Check at AP as instructed under the section Check Printing & Disbursement, below.

NOTE: FN-024s for Mayor/Council official reimbursements, qualifying Commissioner stipends, and Library Trustees must be reviewed by the City Auditor prior to submitting to Accounts Payable for payment processing. SIB payments must be reviewed and approved by the City Auditor.

B. Description & Purpose (FUND$ limits this to approximately 25 characters per description field)
   1. DESCRIPTION 1: enter conference name, period/s of mileage reimbursement, or Board or Commission meeting date/s.
   2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information
   1. INVOICE #: enter conference invoice # or date/s. (FUND$ limit of approximately 15 characters)
   2. INVOICE DATE: for advances or reimbursements to an employee, Mayor, Councilmember or Commissioner*, enter the date of the conference or the last date of the reimbursement period.

Payments for Refunds

A. Vendor Information
   1. VENDOR NAME: enter payee name followed by "MISC REFUND" and highlight it.
   2. VENDOR NO.: enter the assigned miscellaneous vendor number.
   3. ADDRESS: enter the payee mailing address.
   4. Requests for refunds that include deductions for fees should clearly state the original amount paid to the City, the reason for the deduction, and the balance for the refund owed to payee.
   5. Original receipts must be submitted for a refund. If an original receipt is not available, a completed and signed Customer Request for Refund Without Receipt must be attached.

B. Description & Purpose (FUND$ limits this to approximately 25 characters per description field)
   1. DESCRIPTION 1: enter nature of purchase or service.

[4] Including members of the Rent Stabilization Board for reimbursements or other approved payments.

2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for refund is being made.

C. Invoice Information

1. INVOICE #: for refunds, use the receipt number. (FUND$ limit of approximately 15 characters)
2. INVOICE Date: for refunds, enter the original payment date from the original receipt.

Other Designated Payments (see list under Policy on 1st page)

A. Vendor Information

FIRST – For all FN-024 Payments: follow instructions for the initial procedure, above. Then:

1. VENDOR NAME: enter the payee name as it appears in FUND$ GMBA Master Inquiry.
2. VENDOR NO.: enter the vendor # as it appears in FUND$ GMBA Master Inquiry.
3. ADDRESS: when correct information is confirmed or corrected in GMBA, this can be blank.

B. Description & Purpose (FUND$ limits these to approximately 25 characters per description field)

1. DESCRIPTION 1: enter nature of purchase or service.
2. DESCRIPTION 2: enter other applicable information, i.e., the reason a request for payment is being made on an FN-024, rather than a Purchase Order.

C. Invoice Information

1. INVOICE #: enter exactly as it appears on the vendor invoice, with dashes, hyphens, etc; if there is no invoice number, use the statement date as the invoice number (FUND$ has a limit of approximately 15 characters).
2. INVOICE Date: enter the invoice or statement date.

Additional Instructions for all FN-024 Payment Vouchers

A. Account Codes & Project Code

1. Prior to submitting an FN-024, departments must confirm the account codes and project code used are active, correct for the expenditure, and have sufficient, unencumbered balances.
2. If needed, departments must process any budget adjustments prior to submitting the FN-024.
3. Accounts Payable will return FN-024s to departments for inactive budget or project codes, and/or improper budget codes, or insufficient funds.

B. Authorized Signatures

Each department must complete an Authorized Signatures Card with the designated staff authorized to approve invoices and FN-024s (see AR 3.12 and the Authorized Signatures Card form on Groupware – Finance). When there are changes in personnel authorized to approve an FN-024, the Authorized Signatures Card must be updated with Accounts Payable. 1. PREPARED BY: signature of the person responsible for completing the FN-024.

2. AUTHORIZED DEPT SIGNATURE: must be signed by authorized personnel, as reflected by the Authorized Signatures Card currently on file with Accounts Payable. FN-024s signed by unauthorized personnel will be returned.

C. Limitations & Justification for 1-time Miscellaneous Items

1. A 1-time request for payment made on an FN-024, which would otherwise be made using a Purchase Order, means 1-time ever – not once a year or once-in-awhile. 1-time requests are only allowed for payments less than $5,000.
2. If a request for payment is being made on an FN-024 that would otherwise be made using a Purchase Order, there must be a justification provided on, or attached to, the FN-024. The Finance Director must approve the justification for use of an FN-024 prior to it being submitted for payment.

D. Compiling the FN-024 Package: Form & Attachments

1. Place the FN-024 on top, with all required documentation stapled to the upper left-hand corner.
2. If there is documentation required to be included with payment to the vendor, you must provide copies of this documentation, along with an envelope or mailing label addressed to the vendor. This is in addition to documentation required for Accounts Payable. Attach the documentation (duplicate copies and/or mailing stubs) to the upper right-hand corner.
3. For payment of two or more items on a single FN-024, list each item separately, with its corresponding amount and account codes, on the FN-024. Attach an adding machine tape that totals the original items, and balances to the total on the FN-024.
4. Employee reimbursements for authorized use of a private vehicle require an attached corresponding Auto Record for Mileage Reimbursement, available in Groupware. In addition, attach an adding machine tape totaling and balancing to the FN-024 for the period submitted.

Check Printing & Disbursement

1. Checks are usually printed weekly on Thursdays. FN-024s received in Accounts Payable by 5:00pm Monday will be processed for printing that week. Changes to this schedule will be emailed to departmental AP processing personnel and/or posted on the City's intranet.
2. Vendor checks will be mailed; see Compiling the FN-024 Package: Form & Attachments for specific requirements. If payment will be picked up rather than mailed, see instructions below.
3. Employee, Mayor, and Council checks will be available to pick up at Accounts Payable after 4:00pm on Thursday.
4. Pick Up Check at Accounts Payable: If it's been indicated on the FN-024 that a designated person will pick up the check, a City employee may sign for and pick up vendor checks. However, vendors may not pick up checks themselves from Finance – Accounts Payable. If payment will be picked up by an employee, rather than mailed out, complete the line in the upper right hand side of the FN-024 for Pick Up Check at AP: enter and highlight the name of authorized person the payment may be released to. This employee will be notified by email when the check is available to be picked up from Finance – Accounts Payable.

EXCEPTIONS

Any exceptions to this AR must be approved in writing by the Director of Finance.

RESPONSIBLE DEPARTMENT: **Finance Department** **TO BE REVIEWED/REVISED:** Every year	Approved by: Robert Jacks Finance Director City Manager

The following items are related to this AR, and can be found on Groupware – Finance:

1. FN-024 Payment Voucher – Excel file
2. FN-024 Payment Voucher – PDF file
3. AR 3.12 Authorized Signatures for Invoices and FN-024 Payment Vouchers
4. Authorized Signatures Card
5. Vendor Information Application
6. Tax Payer ID & Certification Form W-9
7. Customer Request for Refund Without Receipt
8. Attendance & Travel Expense Forms – web page with links to individual forms

Fair Campaign Practices Commission

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission

Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

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).

POLICY COMMITTEE RECOMMENDATION
On January 25, 2021, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to refer the item to the Council with a qualified Positive Recommendation to take no action on the item, but to refer the concepts and materials to the Agenda & Rules Committee for discussion with representatives of the commission on the item entitled “Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)”. Vote: All Ayes.

SUMMARY
Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

Action: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.
Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O’Donnell (excused).

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

> Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Definition of an Officeholder Account

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

campaign contributions or to pay “campaign expenses,” BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda’s conclusions remain valid and are still controlling guidance.

Contributions to Officeholder Accounts

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official’s Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

Expenditures from Officeholder Accounts

Except for the restriction that Officeholder Account funds cannot be used for “campaign expenses,” BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a “campaign expense,” would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent’s name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not “campaign expenses,” also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.[1] Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

> Part 8 - OFFICEHOLDER ACCOUNTS
> 12.06.810 - Officeholder account prohibited.
> No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

2.12.157 Officeholder Account

"Officeholder Account" means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

2.12.441 Officeholder account prohibited

A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

[1] Under state law applicable to state elected officials, officeholders may use campaign contributions for "expenses that are associated with holding office." (Govt. Code, § 89510.) To qualify, expenditures must be "reasonably related to a legislative or governmental purpose." (*Id.*, § 89512.) "Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose." (*Ibid.*)

C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

ENVIRONMENTAL SUSTAINABILITY
There are no identified environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION
This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED
A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER
The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON
Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:
1: Proposed Ordinance
2: Government Code section 85316
3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

ORDINANCE NO. ##,###-N.S.

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

BMC 2.12.157 Officeholder account

"Officeholder Account" means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

BMC 2.12.441 Officeholder account prohibited

A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
C. This provision does not affect a candidate's ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

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

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GOVERNMENT CODE - GOV

TITLE 9. POLITICAL REFORM [81000 - 91014] *(Title 9 added June 4, 1974, by initiative Proposition 9.)*

CHAPTER 5. Limitations on Contributions [85100 - 85802] *(Chapter 5 added June 7, 1988, by initiative Proposition 73.)*

ARTICLE 3. Contribution Limitations [85300 - 85321] *(Article 3 added June 7, 1988, by initiative Proposition 73.)*

85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars ($3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars ($5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars ($20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars ($50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars ($100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars ($200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars ($100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18531.62. Elected State Officeholder Bank Accounts.

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives $2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

HISTORY

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).

Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

FROM: MANUELA ALBUQUERQUE, City Attorney
By: CAMILLE COUREY, Deputy City Attorney

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

ANALYSIS:

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.[1] For similar reasons, the BERA does not

[1] However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

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E-mail: attorney@ci.berkeley.ca.us • TDD: 510 644-6915

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12..050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aide of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.[2] Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aide of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the $250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: II.E.1. and III.G.

CC:bl

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[2] Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 30, 2020**.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: January 24, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code Section 2.12.051

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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 January 30, 2020.

_____
Mark Numainville, City Clerk
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Open Government Commission

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Brad Smith, Chair, Open Government Commission

Subject: Relinquishments and grants from Councilmembers' office budgets

RECOMMENDATION

Adopt a Resolution creating a temporary advisory committee consisting of three (3) members each of the City Council and the Open Government Commission ("OGC") to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

POLICY COMMITTEE RECOMMENDATION

On January 25, 2021, the Agenda and Rules Committee adopted the following action: M/S/C (Arreguin/Hahn) to refer the item to the Council with a qualified Positive Recommendation to take no action on the item, but to designate the Agenda & Rules Committee as the entity to engage with the commission on the item entitled "Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)". Vote: All Ayes

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The issue of D-13 accounts (Council Budget Funds) being used for purposes other than office expenses has been raised at the OGC. While commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may provide unfair advantage to an incumbent.

The two main concerns identified by some commissioners with the current practice are:

1. Councilmembers are able to initiate grants to organizations, at their discretion, which may raise their public profile.

2. Attaching the name of a Councilmember to a grant from the City of Berkeley may confer an advantage for the incumbent over would-be challengers.

The current practice was established in the early 2000's because councilmembers were granting public money to individuals and organizations, without approval of the Council. This led to a concern about the potential for corruption and favoritism. The City Attorney established the existing system, though because the councilmembers' names are attached to the grants, some concern remains.

From recent discussion at OGC, commissioners are in general agreement that ending the practice of attaching the name of a councilmember to a grant will help to alleviate the main concerns: 1 & 2 above. At the OGC's April 23, 2020 meeting, commissioners unanimously approved forwarding a recommendation to Council to not include the name of an individual councilmember attached to a discretionary grant.

A review of the grants and relinquishment of funds from city council members for 2019 amounts to $30,130. These are funds that could have been used for office, travel (on city business) and other expenses.

Commission members have discussed recommending to Council for consideration options to address the issue:

1. An amendment requiring that all disbursements from the General Fund be designated as coming from the Council as a whole, without individual names attached to the donations.

2. Create another account specifically for discretionary grants, without reducing the D-13 account budget, to allow Councilmembers to continue recommending a grant or donation to a particular organization, without an individual name attached to the donation.

3. Eliminate discretionary grants.

BACKGROUND
On May 21, 2020, the OGC directed four of its members to draft a proposed recommendation to Council related to relinquishment of Councilmembers' office budget funds.

On June 18, 2020, the OGC voted to present this recommendation to Council.

ENVIRONMENTAL SUSTAINABILITY
Not applicable.

RATIONALE FOR RECOMMENDATION
An advisory committee will enable collaborative discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

ALTERNATIVE ACTIONS CONSIDERED
The OGC has discussed recommending removal of councilmember names from office budget relinquishments, banning relinquishments for grants to organizations, and creating and funding a separate account for donations to organizations that Council would control, but which would not have councilmember names attached to it.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON
Brad Smith, Chair, Open Government Commission

Attachments:
1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION CREATING A TEMPORARY JOINT ADVISORY COMMITTEE TO REVIEW COUNCIL OFFICE BUDGET RELINQUISHMENTS AND GRANTS

WHEREAS, pursuant to Berkeley Municipal Code § 2.06.190.A.2, the Open Government Commission ("OGC" or "Commission") may "advise the City Council as to any action or policy that it deems advisable to enhance open and effective government in Berkeley"; and

WHEREAS, while Commission members agree that it is admirable to donate to organizations that serve the City, some members feel the practice of using office budget funds for this purpose and attaching individual Councilmembers' names to the donation may raise the public profile of a Councilmember and provide unfair advantage to an incumbent; and

WHEREAS, the Commission has expressed a desire to work collaboratively with the City Council to consider recommendations governing grants made from relinquishments of funds from Councilmembers' office budgets.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that a temporary joint advisory committee consisting of three (3) members of the City Council and three (3) members of the Open Government Commission is hereby created to enable discussion between the Council and the OGC to make recommendations governing relinquishments and grants from Councilmembers' office budgets.

BE IT FURTHER RESOLVED that the City Council and the Open Government Commission each shall, as soon as practicable and by majority vote, appoint three members to the committee created by this resolution.

BE IT FUTHER RESOLVED that the committee created by this resolution shall hold its first meeting within 60 days of passage of this resolution and at that first meeting shall determine the need for any subsequent meetings and shall adopt a schedule for any such subsequent meetings.

Peace and Justice Commission

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Peace and Justice Commission

Subject: Opposition of New U.S. Base Construction in the Henoko-Oura Bay of Okinawa

RECOMMENDATION
Adopt a Resolution opposing new U.S. base construction in the Hemoko-Oura Bay of Okinawa.

FISCAL IMPACTS OF RECOMMENDATION
Minimal to negligible.

CURRENT SITUATION AND ITS EFFECTS
At its March 2, 2020 meeting, the Peace and Justice Commission took the following action:

Recommend to the City Council a resolution opposing new U.S. base construction in the Hemoko-Oura Bay of Okinawa.
M/S/C: Bohn/Meola
Ayes: al-Bazian, Askary, Bohn, Gussman, Lippman, Maran, Meola, Morizawa, Pancoast, Perry, Pierce, Rodriguez, Taplin, Tregub
Noes: None
Abstain: None
Absent: None

BACKGROUND
A new U.S. military base is being constructed in the Pacific Ocean, in Okinawa's Oura Bay[1] in the Henoko region of Okinawa. Oura Bay is one of the most biodiverse ecosystems on the planet with over 5,300 species and world-renowned coral reef systems. Fully 262 of the species in Oura Bay are endangered, including the dugong,[2] a medium-sized marine mammal, which has been closely monitored internationally by

[1] "We shall overcome (戦場ぬ止み Ikusaba Nu Tudumi)," Trailer, YouTube video, October 3, 2015, https://www.youtube.com/watch?v=FEc_D_meOBY&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=20&t=0s
[2] https://www.youtube.com/watch?v=jgJ46Gzkzfk&t=1s

environmental groups due to its diminishing numbers as well as its status as a designated of indigenous historical value.[3]

On August 21, 2017, the 9th Circuit U.S. Court of Appeals affirmed the right of American and Japanese conservation groups and Okinawan citizens to sue to compel the U.S. military to fully consider the impacts of a new U.S. military base in Okinawa, Japan.[4] The base would pave over some of the last remaining habitat for endangered Okinawa dugongs, ancient cultural icons for the Okinawan people. The lawsuit is part of a long-running controversy over the expansion of a U.S. Marine air base at Okinawa's Henoko Bay. The court remanded the case to the district court for further proceedings.[5]

On January 9, 2020, American conservation groups and residents of Okinawa filed the opening brief in an appeal of a court ruling allowing construction of a US Marine Corps air base in the Japanese island's coastal waters. The brief, filed in the 9th Circuit Court of Appeals in San Francisco, highlights the base's threat to the Okinawa dugong, a critically endangered marine mammal related to manatees. Building the base will involve filling in and paving over hundreds of acres of rich coral and seagrass habitat crucial to the last surviving Okinawa dugongs. The Turtle Island Restoration Network, The Center for Biological Diversity, and the Japanese co-plaintiffs are represented in the case by Earthjustice, which filed the appeal. The 9th Circuit ruled in 2017 that Okinawa residents deserved a full hearing on their concerns. "The Okinawa dugong, sea turtles, coral reefs, humans and the ocean environment need the U.S. justice system to guard our genuine national security by rejecting this ecologically horrendous project," said Todd Steiner, founder and executive director of Turtle Island Restoration Network, at the time.[6]
It is noteworthy that Okinawa has been forced to host almost 70% of U.S. military facilities in Japan[7] despite consisting only 0.6% of national land mass. Still, the Japanese government, in partnership with the U.S. government, continues building this U.S. base in the ocean – dropping concrete blocks on top of precious coral and

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[3] Expansion of US Military base puts endangered Henoko Bay Dugong at risk on Okinawa, Japan," May, 1, 2019 (last update), https://ejatlas.org/conflict/henoko-bay-dugong-or-us-base-for-okinawa

[4] Okinawa Dugong Lawsuit Judge asks why US govt did not consult with environmental experts and Okinawans about Landfill, Construction Impact on Okinawa Dugong Cultural Heritage," June 28, 2018, https://tenthousandthingsfromkyoto.blogspot.com/2018/06/okinawa-dugong-lawsuit-judge-asks-why.html

[5] Court Affirms Right to Sue U.S. Military Over New Base's Threats to Endangered Okinawa Dugong. *Rare Japanese Dugongs One Step Closer to Finally Getting Their Day in Court,* https://www.biologicaldiversity.org/news/press_releases/2017/okinawa-dugong-08-21-2017.php

[6] Court Affirms Right to Sue U.S. Military Over New Base's Threats to Endangered Okinawa Dugong. *Rare Japanese Dugongs One Step Closer to Finally Getting Their Day in Court,* https://www.biologicaldiversity.org/news/press_releases/2017/okinawa-dugong-08-21-2017.php and Dugong Defenders to Rally Today at S.F. Hearing on U.S. Airbase's Threat to Endangered Animals 2/3/2020)," https://biologicaldiversity.org/w/news/press-releases/dugong-defenders-to-rally-today-at-sf-hearing-on-us-airbases-threat-to-endangered-animals-2020-02-03/

[7]https://www.pref.okinawa.jp/site/chijiko/kichitai/documents/us%20military%20base%20issues%20in%20okinawa.pdf

suffocating the marine habitat with dirt and concrete – causing irreversible harm to the ecosystem. It is already adversely impacting the region; contributing to species collapse and furthering environmental damage already sustained from rapid climate change.[8]

The Okinawan people have exhausted all legal and peaceful means of opposing this new base from being forced upon them – from elders staging nonviolent protests and sit-ins to Okinawan governors challenging the Japanese government through the legal system, only to be disregarded in Tokyo and Washington, D.C.[9] Okinawan Diaspora members of Global Uchinanchu Alliance (GUA)[10] have come together to reach out for support in this international crisis. Most recently, the City of Berkeley has expressed its solidarity with the Okinawan people by passing a resolution in support of the immediate halting of new U.S. military base construction at Henoko, Okinawa on September 9, 2015.

In addition to environmental concerns, there are significant financial uncertainties associated with this project. Construction of the replacement facility in Okinawa for U.S. Marine Corps Air Station Futenma will take nearly twice as long and cost three times as much as the initial estimates. This makes it certain that shutting down Futenma will now be delayed into the 2030s at the earliest due to additional work to improve the soft ground on the seafloor in the site's offshore areas — which was found in a boring survey three years ago. The entire cost of the project will is estimated to balloon from the initial forecast of $350 billion to $930 billion.[11] The opportunity costs of this enormous outlay of taxpayer dollars are even more acute in the wake of the COVID-19 pandemic than ever before.

The construction of this base has been repeatedly opposed by the Okinawan people.[12] Most recently on February 24, 2019, over 70% of Okinawans voted in opposition to the construction of this U.S. Marine Corps base.[13]

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[8] On A Firm Foundation of Mayonnaise: Human and Natural Threats to the Construction of a New U.S. Base at Henoko, Okinawa," 3/15/18, https://apjjf.org/2018/10/Lummis.html

[9] Message to Obama from a Veteran in Okinawa," YouTube video, February 29, 2016, https://www.youtube.com/watch?v=6p5kXBod1gg&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=4&t=11s

[10] https://uchinanchu.com/

[11] Cost of Destructive U.S. Airbase Project in Japan Nearly Triples: Revised Estimate Sparks New Questions About Project That Threatens Okinawa Dugongs," https://www.commondreams.org/newswire/2020/01/06/cost-destructive-us-airbase-project-japan-nearly-triples

[12]https://www.youtube.com/watch?v=FEc_D_meOBY&list=PL55Jwk9JymqyuApWq7gi08uWQKyZhK3cH&index=20&t=0s

[13] https://www.reuters.com/article/us-japan-okinawa/japan-to-push-ahead-with-u-s-base-relocation-despite-okinawa-referendum-result-idUSKCN1QE06Q

ENVIRONMENTAL SUSTAINABILITY

While there may be no identifiable direct environmental impacts or opportunities associated with the subject of this report, this resolution is a statement against U.S. involvement in grave environmental destruction in the Pacific Ocean off the coast of Okinawa.

RATIONALE FOR RECOMMENDATION

While the Peace and Justice Commission recommends adopting the resolution for a number of reasons, environmental reasons are at the core of this recommendation. On January 21, 2020, the City Council, by a 4-0-5 vote, took no action on a previous version of this resolution.[14] It was noted at the time by some members of the City Council who abstained that a stronger environmental nexus was needed for them to consider supporting this resolution. This resolution is responsive to these concerns by highlighting the destructive environmental impacts of this project.

ALTERNATIVE ACTIONS CONSIDERED

The Peace and Justice Commission considered the alternative of not taking further action on this topic, but chose to address the concerns of these members by recommending a resolution with a more direct environmental nexus.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission
Melissa McDonough, Senior Management Analyst, City Manager's Office, 510-981-7402

Attachments:
1: Resolution
Exhibit A: Resolution Opposing New U.S. Base Construction in Henolo-Oura Bay of Okinawa

[14] https://www.cityofberkeley.info/Clerk/City_Council/2020/01_Jan/Documents/01-21_Annotated_Agenda_pdf.aspx

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

RESOLUTION OPPOSING NEW U.S. BASE CONSTRUCCTION IN HENOKO-OURA BAY OF OKINAWA

WHEREAS, he Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, a new U.S. military base is being constructed in the ocean of Oura Bay. This bay is in the Henoko region of Okinawa. It is one of the most bio-diverse ecosystems on the planet with over 5,300 species and world-renown coral reef systems. 262 of the species in Oura Bay are endangered, including the dugong which have been closely monitored internationally by environmental groups due to its diminishing numbers as well as its status as a designated a cultural property of indigenous historical value; and

WHEREAS, on August 21, 2017, the 9th Circuit U.S. Court of Appeals affirmed the right of American and Japanese conservation groups and Okinawan citizens to sue to compel the U.S. military to fully consider the impacts of a new U.S. military base in Okinawa, Japan. The base would pave over some of the last remaining habitat for endangered Okinawa dugongs, ancient cultural icons for the Okinawan people. The lawsuit is part of a long-running controversy over the expansion of a U.S. Marine air base at Okinawa's Henoko Bay. The court remanded the case to the district court for further proceedings; and

WHEREAS, on January 9, 2020, American conservation groups and residents of Okinawa filed the opening brief in an appeal of a court ruling allowing construction of a US Marine Corps air base in the Japanese island's coastal waters; and

WHEREAS, construction of the replacement facility in Okinawa for U.S. Marine Corps Air Station Futenma will take nearly twice as long and cost three times as much as the initial estimates. This makes it certain that shutting down Futenma will now be delayed into the 2030s at the earliest due to additional work to improve the soft ground on the seafloor in the site's offshore areas — which was found in a boring survey three years ago. The entire cost of the project will balloon from the initial forecast of $350 billion to $930 billion; and

WHEREAS, the construction of this base has been opposed by the Okinawan people repeatedly. Most recently on February 24, 2019, over 70% of Okinawans voted in opposition to the construction of this particular U.S. Marine Corps base outside of Camp Schwab. Still, the Japanese government, in partnership with the U.S. government, continues building this U.S. base in the ocean – dropping concrete blocks on top of precious coral and suffocating the marine habitat with dirt and concrete – causing irreversible harm to the ecosystem. It is already adversely impacting the region;

contributing to species collapse and furthering environmental damage already sustained from rapid climate change; and

WHEREAS, already, Okinawa has been forced to host almost 70% of U.S. military facilities in Japan despite consisting only 0.6% of national landmass; and

WHEREAS, this treatment of Okinawa as a colonial military outpost has continued since the Japanese annexation of the once sovereign nation of the Ryūkyū Kingdom. Then during WWII, Okinawan land was destroyed in a war between U.S. and Japan, taking almost a third of the entire Okinawan population. From there, the U.S. construction of military bases began against the will of the Okinawan people and continues today; and

WHEREAS, the Okinawan people have exhausted all legal and peaceful means of opposing this new base from being forced upon them – from elders staging nonviolent protests and sit-ins to Okinawan governors challenging the Japanese government through the legal system, only to be disregarded in Tokyo and Washington, D.C. Okinawan Diaspora members of Global Uchinanchu Alliance (GUA) have come together to reach out for support in this international crisis; and

WHEREAS, the City of Berkeley has expressed its solidarity with the Okinawan people by passing a resolution in support of the immediate halting of new U.S. military base construction at Henoko, Okinawa, passed through the Berkeley City Council on September 9, 2015.

THEREFORE BE IT RESOLVED that the Council of the City of Berkeley directs the City Clerk to send the following message to the U.S. House Armed Services Committee:
The City of Berkeley, California stands in solidarity with the people of Okinawa in demanding the immediate and complete halt of the U.S. Marine Corps base construction in Henoko, Okinawa.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley asks the City Clerk to send a copy of this resolution to Representative Barbara Lee and Senator Dianne Feinstein.

Cheryl Davila
Councilmember
District 2

REVISED AGENDA MATERIAL

Meeting Date: November 23, 2020

Item: Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency

Subject: Resolution furthering Climate action approaches by: creating a just transition commission, tasking all commissions for climate action policies, forming a regional task force, forming an trans-national climate task force among governments who have declared a climate emergency, drafting ordinances to make products sold in Berkeley exclusively circular, advocating for bio-regional sustainability and governance in the bay area, the city will adopt the Doughnut Economics methodology for sustainability,

Submitted by: Councilmember Cheryl Davila

Revisions: Removed (5) Therefore Be It Resolved clauses: in regards to circular economy therefore clause changed the date from 2025 to 2030 and specified that this applies to non-critical infrastructure and consumer items; added contra costa county to list of governments who have declared a climate emergency; in therefor clause concerning regional collaboration added joint powers authority as focus of regional climate collaboration; added language “commit to be regenerative” and improve public and environmental health; changed language to shall from will in regards to adopting doughnut economics, changed the directive to the city manager to draft ordinances concerning products sold in Berkeley to allow more discretion in light of financial impact on residents and to exclude medical devices, and critical non-replaceable products“

Item updated to: 1. The terms Just Transition and Regenerative Economy refer to specific frameworks and definitions and are thus capitalized; 2. The city hosts a variety of businesses and services which sell products which contribute to environmental degradation and negative health impacts. Directing the city manager to develop a series of ordinances to remove such products from the city by a certain date allows the originally intended language of accelerating a transition to a circular economy more concrete; 3. Ideally a transition to sustainability is a given, unfortunately we cannot take this for granted. Further there are many transition scenarios that are not explicitly just by design. Only a just transition which explicitly and intentionally reverses existing inequities will improve the living conditions of marginalized people, ecosystems and wildlife to the maximal extent possible; 4. There are thousands of governments who have formally declared a climate emergency, in total these governments which include whole countries cover a significant portion of the world’s population, a significant portion of the world’s economy, and cumulatively can have a profoundly positive impact. Because 2050 is the

conventional date by which sustainability is to be achieved in many governments this date was selected as the length of time this trans-national network will be sustained; 5. The revision that the City of Berkeley will create a regional/statewide task force to be sustained by 2050 is for the purpose of organizing 25 cities and counties who have explicitly declared a climate emergency and responded to Berkeley's call for regional collaboration in the Bay Area. A regional/statewide task force will be necessary for navigating the shift to a more sophisticated ecosystem-resilience management of governance called bio-regional governance in the resolution; 6. The City of Berkeley will put forth to the trans-national and statewide task forces the framework of a Just Transition as an orienting ethos and a Regenerative Economy as a framework for the collective aim of the task forces; 7. Affording critical ecosystems in and around the Bay Area with rights will ensure their protection, thus a couple examples were added; 8. was added to emphasize that a citywide just transition in Berkeley requires a profound cultural shift in that citizen participation is required for success; 9. Numerous content edits were provided to clarify the original intent of the resolution.

Blue text and strikethroughs are track changes. Clean version at very end of document.

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency

RECOMMENDATION
Adopt a resolution ~~to initiate a citywide, regional and international Just Transition to a Regenerative Economy to address the Climate Emergency, and~~ taking the following actions:

1. The City of Berkeley shall initiate a citywide, regional and international Just Transition to a Regenerative Economy; ~~The City of Berkeley recognizes sustainability is sustainability is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, and resource allocation to be socially and environmentally positive and will invest in a regenerative whole city infrastructure, policy, development and design process.~~
2. The City of Berkeley will work with cities, counties, and institutions such as the UC system to form a joint powers authority regional and statewide task force to oversee a justice and public safety-oriented - scientifically grounded - transition to a regenerative economy here in the Bay Area to be sustained until 2050; ~~and The City of Berkeley following the lead of Amsterdam and other cities will join in an attempt to embrace Doughnut Economics, which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay Area bioregion.~~
3. The City of Berkeley commits to being regenerative, recognizing that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, governance culture, and resource allocation to improve public and environmental health, be participatory and will invest in a centuries long regenerative whole city culture, infrastructure, policy, development and design process; ~~and The City of Berkeley will accelerate the transition to a zero-waste cradle to cradle, circular economy by a developing a series of ordinances ensuring only earth friendly products are sold within city limits by 2025~~
4. The City of Berkeley shall adopt doughnut economics and implement it's associated methodology to assess sustainability which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay Area bioregion; ~~and All City of Berkeley commissions shall propose city~~

~~policies, procedures and programs to enact a just transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction from Berkeley and Bay Area residents.~~

5. The City Council directs the City manager to develop a set of ordinances to ensure zero-waste, cradle to cradle, non-toxic, earth friendly non-essential consumer based products are sold within city limits by 2030 with special exception to non-replaceable items for which a sustainable alternative is either unavailable or too expensive for low income residents to afford, critical infrastructure, medical devices and other such life dependent items; ~~The City of Berkeley will create a city commission responsible for planning and implementing a Just Transition to a Regenerative Economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses.~~
6. The City of Berkeley shall suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; ~~and The City of Berkeley commits to suspend any and all projects and policies that are incompatible with protecting the Earth and people from further environmental degradation, social inequality, public health risks, and global warming and urges all neighboring agencies, statewide, national, and international, to do the same.~~
7. The City of Berkeley calls for regional agencies, cities, and counties to agree on a shared definition of the Bay Area's bioregion (s), to define the shared limits of our bio-region's carrying capacity and to organize our governance to be bio-regionally regenerative, sustainable, and to define a developmental trajectory that maximizes the health and vitality of the ecosystems, wildlife, and people for generations to come; ~~and The City of Berkeley will create a regional and statewide collaborative to ensure the maximal climate mitigation and adaptation scenarios to begin as soon as possible and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a Just Transition plan to the Regenerative Economy here in the greater Bay Area through a regional Green New Deal.~~
8. The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries of wellbeing and furthers human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainability through a just and regenerative transition to restore a safe climate and adapt to further warming in the near and long term; ~~and The City of Berkeley within the first 90 days will invite all the cities, counties, and institutions such as the UC system to form a regional and statewide task force to oversee a justice- oriented evidence- based transition to a regenerative economy to be sustained until 2050;~~
9. The City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.
10. ~~The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries, focuses on human and ecological flourishing,~~

~~furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and fosters an immediate transition to avert climate catastrophe in the near and long term.~~

11. ~~The City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts.~~
12. ~~The City of Berkeley recognizes the importance of indigenous leadership in designing and implementing a Regenerative Economy in Berkeley, the greater Bay Area, and the world, and shall invite delegates from indigenous communities to all stages of the planning and implementation process.~~

BACKGROUND

In addition to the massive worldwide health crisis, COVID-19 also caused a slow down to the global economy. Governments around the world have begun, and are planning, to invest trillions of dollars in economic recoveries. There is a time-sensitive need to prevent a carbon rebound and prevent a return to extractive overconsumption in order to avert climate catastrophe and secure a just future for humankind and wildlife. As the sixth city in the world to recognize that we already face a Climate Emergency, Berkeley has an opportunity and responsibility to lead and collaborate the effort with over 1772 cities, counties, and countries that have formally recognized and declared a Climate Emergency. The Climate Emergency Declaration, the term climate emergency and the climate emergency movement are a subset of the larger climate movement which asserts "business as usual" climate action which defers carbon neutrality to 2050 is incompatible with global warming for the vast majority of the world and future generations. Over 102 municipalities in the United States, 25 of those within the Bay Area and more across the state of California have declared a Climate Emergency and called for a regional collaborative effort that has not yet begun. For the Bay Area to do its part for the world, it must have a regional plan to reverse ~~to achieve~~ the harmful environmental and social impacts of which brought us this societal-environmental-economic crisis to biodiversity and human societies ~~by achieving regeneration of endangered life areas and sustainability,~~ the City of Berkeley continues to have ~~has~~ a role and responsibility in leading this effort.

~~In leading this effort,~~ Berkeley must recognize and address the following issues: (1) Climate change and its connection to public health (i.e., resurgence of diseases and pandemics, compounded effects on low income, people of color, and other groups systematically disenfranchised), (2) Injustice of the pre-COVID-19 economic and political system, and (3) a Just Transition to a sustainable and Regenerative Economy.

Climate change and harmful public health issues have a positive correlation. Even if reasonably curbed, global warming effects in the near future include increased danger from record breaking wildfires, increased oceanic storms potentially causing at least $1 billion worth of damage to public infrastructure and coastal real estate in the U.S.,[1] forced migration for up to a billion climate refugees by 2050[2], increased exposure to diseases, loss of arable farm land, increased deaths related to heat stress[3], scarcity of freshwater, and further extinction of wildlife and biodiversity threatening the entire population of the world. More specific to the greater Bay Area,

[1] https://www.ucsusa.org/resources/underwater

[2] https://unu.edu/media-relations/media-coverage/climate-migrants-might-reach-one-billion-by-2050.html

[3] https://www.nature.com/articles/nclimate3322.epdf?sharing_token=MuYgnDiD-ztxrwuEdc-3xtRgN0jAjWel9jnR3ZoTv0P1ZmqVLxKfxqQX-KqJzVRLBBVboAWW8gu7iH3qRbNOymWZ_WLKYDK4-9wUkfwjoVC5-B45GtJEP2hxXrl49lGj-ukRYIR0z5H0Ps9kJtFARSUhBqgg4Q3sT1BsLgpXbQUGDQWRvtvQBvQRmVVAfq-OHUCsqHStoFZ0JZRaGO91BHNhojMkyy0ysY-TI9zjISCKsuIIA9wdl3ohvm8mQMdWbyqk-9ol7o9g_2CJmFBeCsrualCAY-UnopfvSUmuidWbuAYOxifLoTWRbj2rCF_YwNh_INWWYrNDLcsrQoHUOyyPwf02XWGva7D8jQiREZU%3D&tracking_referrer=www.theguardian.com

the increased air pollution results in higher vulnerability to infectious viral respiratory illnesses, due to ~~and~~ low income neighborhoods systematically located close to oil refineries are disproportionately and compactedly affected.[4]

Due to a history of imperial dominance the United States has forcibly positioned itself to consume an unsustainable and inequitable portion of the world's resources. We must recognize that the San Francisco Bay Area, California, and the United States are historic beneficiaries of hundreds of years of enslavement of African people, genocide of Indigenous peoples, economic exploitation of the Global South and numerous unjust wars for oil etc, which has afforded it the ability to consume an unsustainable and inequitable portion of the world's resources at the expense of people of color worldwide, the earth and the American people.

A Just Transition to a Regenerative Economy as championed by Movement Generation and GrassRoots Global Justice is a framework for achieving a Regenerative Economy that: focuses on Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for workers and communities impacted by extractive industries; reinvests in environmental sacrifice zones and communities and healthcare for all; ensures a home guarantee, greater democracy in energy, food and land sovereignty, equitable clean energy and emissions free transit, a just recovery in the face of diverse forms of disasters; and advances feminist economies, regenerative finance with an emphasis on bio-regional governance.

The City of Berkeley should become a model post-COVID-19 city by creating a regenerative economy that reverses a history of colonization, wealth extraction and globalization, de-incarcerates and de-militarizes community life, makes reparative investments in marginalized communities, makes reparations for the descendants of enslaved persons for providing generations of free labor and restores their dignity and security against an onslaught of destabilizing forces such as gentrification and anti-black racism, supports Indigenous peoples and Tribal Nations in land reclamation and governance of their rightful lands, organizes workplaces and communities to collectively self govern, shifts means of production to works and communities, divests from fossil fuels and other extractive economies, invests in common access to energy, food, housing, and advances public dollars to build community wealth toward reversing inequality.

FINANCIAL IMPLICATIONS
To be determined.

ENVIRONMENTAL SUSTAINABILITY
Go beyond sustainability to embrace regenerative and restorative practices as necessary to achieve sustainability. Do a whole city community participatory design on how to shift the City into a net regenerative ecological and social impact.

CONTACT PERSONS
Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:
1. Resolution

[4] John Loike and Robert Pollack, "*What We Can Do to Preserve Our Clean Air;"* Bo Peiter Johannes Andree, "Incidence of Covid-19 Connections with Air Pollution Exposure: Evidence from the Netherlands." 4-7.

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INITIATE A CITYWIDE, REGIONAL AND INTERNATIONAL JUST TRANSITION TO A REGENERATIVE ECONOMY TO ADDRESS THE CLIMATE EMERGENCY

WHEREAS, the City of Berkeley was the sixth city in the world to have declared a Climate Emergency in June 2018, calling for a just transition and regional collaborative effort in the San Francisco Bay Area as well as a statewide, national and global effort to immediately end greenhouse gas emissions; and

WHEREAS, the University of California[5] and cities of Richmond, Oakland, Hayward, El Cerrito, Fairfax, Sebastopol, San Jose, Petaluma, Cupertino, Alameda, San Anselmo, Benicia, Cloverdale, Cotati, Healdsburg, Santa Rosa, Windsor, Menlo Park, Santa Cruz and the counties of San Francisco, Santa Cruz, Alameda, San Mateo, Santa Clara, Contra Costa and Sonoma have responded by declaring that we face a climate emergency and by joining the call for a regional collaborative effort in the San Francisco Bay Area; and

WHEREAS, there is not a focused collaborative implementation plan in sight, regionally or internationally, amongst the thousands of universities and governments across the globe that have declared a climate emergency; and

WHEREAS, 2020 - 2030 is a critical time frame wherein emissions must sharply and permanently fall to minimize climate catastrophe and meet internationally agreed upon targets which are insufficient to protect people from climate impacts; and

WHEREAS, governments are already spending or planning to spend $9 trillion or more globally in the next few months on rescuing their economies,[6] during the same timeframe that addressing the root causes of global warming is required for meaningful impact; and

WHEREAS, returning to a pre-COVID-19 global economic system, which is designed for unlimited growth on a finite planet requiring more extraction, production and consumption of materials and labor than the earth or people can handle, is a recipe for destruction; and

WHEREAS, a transformative economic intervention specifically designed to address the climate emergency in all of it's dimensions and deal with the COVID-19 economic impacts is fully justified by the imminent and time-sensitive existential threat both crises pose; and

[5] https://www.universityofcalifornia.edu/news/university-california-declares-climate-emergency

[6] https://www.theguardian.com/environment/2020/jun/18/world-has-six-months-to-avert-climate-crisis-says-energy-expert

WHEREAS, the traditional land management and stewardship methods of Chochenyo, Muwekma, Karkin, Lisjan, Ohlone and other neighboring Indigenous peoples serve as the original design for a regenerative economy on the lands now occupied by the nine counties of the SF Bay Area; and

WHEREAS, legally recognizing the inherent rights of nature such as the Bay, the Pacific Ocean, Strawberry Creek, the Wetlands, Tilden, and other ecosystems,is necessary to establish precautionary and restrictive measures to prevent human activities from causing additional harms to water, air, soil, species, ecosystems or ecological cycles on both local and global scales; and

WHEREAS, for the greater Bay Area to fulfill its responsibility to address global warming without exacerbating a history of racial violence, wealth inequality, and ecological degradation, it must: implement a Just Transition to a Regenerative Economy; embrace a doughnut economics[7] wherein the Bay Area brings its overall footprint well within the earth's carrying capacity while meeting the social needs of its residents; phase out the refining, transport, and consumption of fossil fuels and other polluting industries, energies, and waste products; and define the bioregional boundaries upon which the Bay Area attempts to be regenerative and sustainable; and be an accelerator for a circular economic strategies such as cradle-to-cradle design[8] wherein the material streams of waste are designed to be nutrients for further ecological reproduction; lead a trans-national task force amongst the 1700+ cities, counties, states and countries who recognize we face a Climate Emergency; sustain focus and unity of purpose in successfully executing a Just Transition to a Regenerative Economy until such an economy is fully functioning; and

WHEREAS, a Regenerative Economy as defined by Movement Generation[9] and GrassRoots Global Justice[10] as a framework for achieving a regenerative economy that focuses on: Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for Workers and communities impacted by extractive industries; reinvestment in environmental sacrifice zones and communities; Healthcare for All; ensures a home guarantee, energy democracy, food and land sovereignty; equitable clean energy; emissions-free transit; bioregional governance; a just recovery in the face of diverse forms of disasters; and advances feminist economies; and

WHEREAS, a Just Transition to a Regenerative Economy should, in practice: Transform a history of colonization, wealth extraction and imperialistic globalization; Transform patterns of mass incarceration and demilitarize community life; make reparative investments in marginalized communities; make reparations for the descendants of enslaved persons; support Indigenous peoples and Tribal Nations in land reclamation and governance of their rightful lands; organize workplaces and communities to be democratic, equitable and collectively self governing; shift to cooperative and public ownership of businesses; divest from fossil fuels and other extractive economic activities; invest in common access to renewable energy, food, and housing; advance public dollars to build community wealth reversing inequality; and

WHEREAS, for any transition plan to be successful, it must include: reducing consumption and production of the remaining GHG budget in order to extend our transition timeline; investing in research and innovation to transform major industries; creating an optimal psychological and cultural climate wherein the work of transition can be carried out free from the compounded

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[7] https://www.amsterdam.nl/en/policy/sustainability/circular-economy/
https://www.theguardian.com/world/2020/apr/08/amsterdam-doughnut-model-mend-post-coronavirus-economy

[8] https://mcdonough.com/cradle-to-cradle/

[9] https://movementgeneration.org/wp-content/uploads/2016/11/JT_booklet_English_SPREADs_web.pdf

[10] https://ggjalliance.org/programs/a-pathway-to-a-regenerative-economy/

stress of racism, climate change impacts, income and wealth inequality, jobs loss, COVID-19, and political polarization are relieved; and training and preparation of our workforces for all the skilled labor required for a just transition; enacting regenerative and sustainable constraints for whole societies that are in balance with humans needs, ecosystems and wildlife; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley shall initiate a citywide, regional and international Just Transition to a Regenerative Economy

~~NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley will initiate a citywide community engaged Just Transition to a Regenerative Economy~~

~~BE IT FURTHER RESOLVED, the City of Berkeley within the first 90 days will create a city commission responsible for planning and implementing a Just Transition to a regenerative economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses; and~~

BE IT FURTHER RESOLVED, the City of Berkeley will work with cities, counties, and institutions such as the UC system to form a joint powers authority regional and statewide task force to oversee a justice and public safety-oriented - scientifically grounded - transition to a regenerative economy here in the Bay Area to be sustained until 2050; and

BE IT FURTHER RESOLVED, the City of Berkeley will invest city funds, staff time, to create a trans-national task force focused on coordinating with -governments who have declared a climate emergency to be sustained until 2050;

~~BE IT FURTHER RESOLVED, the City of Berkeley will work with cities, counties, and institutions such as the UC system to form a joint powers authority regional and statewide task force to oversee a justice-oriented - scientifically grounded - transition to a regenerative economy to be sustained until 2050; and~~

BE IT FURTHER RESOLVED, the City of Berkeley commits to being regenerative, recognizing~~es~~ that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation ~~will~~ reorient its city planning, policy, governance culture, and resource allocation to ~~improve public and environmental health, be~~ participatory and will invest in a centuries long regenerative whole city culture, infrastructure, policy, development and design process; and

BE IT FURTHER RESOLVED, the City of Berkeley shall ~~will join the early~~ adopt doughnut economics ~~and implement it's associated~~ methodology to assess its sustainability which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay Area bioregion; and

BE IT FURTHER RESOLVED, The City Council directs the City manager to develop a set of ordinances to ensure zero-waste, cradle to cradle, non-toxic, earth friendly nonessential consumer based products are sold within city limits by 2030 ~~25~~ with -special exception to non-replaceable items for which a sustainable alternative is either unavailable or too expensive for low income residents to afford, critical infrastructure, medical devices and other such life dependent items ~~materials~~;

~~BE IT FURTHER RESOLVED, all city commissions shall propose city policies, procedures and programs to enact a Just Transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces~~

~~greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction of Berkeley and Bay Area residents; and~~

BE IT FURTHER RESOLVED, the City of Berkeley shall ~~commits to~~ suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; and

~~BE IT FURTHER RESOLVED, the City of Berkeley commits to the formation of a co-funded regional collaborative effort to begin and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a just transition plan to the regenerative economy here in the Greater Bay Area through a regional green new deal; and~~

BE IT FURTHER RESOLVED, the City of Berkeley calls for a bio-regional governance wherein agencies and municipalities define a shared recognition ~~of~~ our bio-region, ~~define~~ its carrying capacity and bring the Bay Area as a whole within the regenerative zone of our local bio-region in order to prioritize the long term resilience and adaptive capacity to coming environmental changes; and

BE IT FURTHER RESOLVED, the City of Berkeley calls for a regional agencies, cities, and counties to agree on a shared definition of the Bay Area's bioregion(s), to define the shared limits of our bio-region's carrying capacity and to organize our governance to be bio-regionally regenerative, sustainable, and to define a developmental trajectory that maximizes the health and vitality of the ecosystems, wildlife, and people for generations to come; and

~~BE IT FURTHER RESOLVED, the City of Berkeley urges all neighboring governmental agencies (including local, state and federal) to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, public health risks, and global warming; and~~

BE IT FURTHER RESOLVED, the City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries of wellbeing and furthers human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainability through a just and regenerative transition to restore a safe climate and adapt to further warming in the near and long term; and

~~BE IT FURTHER RESOLVED, the City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts; and~~

BE IT FURTHER RESOLVED, the City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency

RECOMMENDATION
Adopt a resolution taking the following actions:

1) The City of Berkeley shall initiate a citywide, regional and international Just Transition to a Regenerative Economy

2) The City of Berkeley will work with cities, counties, and institutions such as the UC system to form a joint powers authority regional and statewide task force to oversee a justice and public safety-oriented - scientifically grounded - transition to a regenerative economy here in the Bay Area to be sustained until 2050; and

3) The City of Berkeley commits to being regenerative, recognizing that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, governance culture, and resource allocation to improve public and environmental health, be participatory and will invest in a centuries long regenerative whole city culture, infrastructure, policy, development and design process; and

4) The City of Berkeley shall adopt doughnut economics and implement it's associated methodology to assess sustainability which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay Area bioregion; and

5) The City Council directs the City manager to develop a set of ordinances to ensure zero-waste, cradle to cradle, non-toxic, earth friendly non-essential consumer based products are sold within city limits by 2030 with special exception to non-replaceable items for which a sustainable alternative is either unavailable or too expensive for low income residents to afford, critical infrastructure, medical devices and other such life dependent items;

6) The City of Berkeley shall suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; and

7) The City of Berkeley calls for regional agencies, cities, and counties to agree on a shared definition of the Bay Area's bioregion (s), to define the shared limits of our bio-region's carrying capacity and to organize our governance to be bio-regionally regenerative, sustainable, and to define a developmental trajectory that maximizes the health and vitality of the ecosystems, wildlife, and people for generations to come; and

8) The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries of wellbeing and furthers human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainability through a just and regenerative transition to restore a safe climate and adapt to further warming in the near and long term; and

9) The City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

POLICY COMMITTEE RECOMMENDATION
On January 20, 2021, the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee moved to send the item with a positive recommendation that Council take no action on the item. Vote: All Ayes

BACKGROUND
In addition to the massive worldwide health crisis, COVID-19 also caused a slow down to the global economy. Governments around the world have begun, and are planning, to invest trillions of dollars in economic recoveries. There is a time-sensitive need to prevent a carbon rebound and prevent a return to extractive overconsumption in order to avert climate catastrophe and secure a just future for humankind and wildlife. As the sixth city in the world to recognize that we already face a Climate Emergency, Berkeley has an opportunity and responsibility to lead and collaborate the effort with over 1772 cities, counties, and countries that have formally recognized and declared a Climate Emergency. The Climate Emergency Declaration, the term climate emergency and the climate emergency movement are a subset of the larger climate movement which asserts "business as usual" climate action which defers carbon neutrality to 2050 is incompatible with global warming for the vast majority of the world and future generations. Over 102 municipalities in the United States, 25 of those within the Bay Area and more across the state of California have declared a Climate Emergency and called for a regional collaborative effort that has not yet begun. For the Bay Area to do its part for the world, it must have a regional plan to reverse the harmful environmental and social impacts of which brought us this societal-environmental-economic crisis to biodiversity and human societies by, the City of Berkeley continues to have a role and responsibility in leading this effort.

Berkeley must recognize and address the following issues: (1) Climate change and its connection to public health (i.e., resurgence of diseases and pandemics, compounded effects on low income, people of color, and other groups systematically disenfranchised), (2) Injustice of the pre-COVID-19 economic and political system, and (3) a Just Transition to a sustainable and Regenerative Economy.

Climate change and harmful public health issues have a positive correlation. Even if reasonably curbed, global warming effects in the near future include increased danger from record breaking wildfires, increased oceanic storms potentially causing at least $1 billion worth of damage to public infrastructure and coastal real estate in the U.S.,[11] forced migration for up to a billion climate refugees by 2050[12], increased exposure to diseases, loss of arable farm land, increased deaths related to heat stress[13], scarcity of freshwater, and further extinction of wildlife and biodiversity threatening the entire population of the world. More specific to the greater Bay Area, the increased air pollution results in higher vulnerability to infectious viral respiratory illnesses, due to low income neighborhoods systematically located close to oil refineries are disproportionately and compactedly affected.[14]

Due to a history of imperial dominance the United States has forcibly positioned itself to consume an unsustainable and inequitable portion of the world's resources. We must recognize that the San Francisco Bay Area, California, and the United States are historic beneficiaries of hundreds of years of enslavement of African people, genocide of Indigenous peoples, economic exploitation of the Global South and numerous unjust wars for oil etc,which has afforded it the ability to consume an unsustainable and inequitable portion of the world's resources at the expense of people of color worldwide, the earth and the American people.

A Just Transition to a Regenerative Economy as championed by Movement Generation and GrassRoots Global Justice is a framework for achieving a Regenerative Economy that: focuses on Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for workers and communities impacted by extractive industries; reinvests in environmental sacrifice zones and communities and healthcare for all; ensures a home guarantee, greater democracy in energy, food and land sovereignty, equitable clean energy and emissions free transit, a just recovery in the face of diverse forms of disasters; and advances feminist economies,regenerative finance with an emphasis on bio-regional governance.

The City of Berkeley should become a model post-COVID-19 city by creating a regenerative economy that reverses a history of colonization, wealth extraction and globalization, de-incarcerates and de-militarizes community life, makes reparative investments in marginalized communities, makes reparations for the descendants of enslaved persons for providing generations of free labor and restores their dignity and security against an onslaught of destabilizing forces such as gentrification and anti-black racism, supports Indigenous peoples and Tribal Nations in land reclamation and governance of their rightful lands, organizes workplaces and communities to collectively self govern, shifts means of production to works and communities, divests from fossil fuels and other extractive economies, invests in common access to energy, food, housing, and advances public dollars to build community wealth toward reversing inequality.

FINANCIAL IMPLICATIONS
To be determined.

ENVIRONMENTAL SUSTAINABILITY

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[11] https://www.ucsusa.org/resources/underwater

[12] https://unu.edu/media-relations/media-coverage/climate-migrants-might-reach-one-billion-by-2050.html

[13] https://www.nature.com/articles/nclimate3322.epdf?sharing_token=MuYgnDiD-ztxrwuEdc-3xtRgN0jAjWel9jnR3ZoTv0P1ZmqVLxKfxqQX-KqJzVRLBBVboAWW8gu7iH3qRbNOymWZ_WLKYDK4-9wUkfwjoVC5-B45GtJEP2hxXrl49lGj-ukRYlR0z5H0Ps9kJtFARSUhBqgg4Q3sT1BsLgpXbQUGDQWRvtvQBvQRmVVAfq-OHUCsqHStoFZ0JZRaGO91BHNhojMkyy0ysY-Tl9zjISCKsuIIA9wdl3ohvm8mQMdWbyqk-9ol7o9g_2CJmFBeCsrualCAY-UnopfvSUmuidWbuAYOxifLoTWRbj2rCF_YwNh_INWWYrNDLcsrQoHUOyyPwf02XWGva7D8jQiREZU%3D&tracking_referrer=www.theguardian.com

[14] John Loike and Robert Pollack, "*What We Can Do to Preserve Our Clean Air;"* Bo Peiter Johannes Andree, "Incidence of Covid-19 Connections with Air Pollution Exposure: Evidence from the Netherlands." 4-7.

Go beyond sustainability to embrace regenerative and restorative practices as necessary to achieve sustainability. Do a whole city community participatory design on how to shift the City into a net regenerative ecological and social impact.

CONTACT PERSONS

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Councilmember District 2
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ATTACHMENTS:
1. Resolution

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INITIATE A CITYWIDE, REGIONAL AND INTERNATIONAL JUST TRANSITION TO A REGENERATIVE ECONOMY TO ADDRESS THE CLIMATE EMERGENCY

WHEREAS, the City of Berkeley was the sixth city in the world to have declared a Climate Emergency in June 2018, calling for a just transition and regional collaborative effort in the San Francisco Bay Area as well as a statewide, national and global effort to immediately end greenhouse gas emissions; and

WHEREAS, the University of California[15] and cities of Richmond, Oakland, Hayward, El Cerrito, Fairfax, Sebastopol, San Jose, Petaluma, Cupertino, Alameda, San Anselmo, Benicia, Cloverdale, Cotati, Healdsburg, Santa Rosa, Windsor, Menlo Park, Santa Cruz and the counties of San Francisco, Santa Cruz, Alameda, San Mateo, Santa Clara, Contra Costa and Sonoma have responded by declaring that we face a climate emergency and by joining the call for a regional collaborative effort in the San Francisco Bay Area; and

WHEREAS, there is not a focused collaborative implementation plan in sight, regionally or internationally, amongst the thousands of universities and governments across the globe that have declared a climate emergency; and

WHEREAS, 2020 - 2030 is a critical time frame wherein emissions must sharply and permanently fall to minimize climate catastrophe and meet internationally agreed upon targets which are insufficient to protect people from climate impacts; and

WHEREAS, governments are already spending or planning to spend $9 trillion or more globally in the next few months on rescuing their economies,[16] during the same timeframe that addressing the root causes of global warming is required for meaningful impact; and

WHEREAS, returning to a pre-COVID-19 global economic system, which is designed for unlimited growth on a finite planet requiring more extraction, production and consumption of materials and labor than the earth or people can handle, is a recipe for destruction; and

WHEREAS, a transformative economic intervention specifically designed to address the climate emergency in all of it’s dimensions and deal with the COVID-19 economic impacts is fully justified by the imminent and time-sensitive existential threat both crises pose; and

WHEREAS, the traditional land management and stewardship methods of Chochenyo, Muwekma, Karkin, Lisjan, Ohlone and other neighboring Indigenous peoples serve as the original design for a regenerative economy on the lands now occupied by the nine counties of the SF Bay Area; and

WHEREAS, legally recognizing the inherent rights of nature such as the Bay, the Pacific Ocean, Strawberry Creek, the Wetlands, Tilden, and other ecosystems,is necessary to establish precautionary and restrictive measures to prevent human activities from causing additional harms to water, air, soil, species, ecosystems or ecological cycles on both local and global scales; and

[15] https://www.universityofcalifornia.edu/news/university-california-declares-climate-emergency

[16] https://www.theguardian.com/environment/2020/jun/18/world-has-six-months-to-avert-climate-crisis-says-energy-expert

WHEREAS, for the greater Bay Area to fulfill its responsibility to address global warming without exacerbating a history of racial violence, wealth inequality, and ecological degradation, it must: implement a Just Transition to a Regenerative Economy; embrace a doughnut economics[17] wherein the Bay Area brings its overall footprint well within the earth's carrying capacity while meeting the social needs of its residents; phase out the refining, transport, and consumption of fossil fuels and other polluting industries, energies, and waste products; and define the bioregional boundaries upon which the Bay Area attempts to be regenerative and sustainable; and be an accelerator for a circular economic strategies such as cradle-to-cradle design[18] wherein the material streams of waste are designed to be nutrients for further ecological reproduction; lead a trans-national task force amongst the 1700+ cities, counties, states and countries who recognize we face a Climate Emergency; sustain focus and unity of purpose in successfully executing a Just Transition to a Regenerative Economy until such an economy is fully functioning; and

WHEREAS, a Regenerative Economy as defined by Movement Generation[19] and GrassRoots Global Justice[20] as a framework for achieving a regenerative economy that focuses on: Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for Workers and communities impacted by extractive industries; reinvestment in environmental sacrifice zones and communities; Healthcare for All; ensures a home guarantee, energy democracy, food and land sovereignty; equitable clean energy; emissions-free transit; bioregional governance; a just recovery in the face of diverse forms of disasters; and advances feminist economies; and

WHEREAS, a Just Transition to a Regenerative Economy should, in practice: Transform a history of colonization, wealth extraction and imperialistic globalization; Transform patterns of mass incarceration and demilitarize community life; make reparative investments in marginalized communities; make reparations for the descendants of enslaved persons; support Indigenous peoples and Tribal Nations in land reclamation and governance of their rightful lands; organize workplaces and communities to be democratic, equitable and collectively self governing; shift to cooperative and public ownership of businesses; divest from fossil fuels and other extractive economic activities; invest in common access to renewable energy, food, and housing; advance public dollars to build community wealth reversing inequality; and

WHEREAS, for any transition plan to be successful, it must include: reducing consumption and production of the remaining GHG budget in order to extend our transition timeline; investing in research and innovation to transform major industries; creating an optimal psychological and cultural climate wherein the work of transition can be carried out free from the compounded stress of racism, climate change impacts, income and wealth inequality, jobs loss, COVID-19, and political polarization are relieved; and training and preparation of our workforces for all the skilled labor required for a just transition; enacting regenerative and sustainable constraints for whole societies that are in balance with humans needs, ecosystems and wildlife; and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley will initiate a citywide community engaged Just Transition to a Regenerative Economy;

BE IT FURTHER RESOLVED, the City of Berkeley will work with cities, counties, and institutions such as the UC system to form a joint powers authority to oversee a justice-oriented

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[17] https://www.amsterdam.nl/en/policy/sustainability/circular-economy/
https://www.theguardian.com/world/2020/apr/08/amsterdam-doughnut-model-mend-post-coronavirus-economy

[18] https://mcdonough.com/cradle-to-cradle/

[19] https://movementgeneration.org/wp-content/uploads/2016/11/JT_booklet_English_SPREADs_web.pdf

[20] https://ggjalliance.org/programs/a-pathway-to-a-regenerative-economy/

- scientifically grounded - transition to a regenerative economy here in the Bay Areato be sustained until 2050; and

BE IT FURTHER RESOLVED, the City of Berkeley will invest city funds, staff time, to create a trans-national task force focused on coordinating with governments who have declared a climate emergency to be sustained until 2050;

BE IT FURTHER RESOLVED, the City of Berkeley recognizes that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, governance culture, and resource allocation to improve public and environmental health, be participatory and will invest in a centuries long regenerative whole city culture, infrastructure, policy, development and design process; and

BE IT FURTHER RESOLVED, the City of Berkeley shall adopt doughnut economics and implement it's associated methodology to assess sustainability which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay Area bioregion; and

BE IT FURTHER RESOLVED, The City Council directs the City manager to develop a set of ordinances to ensure zero-waste, cradle to cradle, non-toxic, earth friendly non-essential consumer based products are sold within city limits by 2030 where applicable with special exception to non-replaceable items for which a sustainable alternative is either unavailable or too expensive for low income residents to afford, critical infrastructure, medical devices and other such life dependent items;

BE IT FURTHER RESOLVED, the City of Berkeley shall suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; and

BE IT FURTHER RESOLVED, the City of Berkeley calls for a regional agencies, cities, and counties to agree on a shared definition of the Bay Area's bioregion, to define the shared limits of our bio-region's carrying capacity and to organize our governance to be bio-regionally regenerative, sustainable, and to define a developmental trajectory that maximizes the health and vitality of the ecosystems, wildlife, and people for generations to come; and

BE IT FURTHER RESOLVED, the City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries of wellbeing and furthers human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainability through a just and regenerative transition to restore a safe climate and adapt to further warming in the near and long term; and

BE IT FURTHER RESOLVED, the City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

Cheryl Davila
Councilmember
District 2

REVISED AGENDA MATERIAL

Meeting Date: September 16, 2020

Item Description: Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency

Submitted by: Councilmember Cheryl Davila

Revisions: 1. Changed the capitalization of certain terms; 2. Added the date 2025 by which the city will exclusively sell sustainable products and directed the city staff to develop a set of ordinances to make this so. 3. The City Adopts a Just Transition to a Regenerative Economy as an orienting framework for climate action; 4. City will create a trans-national task force among governments who have declared a climate emergency; 5. City will create a regional and California based task force to address the climate emergency; 6. Both task forces will have the purpose of co-executing a just transition to a regenerative economy and will function until 2050; 7. added more names of ecosystems to be recognized and afforded rights as examples; 8. The language community engaged was added to emphasize that a citywide just transition in Berkeley requires a profound cultural shift in that citizen participation is required for success. 9. Numerous edits to clarify the original intent of the resolution.

Item Subject updated to: 1. The terms Just Transition and Regenerative Economy refer to specific frameworks and definitions and are thus capitalized; 2. The city hosts a variety of businesses and services which sell products which contribute to environmental degradation and negative health impacts. Directing the city manager to develop a series of ordinances to remove such products from the city by a certain date allows the originally intended language of accelerating a transition to a circular economy more concrete; 3. Ideally a transition to sustainability is a given, unfortunately we cannot take this for granted. Further there are many transition scenarios that are not explicitly just by design. Only a just transition which explicitly and intentionally reverses existing inequities will improve the living conditions of marginalized people, ecosystems and wildlife to the maximal extent possible; 4. There are thousands of governments who have formally declared a climate emergency, in total these governments which include whole countries cover a significant portion of the world's population, a significant portion of the world's economy, and cumulatively can have a profoundly positive impact. Because 2050 is the conventional date by which sustainability is to be achieved in many governments this date was selected as the length of time this trans-national network will be sustained; 5. The revision that the City of Berkeley will create a regional/statewide task force to be sustained by 2050 is for the purpose of organizing 25 cities and counties who have explicitly declared a climate emergency and responded to Berkeley's call for regional collaboration in the Bay Area. A regional/statewide task force will be necessary for navigating the shift to a more sophisticated ecosystem-resilience management of governance called bio-regional governance in the resolution; 6. The City of Berkeley will put forth to the trans-national and statewide task forces the framework of a Just Transition as an orienting ethos and a Regenerative Economy as a framework for the collective aim of the task forces; 7. Affording critical ecosystems in and around the Bay Area with rights will ensure their protection, thus a couple examples were added; 8. was added to emphasize that a citywide just transition in Berkeley requires a profound cultural shift in that citizen participation is required for success; 9. Numerous content edits were provided to clarify the original intent of the resolution.

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency

RECOMMENDATION
Adopt a resolution to initiate a Citywide, Regional and International Just Transition to a Regenerative Economy to Address the Climate Emergency, and taking the following actions:

1. The City of Berkeley recognizes that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, and resource allocation to be socially and environmentally positive and will invest in a regenerative whole city infrastructure, policy, development and design process.
2. The City of Berkeley following the lead of Amsterdam and other cities will join in an attempt to embrace doughnut economics, which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay area bioregion.
3. The City of Berkeley will accelerate the transition to a zero-waste cradle to cradle circular economy.
4. All City of Berkeley commissions shall propose city policies, procedures and programs to enact a just transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction of Berkeley and Bay Area residents.
5. The City of Berkeley will create a city commission responsible for planning and implementing a just transition to a regenerative economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses.
6. The City of Berkeley commits to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming.
7. The City of Berkeley calls for a regional collaborative effort to begin as soon as possible and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a just transition plan to the regenerative economy here in the Greater Bay Area through a regional green new deal.
8. The City of Berkeley urges all neighboring governmental agencies (including local, state and federal) to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, public health risks, and global warming.
9. The City of Berkeley calls on governments who have declared a climate emergency and who broadly recognize the immense challenge facing humanity to join together in

collaborative exchange and begin a shared transitional peace effort in moving their immediate societies and economies toward ethical and regenerative trajectories.

10. The City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries, focuses on human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainable transition to avert climate catastrophe in the near and long term.
11. The City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts.
12. The City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the Greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

BACKGROUND

In addition to the massive worldwide health crisis, COVID-19 also caused a slow down to the global economy. Governments around the world have begun to and are planning to spend trillions to invest in economic recoveries. There is a time-sensitive need to prevent a carbon rebound and prevent a return to extractive overconsumption in order to avert climate catastrophe and secure a just future for humankind and wildlife. Berkeley as the third city to recognize we face a climate emergency has an opportunity and responsibility to lead and collaborate effort with over 1772 cities, counties, and countries who have formally recognized and declared a climate emergency. Over 102 municipalities in the United States, Bay Area have declared a climate emergency and called for a regional collaborative effort that has not yet begun. For the Bay Area to do its part for the world it must have a regional plan to achieve regeneration and sustainability, the City of Berkeley has a role and responsibility in leading this effort.

In leading this effort, Berkeley must recognize and address the following issues: (1) Climate change and its connection to public health (i.e., resurgence of diseases and pandemics, compounded effects on low income, people of color, and other groups systematically disenfranchised), (2) Injustice of the pre-COVID-19 economic and political system, and (3) a just transition to a sustainable and regenerative economy.

Climate change and harmful public health issues have a positive correlation. Even if reasonably curbed, global warming effects in the near future include increased danger from record breaking wildfires, increased oceanic storms potentially causing $1 billion worth of damage to public infrastructure and coastal real estate in the U.S.[1], forced migration for up to a billion climate refugees by 2050[2], increased exposure to diseases, loss of arable farm land, increased death related to heat stress[3], scarcity of freshwater, and further extinction of wildlife and biodiversity threatening the entire population of the world. More specific to the greater Bay area, the increased air pollution results in higher vulnerability to infectious viral respiratory illnesses, and

[1] https://www.ucsusa.org/resources/underwater

[2] https://unu.edu/media-relations/media-coverage/climate-migrants-might-reach-one-billion-by-2050.html

[3] https://www.nature.com/articles/nclimate3322.epdf?sharing_token=MuYgnDiD-ztxrwuEdc-3xtRgN0jAjWel9jnR3ZoTv0P1ZmqVLxKfxqQX-KqJzVRLBBVboAWW8gu7iH3qRbNOymWZ_WLKYDK4-9wUkfwjoVC5-B45GtJEP2hxXrl49lGj-ukRYlR0z5H0Ps9kJtFARSUhBqgg4Q3sT1BsLgpXbQUGDQWRvtvQBvQRmVVAfq-OHUCsqHStoFZ0JZRaGO91BHNhojMkyy0ysY-TI9zjISCKsuIlA9wdl3ohvm8mQMdWbyqk-9ol7o9g_2CJmFBeCsrualCAY-UnopfvSUmuidWbuAYOxifLoTWRbj2rCF_YwNh_INWWYrNDLcsrQoHUOyyPwf02XWGva7D8jQiREZU%3D&tracking_referrer=www.theguardian.com

low income neighborhoods systematically located close to oil refineries are disproportionately and compactedly affected[4].

Due to a history of imperial dominance the United States has forcibly positioned itself to consume an unsustainable and inequitable portion of the world's resources. We must recognize that San Francisco Bay Area, California, and the United States are historic beneficiaries of hundreds of years of enslavement of African people, genocide of Indigenous peoples, economic exploitation of the Global South and numerous unjust wars which has afforded it the ability to consume an unsustainable and inequitable portion of the world's resourcesat the expense of people of color worldwide, the earth and American people.

A Just Transition to a Regenerative Economy as championed by Movement Generation and GrassRoots Global Justice is a framework for achieving a regenerative economy that: focuses on Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for Workers and communities impacted by extractive industries; reinvests in environmental sacrifice zones and communities and healthcare for all; ensures a home guarantee, further democracy in energy, food and land sovereignty, equitable clean energy and emissions free transit, a just recovery in the face of diverse forms of disasters; and advances feminist economies and regenerative finance.

The City of Berkeley should become a model post-COVID-19 city by creating a regenerative economy that reverses a history of colonization, wealth extraction and globalization, de-incarcerates and de-militarizes community life, makes reparative investments in marginalized communities, makes reparations for the descendants of enslaved persons for providing generations of free labor, supports Indigenous peoples and tribal nations in land reclamation and governance of their rightful lands, organizes workplaces and communities to collectively self govern, shifts means of production to works and communities, divests from fossil fuels and other extractive economies, invests in common access to energy, food, housing, and advances public dollars to build community wealth toward reversing inequality.

FINANCIAL IMPLICATIONS
To be determined.

ENVIRONMENTAL SUSTAINABILITY
Go beyond sustainability to embrace regenerative and restorative practices as necessary to achieve sustainability. Do a whole city community participatory design on how to shift the City into a net regenerative ecological and social impact.

CONTACT PERSONS
Cheryl Davila
Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

ATTACHMENTS:
1. Resolution

[4] John Loike and Robert Pollack, "*What We Can Do to Preserve Our Clean Air;"* Bo Peiter Johannes Andree, "Incidence of Covid-19 Connections with Air Pollution Exposure: Evidence from the Netherlands." 4-7.

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO INITIATE A CITYWIDE, REGIONAL AND INTERNATIONAL JUST TRANSITION TO A REGENERATIVE ECONOMY TO ADDRESS THE CLIMATE EMERGENCY

WHEREAS, the City of Berkeley was the third city in the world to have declared a climate emergency in June 2018, calling for a just transition and regional collaborative effort in the San Francisco Bay Area as well as a statewide, national and global effort to immediately end greenhouse gas emissions; and

WHEREAS, the University of California[5] and cities of Richmond, Oakland, Hayward, El Cerrito, Fairfax, Sebastopol, San Jose, Petaluma, Cupertino, Alameda, San Anselmo, Benicia, Cloverdale, Cotati, Healdsburg, Santa Rosa, Windsor, Menlo Park, Santa Cruz and the counties of San Francisco, Santa Cruz, San Mateo, Santa Clara and Sonoma have responded by declaring we face a climate emergency and joining the call for a regional collaborative effort in the San Francisco Bay Area; and

WHEREAS, there is not a focused collaborative implementation plan in sight regionally or internationally amongst the thousands of universities and governments across the globe that have declared a climate emergency; and

WHEREAS, emissions need to intentionally fall between 2020 - 2030 are a critical frame wherein emissions must sharply and permanently fall to minimize climate catastrophe and meet internationally agreed upon targets which are insufficient to protect people from climate impacts; and

WHEREAS, governments are already spending or planning to spend $9 trillion or more globally in the next few months on rescuing their economies,[6] during the same timeframe that addressing the root causes of global warming is required for meaningful action; and

WHEREAS, returning to a pre-COVID-19 global economic system, which is designed for unlimited growth on a finite planet requiring more extraction, production and consumption of materials and labor than the earth or people can handle, is a recipe for destruction; and

WHEREAS, a transformative economic intervention specifically designed to address the climate emergency and deal with the COVID-19 economic impacts is fully justified by the imminent and time-sensitive existential threat both crises pose; and

WHEREAS, the traditional land management and stewardship methods of Chochenyo, Muwekma, Karkin, Lisjan, Ohlone and other neighboring Indigenous peoples serve as the original design for a regenerative economy on the lands now occupied by the nine counties of the SF Bay Area; and

WHEREAS, legally recognizing the inherent rights of nature such as the Bay, is necessary to establish precautionary and restrictive measures to prevent human activities from causing additional harms to water, air, soil, species, ecosystems or ecological cycles on both local and global scales; and

WHEREAS, for the Greater Bay Area to fulfill its responsibility to address global warming without exacerbating a history of racial violence, wealth inequality, and ecological degradation, it must: Implement a Just Transition to a Regenerative Economy; Embrace a doughnut

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[5] https://www.universityofcalifornia.edu/news/university-california-declares-climate-emergency

[6] https://www.theguardian.com/environment/2020/jun/18/world-has-six-months-to-avert-climate-crisis-says-energy-expert

economics[7] wherein the Bay Area brings its overall footprint well within the earth's carrying capacity while meeting the social needs of its residents; phase out the refining, transport, and consumption of fossil fuels and other polluting industries, energies, and waste products; and define the bioregional boundaries upon which the Bay Area attempts to be regenerative and sustainable; and be an accelerator for a circular economic strategies such as cradle-to-cradle design wherein the material streams of waste is designed to be feedstock; lead the world by collaboratively initiating a world-saving transitional effort; sustain focus and unity of purpose in successfully executing a just transition to a regenerative economy until such an economy is fully functioning; and

WHEREAS, a Regenerative Economy as defined by Movement Generation[8] and GrassRoots Global Justice[9] as a framework for achieving a regenerative economy that focuses on: Indigenous and Tribal Sovereignty, Justice for Black and Immigrant Communities, Just Transitions for Workers and communities impacted by extractive industries; Reinvestment in environmental sacrifice zones and communities; Healthcare for all; Ensures a home guarantee; Energy democracy; Food and land sovereignty; Equitable clean energy; Emissions-free transit; Bioregional governance; A just recovery in the face of diverse forms of disasters; and Advances feminist economies; and

WHEREAS, a just transition to a regenerative economy should in practice: Reverse a history of colonization, wealth extraction and imperialistic globalization; Reverse patterns of mass incarceration and demilitarize community life; Make reparative investments in marginalized communities; Make reparations for the descendants of enslaved persons; Support Indigenous peoples and tribal nations in land reclamation and governance of their rightful lands; Organize workplaces and communities to be democratic, equitable and collectively self governing; Shift to cooperative and public ownership of businesses; Divest from fossil fuels and other extractive economic activities; Invest in common access to renewable energy, food, and housing; Advance public dollars to build community wealth reversing inequality; and

WHEREAS, for any transition plan to be successful, it must include: reducing consumption and production of the remaining GHG budget in order to extend our transition timeline; investing in research and innovation to transform major industries; creating an optimal psychological and cultural climate wherein the work of transition can be carried out free from the compounded stress of racism, climate change impacts, income and wealth inequality, jobs loss, COVID-19, and political polarization are relieved; and training and preparation of our workforces for all the skilled labor required for a just transition; enacting regenerative and sustainable constraints for whole societies that are in balance with humans needs, ecosystems and wildlife; and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley will initiate a Citywide Just Transition to a Regenerative Economy because this moment in history is our best and minimize climate catastrophe in an attempt to at least meet agreed upon international targets; and

BE IT FURTHER RESOLVED, the City of Berkeley will invest city funds, staff time, and To create a transnational task force focused on coordinating among on governments who have declared a climate emergency to be sustained until 2050;

BE IT FURTHER RESOLVED, the City of Berkeley within the first 90 days will invite all the cities, counties, and institutions such as the UC system to form a regional and statewide task force to oversee a justice oriented evidence based transition to a regenerative economy to be sustained until 2050.

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[7] https://www.amsterdam.nl/en/policy/sustainability/circular-economy/
· https://www.theguardian.com/world/2020/apr/08/amsterdam-doughnut-model-mend-post-coronavirus-economy

[8] https://movementgeneration.org/wp-content/uploads/2016/11/JT_booklet_English_SPREADs_web.pdf

[9] https://ggjalliance.org/programs/a-pathway-to-a-regenerative-economy/

BE IT FURTHER RESOLVED, the City of Berkeley recognizes that attempting to be sustainable is not enough to protect residents from cumulative impacts of centuries of environmental and social degradation and instead will reorient its city planning, policy, and resource allocation to be socially and environmentally positive and will invest in a regenerative whole city infrastructure, policy, development and design process; and

BE IT FURTHER RESOLVED, the City of Berkeley will join the early adoption of doughnut economics methodology, which, by definition, recognizes the necessity of meeting the needs of residents within the carrying capacity of our planet Earth and the greater Bay area bioregion; and

BE IT FURTHER RESOLVED, the City of Berkeley will accelerate the transition to a zero-waste cradle to cradle circular economy; and

BE IT FURTHER RESOLVED, all city commissions shall propose city policies, procedures and programs to enact a just transition that is socially, economically and ecologically regenerative by securing racial justice, bioregional restoration and sustainability, maximally reduces greenhouse gas emissions, increases public health, increases disaster preparedness and community resilience and reverses inequality and wealth extraction of Berkeley and Bay Area residents; and

BE IT FURTHER RESOLVED, the City of Berkeley will create a city commission responsible for planning and implementing a just transition to a regenerative economy that is anti-racist, provides reparations and transformative support for those who are black, Indigenous, people of color, low income, and those struggling with mental health challenges, is community-driven and democratically-funded, environmentally-regenerative, and prioritizes local and independent businesses; and

BE IT FURTHER RESOLVED, the City of Berkeley commits to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, social inequality, public health risks, and global warming; and

BE IT FURTHER RESOLVED, the City of Berkeley commits to the formation of a co-funded regional collaborative effort to begin as soon as possible and formally requests all regional agencies, cities, and counties to a shared table to devise and execute a just transition plan to the regenerative economy here in the Greater Bay Area through a regional green new deal; and

BE IT FURTHER RESOLVED, the City of Berkeley calls for a regional agencies, cities, and counties to agree on a shared definition of the Bay Area’s bioregion, to define the shared limits of our bio-region’s carrying capacity and to organize our governance to be bio-regionally regenerative, sustainable, and to define a developmental trajectory that maximizes the health and vitality of the ecosystems, wildlife, and people for generations to come; and

BE IT FURTHER RESOLVED, the City of Berkeley urges all neighboring governmental agencies (including local, state and federal) to suspend any and all projects and policies that are incompatible with protecting the earth and people from further environmental degradation, public health risks, and global warming; and

BE IT FURTHER RESOLVED, the City of Berkeley identifies our current economy with its focus on near-term perpetual growth requiring resource extraction and wealth enclosure as defunct and incompatible with the needs of sustainability, human thriving, and dignity, and calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries of wellbeing and furthers human and ecological flourishing, furthers a regenerative human presence on earth, achieves equitable distribution of resources throughout the planet, and achieves sustainability just a just and regenerative transition to bring emissions to zero and adapt to further warming in the near and long term; and

BE IT FURTHER RESOLVED, the City of Berkeley commits to enacting a deep decent emissions scenario radically reducing its environmental footprint aiming for zero in the next 10 years through a real time decadal city wide response network.

BE IT FURTHER RESOLVED, the City of Berkeley endorses the intention and vision behind a global Green New Deal that reverses centuries of colonization, and post-colonial imbalances of power, health, wealth, sovereignty, addresses the climate emergency at the speed and scale necessary, and protects the world from impending climate impacts; and

BE IT FURTHER RESOLVED, the City of Berkeley recognizes the importance of Indigenous leadership in designing and implementing a regenerative economy in Berkeley, the Greater Bay Area, and the World, and shall invite delegates from Indigenous communities to all stages of the planning and implementation process.

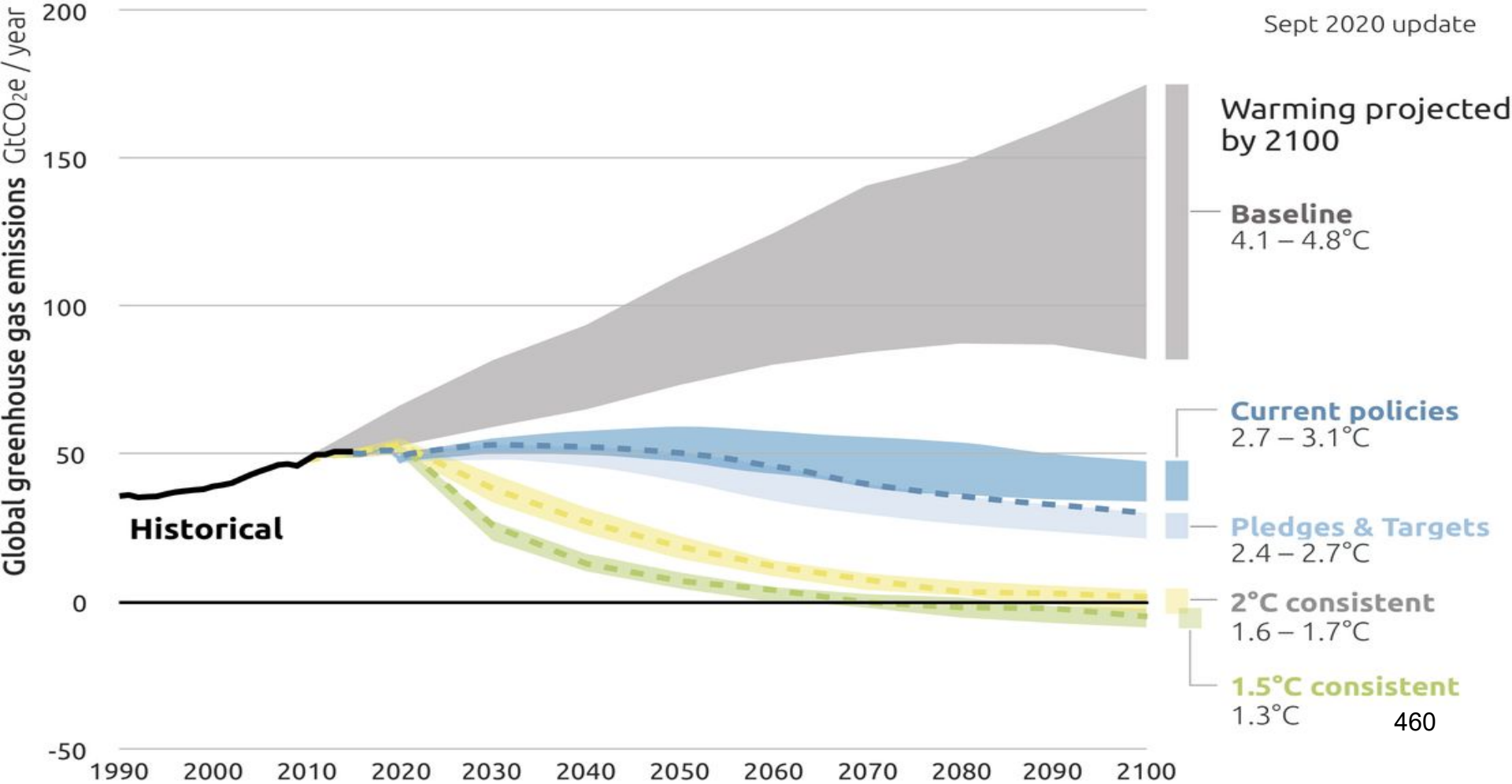
Just Transition Resolution for the FITES Committee 10/21/2020

2100 WARMING PROJECTIONS

Emissions and expected warming based on pledges and current policies

Climate Action Tracker

Sept 2020 update



The Climate Reality:

- These are the final years to transition off fossil fuels and recover dying ecosystems, secure ethical migration practices, and prevent climate apartheid

- A deep descent scenario is unavoidable to preserve life and has yet to be established

We need to coordinate a safe and just transition to a one planet compatible global economy that equitable and renewably distributes abundance.

The City of Berkeley recognizes sustainability is not enough and will:

1. Invest in a regenerative whole-city infrastructure, policy, development and design process
2. Embrace Doughnut Economics meetings social needs within planetary boundaries
3. Draft a set of ordinances ensuring only earth-friendly products are sold within city limits by 2025
4. Focus the Commissions on a Just Transition
5. Create a Just Transition Commission

6. Fund form and hold a regional and statewide collaborative through 2050 to plan a Just Transition to a Regenerative Economy here in the greater Bay Area.

6. Form a transnational task force to be sustained until 2050. to co-execute a shared transitional peace effort in moving their immediate societies and economies toward ethical and regenerative trajectories

6. Define the hard bio-regional boundaries by which Berkeley and the Bay Area governments will attempt to govern safely within

6. Suspend any and all projects and policies that are incompatible with protecting the Earth and people from further environmental degradation, social inequality, and public health risks

6. Center indigenous leadership in all of the above

9. Calls for a new economic system which in its design meets human needs within planetary and local environmental and social boundaries.

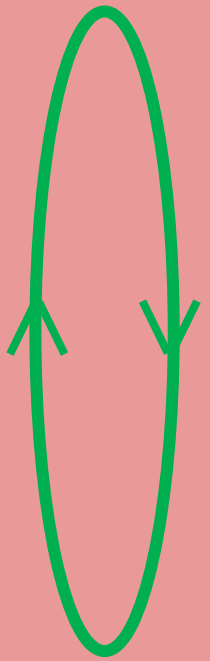
10. Endorse a Global Green New Deal

The Big Ideas:

Formally organize the region, and governments globally who have declared a climate emergency, to form an international task force through 2050

Action has to be taken on all levels in parallel

- Globally/internationally
- Nationally
- On state level
- Bio-regionally
- On **city** level/locally
- On neighborhood/community level
- On family level/individually



The Big Ideas:
Initiate a full-scale societal mobilization toward a regenerative economy

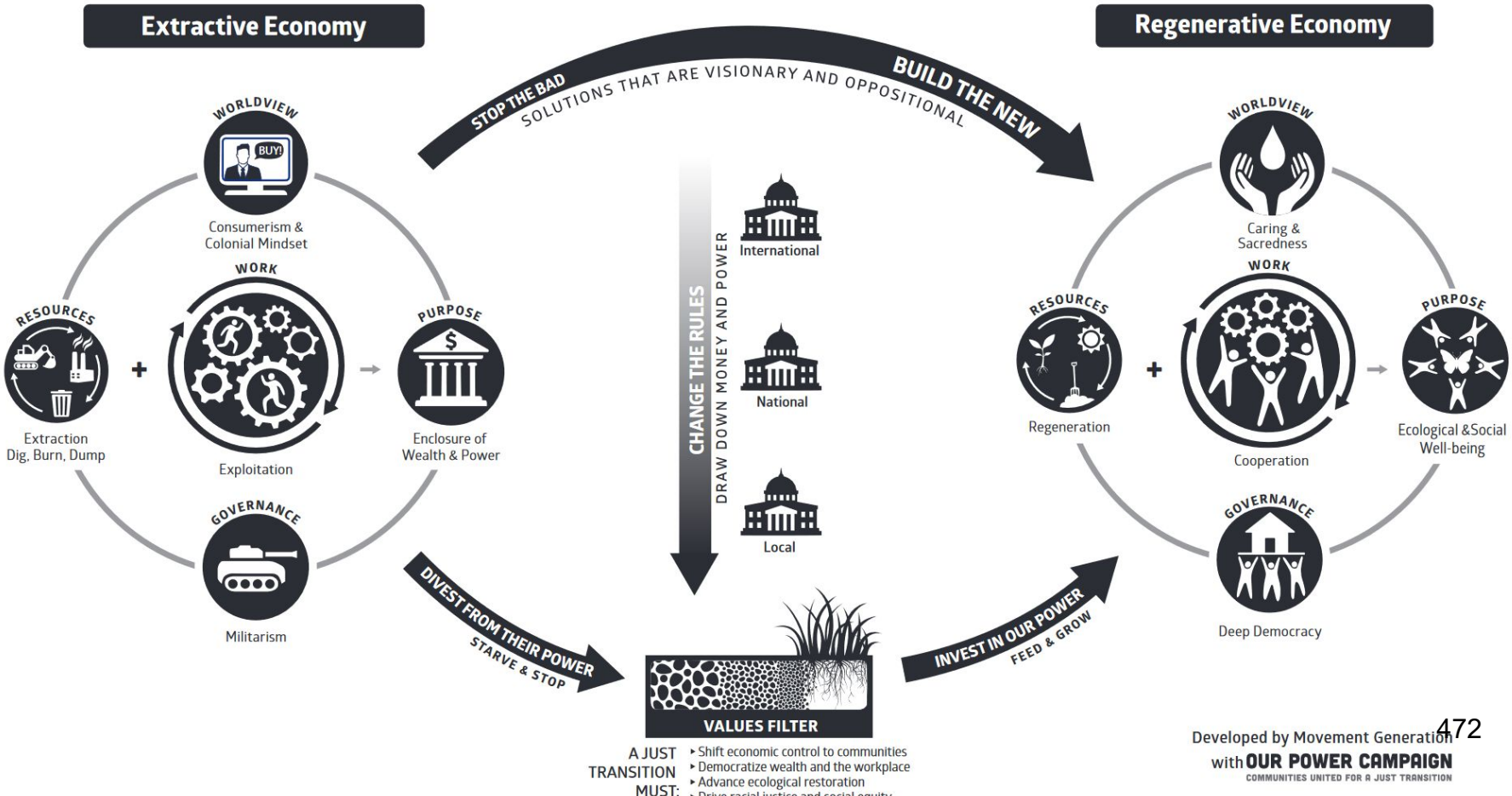
This is what the world is waiting for, the moment when we enter full transition mode.

Berkeley as a community is ready for this. Berkeley as a city is positioned to do this regionally and globally being the 6th city to declare a climate emergency

The Big Ideas:

Commit to a just transition ethos and framework developed by frontline environmental justice organizations for Berkeley's sustainability efforts

A STRATEGY FRAMEWORK FOR JUST TRANSITION



Developed by Movement Generation with OUR POWER CAMPAIGN
COMMUNITIES UNITED FOR A JUST TRANSITION

Formalize these criteria and standards for projects with oversight:

PROTECT: ***Solutions must protect, not harm our communities.***

REPAIR: ***Solutions must repair the harms of our extractive economy.***

INVEST: ***Solutions must move non-extractive and equitable investments to our communities and workers.***

TRANSFORM: ***Solutions must provide the foundation to transform relationships and structures so that they are rooted in respect, equity, and justice.***

How we govern or fail to govern a just transition will determine the strength and wellbeing of all of Berkeley's residents for generations to come worldwide.

Oakland has a race and equity department, a direction we should follow.
We cannot leave justice to chance. Formalizing the standards with appropriate oversight and data is the only ethical option we have.

The Big Ideas: Going beyond sustainability - Bay Area as a fully regenerative economy

7 Counties: Sonoma, San Francisco, Contra Costa, Santa Clara, Alameda, Santa Cruz, San Mateo

18 Bay Area Cities: Richmond, Oakland, Hayward, El Cerrito, Fairfax, Sebastopol, San Jose, Petaluma, Cupertino, Alameda, San Anselmo, Benicia, Cloverdale, Cotati, Healdsburg, Santa Rosa, Windsor, Menlo Park, Santa Cruz

Sustainability means

- Meeting our needs without interfering in future generations' ability to meet theirs
- Operating within planetary and bio-regional boundaries

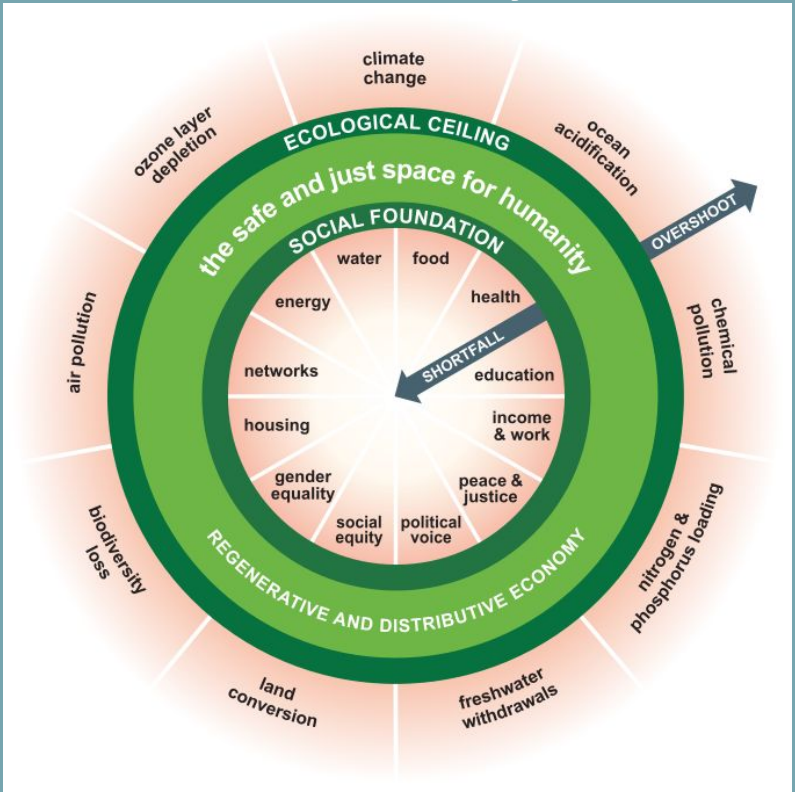
Regeneration means

- Reversing ecological overshoot, GHG emissions, public health impacts, and centuries of ecological and genocidal violence
- Replenishing depleted soils, fisheries, ecosystems

This will require a planning processes and design methodologies that are explicitly regenerative, justice-enacting, and resilient to shocks

The Big Ideas:
Build Doughnut Economics methodology into Berkeley's Sustainability planning and the Bay Area's regional planning

The Doughnut offers a vision of what it means for humanity to thrive in the 21st century

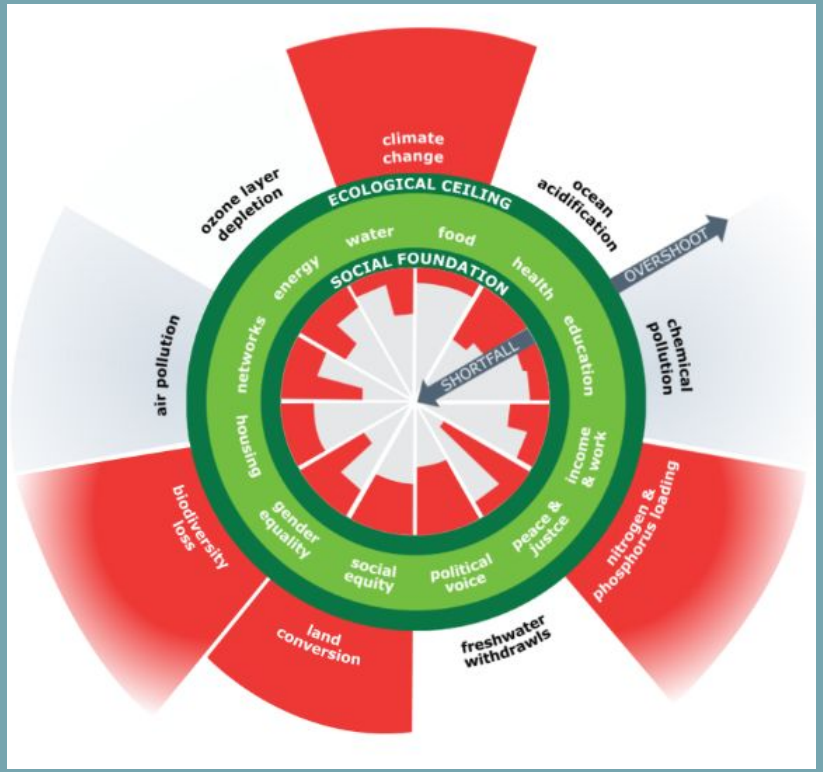


- The **ecological ceiling** consists of nine planetary boundaries, beyond which lie unacceptable environmental degradation and potential tipping points in Earth systems.
- The twelve dimensions of the **social foundation** are derived from internationally agreed minimum social standards, as identified by the world's governments in the Sustainable Development Goals in 2015.
- Between social and planetary boundaries lies an **ecologically safe and socially just space** in which humanity can thrive.

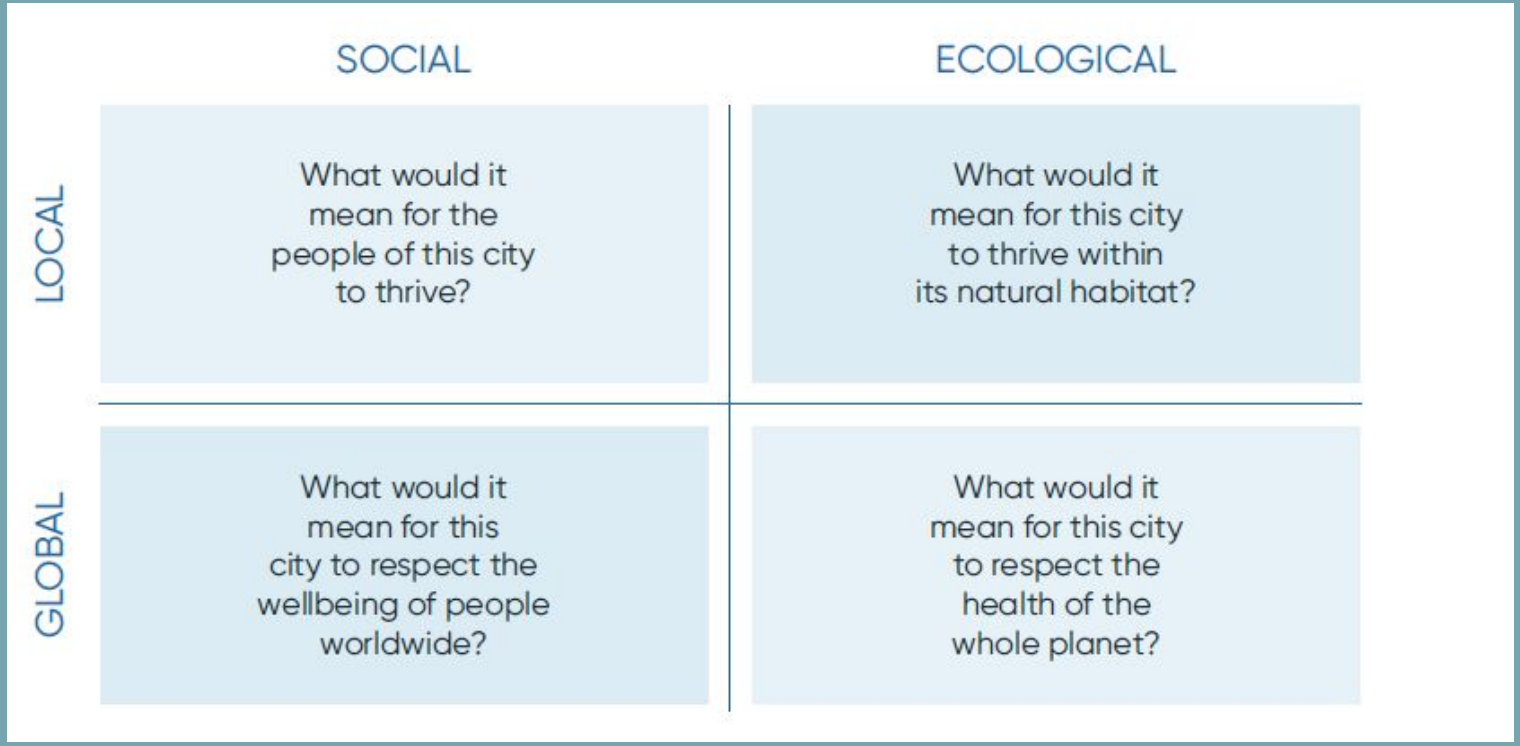
481

Source: https://www.kateraworth.com/doughnut/, https://doughnuteconomics.org/about-doughnut-economics

Doughnut Economics: The world is currently outside the safe and just space on alarmingly many dimensions



Doughnut Economics at city level: 4 lenses



The Big Ideas:

Draft ordinances to accelerate the Circular Economy and the Cradle-to-Cradle standard for products and services sold in Berkeley

“Everything is a resource for something else. In nature, the “waste” of one system becomes food for another. Everything can be designed to be disassembled and safely returned to the soil as biological nutrients, or re-utilized as high quality materials for new products as technical nutrients without contamination.”

Instead of tackling each product at time such as take out food, single use plastic, etc.

Set a standard for all products to be zero waste - biodegradable - food for ecosystems by a certain date

Big Ideas:

Lobby the region to shift to bioregional governance.

Bring the Bay Area's ecological footprint toward the planets and it's own carrying capacity

Bay Area Bioregion:

The San Francisco Bay Bioregion encompasses the entire San Francisco Bay Area and Sacramento-San Joaquin River Delta

Thank you

Cheryl Davila
Councilmember
District 2

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila (Author)

Subject: Create and Support an Adopt an Unhoused community program.

RECOMMENDATION

1. Adopt a resolution to create and support neighborhood volunteers and community groups adopting an encampment, street campers, RV / Vehicle community, located along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and other areas throughout the City.

2. Short term referral to the City Manager and/or designee(s) to present to the City Council in 90 days: how to implement the program modeled after the City of Oakland Adopt a Spot Program, identify a community based organization to oversee the volunteers, know what is needed to adequately implement these efforts, including different organizational structure options.

POLICY COMMITTEE RECOMENDATION

On January 25, 2021, the Health, Life Enrichment, Equity and Community Committee sent the item to Council with a qualified positive recommendation to take the following action: Refer to the City Manager to consider inclusion of homeless encampments in the existing "Adopt a Spot" referral to the Public Works Commission and Parks, Recreation, and Waterfront Commission once the "Adopt a Spot" program has been established. Vote: All Ayes.

BACKGROUND

On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks, or in vehicles) according to the Alameda County 2019 Point-In-Time Count. A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors, and the disabled.

The City of Berkeley spent close to $20 million on providing homeless services. About $6.5 million came from its general fund, about $9.5 million came from regional, state, and federal funds and $3.9 million were one-time funds from the state's Homeless Emergency Aid Program.

The City of Oakland currently has a Adopt a Spot program, where it allows volunteers and/or community groups to adopt a park, creek, shoreline, storm drain, street, trail, median or other public space you'd like to clean, green, or beautify on an ongoing basis. Participants adopt a public space and make a commitment to regularly clean and maintain the spot for no less than one year. The program allows volunteers to organize Community Cleanups and beautification events, joining with your neighbors and community. Volunteers have adopted hundreds of sites

around Oakland. The City of Oakland support for this program is through Tool loans, Debris pick-up, and Technical assistance.

In addition, the City of Oakland has an Adopt a Drain program, where hundreds of volunteers across Oakland have adopted storm drains to help their neighborhoods prepare for rainstorms. It doesn't take much to keep a storm drain clear. A little volunteer effort goes a long way in helping Public Works maintain over 12,000 storm drains to reduce flooding and prevent pollution of our waterways. When you sign up to Adopt a Drain, you become eligible to borrow City tools and supplies, and you will receive the City's rain alert notifications.

Thus, the City of Berkeley can learn from the City of Oakland and implement a similar program to help our unhoused community, i.e. adopting an encampment, street campers, RV / Vehicle community, and/or street intersections especially along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and others areas throughout the City.

Friends of Adeline, a diverse group of South Berkeley residents working in partnership with local businesses, nonprofits, and others to affect change has consistently supported the Here/There encampment when it was first formed. Friends of Adeline's member, Beloved, now deceased, Margy Wilkinson was able to get a port-a-potty and hand-washing station to be delivered at the encampment. Friends of Adeline supporting the Here/There encampment is a model of Adopting the Unhoused community, as well as the concepts of the City of Oakland's Adopt a Spot Program.

In order to get through the current crises we all face COVID-19, Shelter in Place (SIP), wildfires, smoke, etc), we need to allow, coordinate, enable and recognize volunteers from our neighborhoods and community groups to adopt our unhoused community. It truly does take a village.

FINANCIAL IMPLICATIONS
TBD, however, funds can possibly be identified with Measure O and P.

ENVIRONMENTAL SUSTAINABILITY
Allowing communities to have tools to prevent and stop fires furthers protects other communities and the environment.

CONTACT PERSONS
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Councilmember District 2
510.981.7120
cdavila@cityofberkeley.info

Sanjita Pamidimukkala
Eshal Sandhu
District 2 Interns

REFERENCES:
1. http://www.oaklandadoptaspot.org
2. https://www.oaklandca.gov/services/sign-up-for-adopt-a-drain
3. https://thestreetspirit.org/2019/03/01/south-berkeleys-here-there-encampment-celebrates-two-years/

ATTACHMENTS:
1. Adopt a Homeless Senior Neighborhood Project Flyer
2. City of Oakland Adopt a Spot and Adopt a Drain Maps

3. Resolution

Attachment 1: Adopt a Homeless Senior Neighborhood Project

ADOPT A HOMELESS SENIOR NEIGHBORHOOD PROJECT



Adopt a Homeless Senior Project was started in 2018 with the ideas of 12 Berkeley neighbors who wanted to make a difference in our homeless community. We learned that over 1/2 of our homeless population were seniors and that over 85% of those seniors were homeless in the areas they were once housed. We agreed to support St. Mary's Center (stmaryscenter.org), a stellar (and secular) non-profit organization that provides a wide array of services to help get homeless seniors into housing.

We would love other local neighborhoods to join us in our fund-raising efforts.

Contact: barbara@barbarareiner.com

THE ALAMEDA COUNTY
2019 EVERYONE COUNTS HOMELESS POINT-IN-TIME COUNT & SURVEY

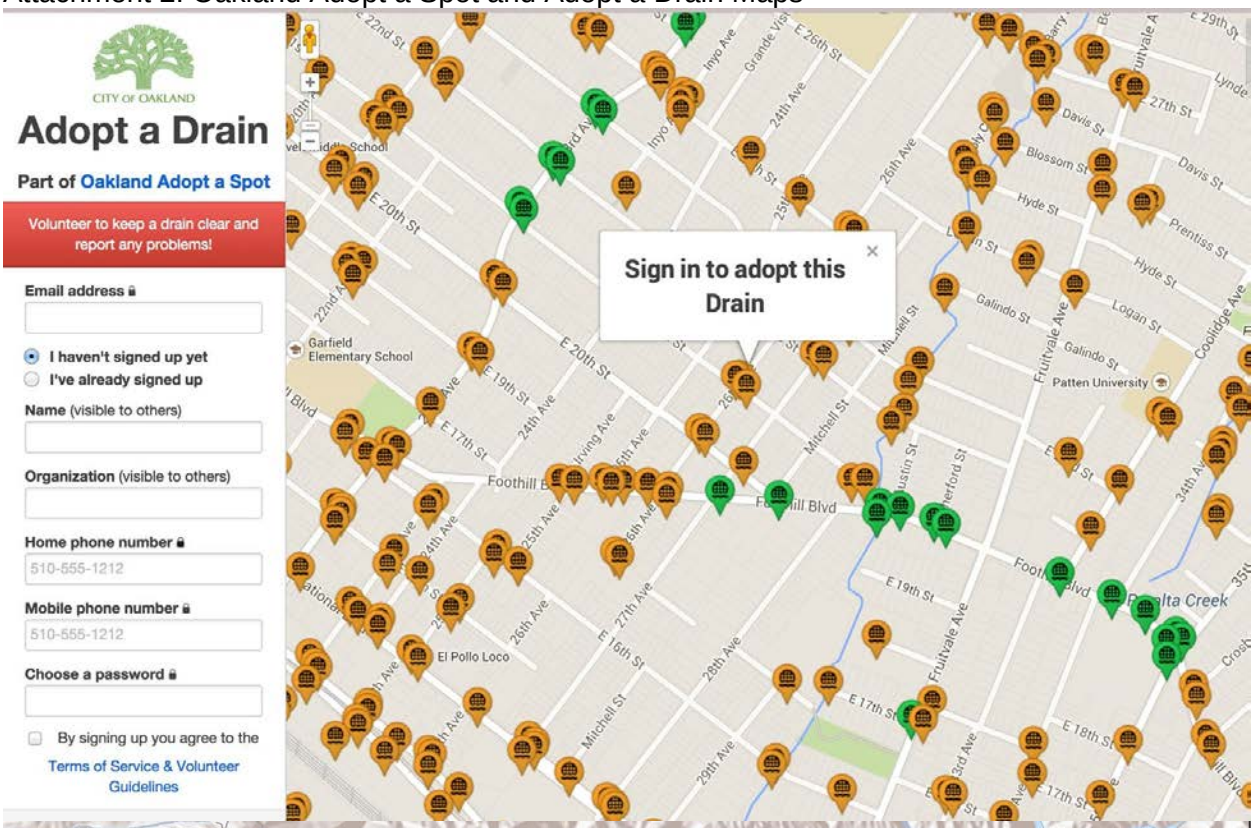
PRIMARY CAUSES OF HOMELESS:
13% Lost Job; 12% Mental Health; 10% Substance Use; 9%Eviction/Foreclosure; 9% Rent Increase; 8% Incarceration

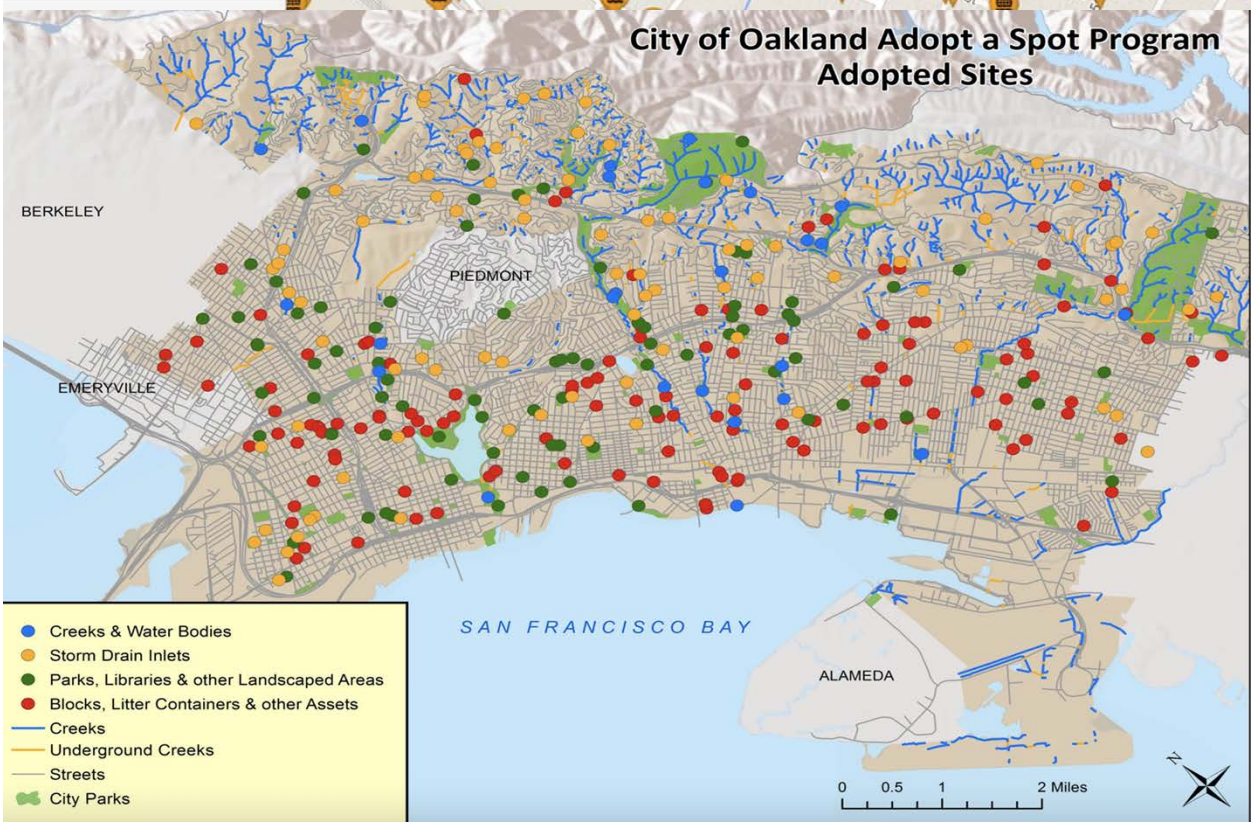
WHERE MOST HOMELESS ARE LIVING:
34% Tent; 23% Car/Van; 22% RV; 20% Street/Outside; 1% Abandoned Building

PERCENTAGE OF HOMELESS POPULATION WHO HAVE BEEN RESIDENTS OF ALAMEDA COUNTY PRIOR TO BECOMING HOMELESS:
78%

THE GERONTOLOGIST (FEBRUARY 2016)
BAY AREA AGE GROUP WITH HIGHEST % OF HOMELESSNESS:
50+

Attachment 2: Oakland Adopt a Spot and Adopt a Drain Maps





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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, SUPPORTING THE CREATION AND SUPPORT AN ADOPT AN UNHOUSED COMMUNITY PROGRAM

WHEREAS, On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks, or in vehicles) according to the Alameda County 2019 Point-In-Time Count. A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors, and the disabled; and

WHEREAS, The City of Berkeley spent close to $20 million on providing homeless services. About $6.5 million came from its general fund, about $9.5 million came from regional, state, and federal funds and $3.9 million were one-time funds from the state's Homeless Emergency Aid Program; and

WHEREAS, The City of Oakland currently has a Adopt a Spot program, where it allows volunteers and/or community groups to adopt a park, creek, shoreline, storm drain, street, trail, median or other public space you'd like to clean, green, or beautify on an ongoing basis. Participants adopt a public space and make a commitment to regularly clean and maintain the spot for no less than one year. The program allows volunteers to organize Community Cleanups and beautification events, joining with your neighbors and community. Volunteers have adopted hundreds of sites around Oakland. The City of Oakland support for this program is through Tool loans, Debris pick-up, and Technical assistance; and

WHEREAS, In addition, the City of Oakland has an Adopt a Drain program, where hundreds of volunteers across Oakland have adopted storm drains to help their neighborhoods prepare for rainstorms. It doesn't take much to keep a storm drain clear. A little volunteer effort goes a long way in helping Public Works maintain over 12,000 storm drains to reduce flooding and prevent pollution of our waterways. When you sign up to Adopt a Drain, you become eligible to borrow City tools and supplies, and you will receive the City's rain alert notifications; and

WHEREAS, Thus, the City of Berkeley can learn from the City of Oakland and implement a similar program to help our unhoused community, i.e. adopting an encampment, street campers, RV / Vehicle community, and/or street intersections especially along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and others areas throughout the City; and

WHEREAS, Friends of Adeline, a diverse group of South Berkeley residents working in partnership with local businesses, nonprofits, and others to affect change has consistently supported the Here/There encampment when it was first formed. Friends of Adeline's member, Beloved, now deceased, Margy Wilkinson was able to get a port-a-potty and hand-washing station to be delivered at the encampment. Friends of Adeline supporting the Here/There encampment is a model of Adopting the Unhoused community, as well as the concepts of the City of Oakland's Adopt a Spot Program; and

WHEREAS, In order to get through the current crises we all face COVID-19, Shelter in Place (SIP), wildfires, smoke, etc), we need to allow, coordinate, enable and recognize volunteers from our neighborhoods and community groups to adopt our unhoused community. It truly does take a village; and

NOW THEREFORE BE IT RESOLVED that the City Council of Berkeley, hereby support the creation and support an Adopt an Unhoused community program, as well as provide support to neighborhood volunteers and community groups adopting an encampment, street campers, RV / Vehicle community, located along University Avenue/ Shattuck Avenue / Adeline corridor/ San Pablo Avenue and other areas throughout the City.

BE IT FURTHER RESOLVED, Short term referral to the City Manager and/or designee(s) to present to the City Council in 90 days: how to implement the program modeled after the City of Oakland Adopt a Spot Program, identify a community based organization to oversee the volunteers, know what is needed to adequately implement these efforts, including different organizational structure options.

Councilmember Ben Bartlett
City of Berkeley, District 3

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Amend Berkeley's Property Tax Measures and Restore Tax Equity by Changing the Square Footage Tax Imposition through a Comprehensive Verification Process

RECOMMENDATION

In order to correct inequitable and inconsistently applied rates of property tax assessments, and to ensure that outstanding revenues due to the City are paid, the Finance Department should conduct a comprehensive verification analysis. This process will update and bring the city's taxable square footage database into alignment with Planning's building area database. Through this verification, the City shall also reconcile with the Alameda County Assessor's Public Roll to ensure that the City's tax database is up-to-date and accurate. This reconciliation will restore tax equity, which has been desired by Berkeley voters, while also unifying standards, protocols and terminology between departments. The City should adopt the following habitability criteria for taxation purposes:

1. Taxable space must have manufactured flooring. If the understory has dirt base, it shall not be taxed (Uniform Building Code R502 – floor material requirement). (Acceptable proof: photo)
2. Taxable basement space must be of required height clearance. If understory has proper flooring and is of limited height, 6' 8" or less, with 6'4" allowance for ducting, then it shall not be taxed (Uniform Building Code R305 – basement height requirement) (Acceptable proof: photo with measuring tape)
3. Taxable attic space must have required height clearance. If finished attic, only areas of 6'4" height or more is taxed for city assessments (Acceptable proof: photo with measuring tape)
4. City of Berkeley shall post the property's taxable square footage in at least 12 point font on the City's Parcel Viewer page. City of Berkeley shall disclose the potential increase to taxable square footage liability for the taxpayer when application for building addition is made.
5. City of Berkeley shall make public the taxable square footage liability of the proposed finished building to the community when a Zoning Adjustments Board application is made.
6. City of Berkeley shall disclose a property's taxable square footage in writing to a property owner or interested buyer, upon request.

7. If the taxpayer requests a correction on the square footage assessments, and the space in question does not align with the above taxability requirements, the taxpayer shall be entitled to a refund on all 9 city and schools assessments for the previous four full years of taxes (Civil Code 5097). Requests for correction shall be allowed at any time.

POLICY COMMITTEE RECOMMENDATION

On January 28, 2021, the Budget and Finance Committee moved the item to Council with a negative recommendation to take no action and for Councilmember Harrison to work with Councilmember Bartlett on another item addressing the broader policy issues surrounding this item. Vote: All Ayes.

BACKGROUND

In 1965, the Berkeley Municipal Code was amended to state *"The following duties are hereby transferred to the appropriate officers and employees of the County of Alameda: (a) The assessment of City of Berkeley property for City of Berkeley taxes. (b) The equalization and correction of the assessment*" (BMC 7.24.010). Instead of using County standards and measures, however, the City has its own unique method of measuring taxes and assessing property within the City.

BMC 7.56.030A allows the Finance Department to impose taxes on the dwelling unit square feet. Specifically, BMC 7.56.020C defines dwelling as "designed for human occupancy." However, the City has used an expansive interpretation of what shall be included in a dwelling area. For example, many Berkeley families have been charged for non-conforming spaces and areas not designed for human occupany under their homes. The Berkeley for Assessment Tax Equity organization has sent the Finance Department a letter. See Attachment 1 and 2. The letter highlights examples of constituents who are currently and inequitably impacted by the City's tax method.

The City's expansive interpretation of the BMC has led to the taxation of unfinished understory areas, including spaces that are of a reduced height and are not of adequate height to be a basement according to the Uniform Building Code. Such spaces cannot be used for dwelling without substantially rebuilding the foundation, yet many of these areas continue to be improperly taxed. At the same time, dozens of properties with true basements (with floors and sufficient height to walk around in) are not taxed for those spaces.

At the same time, there are homeowners who experience windfall because they are not being taxed for new additions to their properties. According to the Berkeley for Assessment Tax Equity, hundreds of properties escape these assessments for their permitted additions each year because some Berkeley property owners who build onto

their property are often not reassessed in square footage by the City of Berkeley or in ad valorem value by Alameda County. The inconsistencies in taxation, along with the imposition of taxes on non-dwelling spaces, is an equity issue that must be addressed.

Incorrect dwelling space assessments place a huge burden on many Berkeley homeowners--several of whom are seniors, persons of color, and/or have fixed-income. These individuals experience economic hardship by paying hundreds of dollars more in taxes for unfinished understories on top of their already pricey assessments. All while other homeowners are experiencing windfall because they are not similarly taxed. As a result, those who pay taxes on their unfinished understory area subsidize those who do not pay for what should be their new additions' fair tax increase.

CURRENT SITUATION

The voters of the City of Berkeley have approved various Tax Assessments to benefit the Berkeley Public Schools and City Programs and Districts. The intent of the voters was equitable taxation through calculation based on the size of the dwelling or business. Instead, the City's tax assessments have been calculated in a way that allows escaped assessments for those who have added on to their home with or without permits. In addition, the City's interpretation of 1950s and 1960s building cards has led the City to charge homeowners for non-conforming spaces, which are not part of their dwelling, at varying rates of tax assessments for similarly sized properties.

Community members, including individuals from Berkeley for Assessment Tax Equity (BATE), have asked the Council to rationalize this process of paying property taxes. BATE and past auditors have already identified problems with the tax records, including:

1. The failure of the city to capture square footage at the intersection of planning/building and finance/assessor
2. The inequitable imposition of taxes on non-conforming spaces for some properties, and not for others

In the past four decades, City auditors have identified assessment discrepancies many times and have made suggestions that echoes the recommendations of this proposal. For example, a 2005 City audit recommended the implementation of a comprehensive verification analysis, in which tax procedures should include a comparison of the building square footage (BSFT) and lot square footage (LSFT) to the County's assessed values. In 2012, another auditor recommended that the City Manager should consider aligning the tax definition of BSFT with the Planning Department's. In this case, the City's aim of using square footage for more equitable distribution of the special tax would not change. See Attachment 3.

However, the City's current method of taxation does not reflect these changes or recommendations made by past auditors. As a result, the flawed imposition of tax continues to broaden the tax burden of some and the total escaped taxes of others. In this respect, the tax equity problem results from a lack of internal controls between City Departments. .

Currently, BATE has identified 700 properties with square footage-related lost revenue errors. See Attachment 4. In addition, there are at least 40 properties with understories/basements that are not charged for these dwelling areas, while there are at least 11 confirmed homeowners who have been charged for non-conforming spaces. See Attachment 5. To effectively address the significant impacts of the City's special tax assessment method on all property owners in Berkeley, the Council should utilize the recommendations of past auditors and BATE's research to directly change the City's method of taxation.

ACTIONS/ALTERNATIVES CONSIDERED

The District 3 Office also considered hiring an outside consultant to conduct their own individual analysis and impact study on Berkeley's property tax measures and special assessments. This third-party consultant would analyze the impacts of the City's tax measures on homeowners and City revenues. In addition, the consultant would compare the impacts between the tax methodologies of (1) Alameda County, (2) Berkeley's Finance Department, and (3) Berkeley's Planning Department. The consultant would use this information to help the City determine the best method and practice for taxing property and ensuring tax equity. However, the City has already hired past auditors who have suggested some of the recommendations in this item. Rather than spend additional funds to hire a consultant to perform another analysis, the City should implement direct changes to the method of adherence to tax code when imposing taxes.

OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with the Berkeley for Assessment Tax Equity (BATE) and impacted constituents on the ways in which Berkeley's tax measures have significantly affected their lives and communities. The constituents have collected background materials, observed BATE community actions, and discovered findings from research on underassessed properties and experiences with City departments. The Office's communication with these constituents has informed this Council recommendation.

RATIONALE FOR RECOMMENDATION

This recommendation aims to restore tax equity by updating the tax records to align with habitability standards. Failing to tax habitable dwelling spaces while imposing taxes on inhabitable spaces places an economic burden on taxpayers due to the inconsistent and unequal practice of taxation assessments. Enforcing equitable taxation in the law and in practice is important to ensure homeowners are being fairly and accurately taxed based on reasonable legal standards regarding their dwelling units. Taxpayers should not be overcharged on units that are not designed for human occupancy, noting that legal considerations of “dwelling” do not always comply with the reality of these spaces.

To enforce tax equity, these recommendations outline a standard for taxable dwelling units and inform the taxpayer of the taxation assessment method. If there is a discrepancy in the assessment, the taxpayer may request a correction to ensure tax compliance. Former city auditors have recommended these guidelines in the past, but unfortunately, there has been no action to follow through with their recommendations. Not only would these code changes ensure that homeowners are not being overly taxed, but by modifying the tax code to align with the Planning Department’s square footage database, the City can gain money from the previously unassessed, untaxed dwelling spaces. These recommendations would ensure that tax equity is properly enforced to align with habitable standards.

FISCAL IMPACTS OF RECOMMENDATION

Staff time to check the tax records and update the tax database to ensure that tax assessments correctly match the relevant properties that must be charged. Past auditors have found that aligning the tax code with the Planning Department’s code would make these interdepartmental tasks and updates easier. The aim of levying tax with equity in mind would not change either. In addition, removing non-conforming, non-dwelling spaces from the taxable database will not have a significant impact on revenue. Instead, changing the tax code will allow the City to capture the hundreds of thousands of dollars of unassessed dwelling space, resulting in increased cash flow.

All true basements and other non-conforming, but developed, spaces would remain taxed upon implementation of this proposed policy. Most homes that are taxed by the City at a higher square footage level than the County's value would remain this way. As a result, the City would not face rampant future applications for refunds.

CONTACT PERSON

Councilmember Ben Bartlett 510-981-7130
Katie Ly 510-981-7131

ATTACHMENTS

1. Berkeley for Assessment Tax Equity Group Letter (BATE) to the Finance Department
2. Signatures on BATE’s Letter

3. 2005 and 2012 City Audit on Assessment Discrepancies
4. List of the 700 Properties with Square Footage-Related Lost Revenue
5. List of the 40 Basements/Understories Not Charged

ATTACHMENT 1

Berkeley for Assessment Tax Equity

2215 Stuart St.

Berkeley, CA 94705

July 1, 2020

City of Berkeley Finance Department

1947 Center St.

Berkeley, CA 94704

Dear Finance Department,

We, the undersigned, saw the Finance Department's response to the Berkeley Neighborhood's Request for a public hearing about the numerous requests from the community for tax bill corrections. Despite your claim to the contrary, we know that the City's square footage database is rife with errors. We are urging you to take action now to correct the square footage value you use to bill us for City and Schools parcel taxes. Berkeley Municipal Code 7.56.030A (referenced in the Library and Schools taxes) allows Finance to impose tax on the dwelling unit square feet. BMC 7.56.020C defines dwelling as "designed for human occupancy". You are imposing tax on areas that are NOT designed for human occupancy, in our cases. This is unfair and burdens us with a greater liability for City Services than others who are not similarly taxed, as each instance will show.

Willa Willis Jacobs in the 1700 block of 62nd - I pay for 820 ft2 of unfinished non-conforming space under my home. Near me, at 1823 62nd, a duplex owner pays 772 ft2 less than they should. Also, the duplex at 1536 62nd pays 609 ft2 less than they should after their 1993 basement renovation. I, Ms. Jacobs, pay $820 a year more than I legally should pay, the landlords at 1823 and 1536 62nd pay $800 and $625 less a year than they should.

Roxanne Schwartz in the 1300 block of 66th – I pay assessment taxes for 1077 ft2 of unfinished, non-dwelling space less than 6 ft in height. The unfinished understories at 1619 Julia and 1623 Tyler are not charged assessment taxes on their similar spaces. Near me, at 1406 66th, the landlord owner pays for 655 ft2 less building area than that showing in the public record. Why should I, a retiree on fixed income pay more for city services than that landlord whose tenants should be paying adequately for city services through their rent?

Paul Gumpel in the 1100 block of Carleton – I pay for 733 ft2 of sloped dirt understory. Near me, the landlord at 1115 Carleton, only pays for half the square footage (1118 ft2) they have available to rent to tenants (2524 ft2). The landlord at 1215 Carleton pays tax on 1175 ft2 less than they should for their 2587 ft2 building. I, Mr. Gumpel, pay extra $750 a year and the landlords save $1400 and $1200 a year, respectively.

ATTACHMENT 1

Mrs. Doris Smith in the 1700 block of Carleton – I pay for 384 ft2 of unfinished, non-conforming space. The law says and voters approved a tax on dwelling space. A couple of blocks over at 1731 Channing, they don't pay for their cavernous non-conforming space. Neither do they pay for unfinished space at 1933 Yolo and 76 Codornices and 1136 Fresno. Also close by, the owners at 2319 California don't pay tax on their beautiful 2nd story they added. Why should they receive discounts on dwelling space for years, while I am penalized for non-dwelling space? I, Mrs. Doris Smith, pay an extra $400/year and the other owners don't have to pay this illegal tax. Many, like the owners of 2319 California don't even have to pay for dwelling space when they add it on.

Merryl Dashiell in the 1700 block of Carleton – I pay for 525 ft2 of unfinished attic. City of Berkeley councilmembers, Harrison and Droste do not pay for their finished and usable attics. I, Ms. Dashiel, pay an extra $550 a year and Councilmembers Harrison and Droste save $500 a year each.

Colleen Miller in the 2100 block of Essex - I pay extra for unfinished understory of 1024ft2. My neighbors at 2121 Essex don't pay for their understory of 1083 ft2 and the landlord of the duplex at 2117 Essex underpays for rentable, dwelling space by 1485 ft2 each year. I, Colleen Miller, pay an extra unlawful $1025 a year and the others save $1100 and $1500 respectively on their tax bill.

Mrs. Berrigher in the 1900 block of Fairview - we pay for 1094 ft2 of unfinished understory. My neighbor at 1930 Fairview does not pay for their basement or finished attic. Also nearby, the landlord owner of the duplex at 1631 Woolsey pays for 682 ft2 less space than they actually have to rent to their tenants. The owner of the nearby house, 3107 Deakin, recently on the market avoids paying for a 1000 square foot finished apartment in their untaxed basement. Fairview Family pays $1300 more than they lawfully should be forced to pay. The landlord at 1631 Woolsey saves $700/year. The owners at 3107 Deakin save $1000 a year.

Wolf and Amanda Arnold in the 1600 block of Josephine - We recently bought our home and were not told that the 686 ft2 of non-conforming height understory would be taxed. Down the street, the owners at 1405 Josephine don't pay assessments on their basement, even after they developed it with permits in 1997. Also on our street, 1206 Josephine underpays for permitted dwelling space by 1245 ft2 (around $1300) a year. The home at 1410 Josephine underpays by 1686 ft2 or around $1700 a year. 1315 and 1226 underpay by around $1000/year, all for dwelling space. We will be burdened even more unfairly when taxes increase soon.

Chris Catletts in the 1700 block of Parker – I pay extra for 1119 ft2 understory not tall enough to walk in without hunching over. My neighbors at 1825 Parker don't pay for the space they created in 2002 when they did a $200,000 house raise to increase their building area by 1141 ft2. The triplex landlord owner up the street at 2120 Parker doesn't pay for the 926 ft2 area of a 2006 $253,845 ft2 3rd story. 1736 Channing doesn't pay for their understory at all. I, a retiree, pay an extra unlawful $1119 a year and the others save an unlawful $1150 and $950 a year.

The Tharp/Menard family in the 1600 block of Stuart St – we pay 916 ft2 extra for unfinished, dirt, non-conforming space. Our backdoor neighbor at 1618 Ward doesn't pay for the 975 ft2 area of the downstairs unit they developed in the 1990s. Another duplex owner at 1508 Ward doesn't pay for the 1006 ft2 they renovated in 2002, before or after the renovation! We, the Tharp/Menard family, pay $920 a year more than we should, while the duplex owners at 1508 and 1618 pay $1000 and $1050 less than their share a year for city services.

ATTACHMENT 1

Ms. Dengler in the 2200 block of Stuart – I pay for 2286 ft2 of basement that I don't have. Meanwhile, the 4plex owner at 1939 Stuart pays for only 2700 ft2, even though it is a 3800 ft2 building. I, Mrs. Dengler, lose $2300 a year in unlawful tax assessments while the landlord down the street saves $1100 a year.

We beseech you to do the right thing and correct our dwelling space assessments before the new tax bills are mailed out.

Berkeley for Assessment Tax Equity

Cc: Mayor Jesse Arreguin, City Manager Dee Williams-Ridley, City Auditor Jenny Wong,

Councilmembers Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste,

Alameda County Tax Collector Henry Levy, Alameda County Assessor Phong La,

Alameda County Board of Supervisor Keith Carson,

Alameda County District Attorney Jeff Israel,

Berkeley Neighborhood Council, Berkeley School Board

Sharon Parker, Ca State Controller Office (Betty Yee)

See Attachment 2 for signatures.

Willa Willis Jacobs at [redacted] 62nd

Roxanne Schwartz at [redacted] 66th

Paul Gumpel at [redacted] Carleton

Mrs. Smith at [redacted] Carleton

Merryl Dashiell at [redacted] Carleton

Colleen Miller [redacted] Essex

~~[redacted] 1008 Fairview~~

Wolf Arnold at [redacted] Josephine

~~[redacted] Steve Klusaritz at 1609 Parker~~

Chris Catletts at [redacted] Parker

~~[redacted] Elgie Scott at 1514 Prince~~

Laura Menard at [redacted] Stuart

Barbara Dengler at [redacted] Stuart

~~[redacted] 1914 Ward~~

~~[redacted] Mr Julias at 2001 Woolsey~~

Mrs. Beatrice Barrigher at [redacted] Fairview

ATTACHMENT 3

Parcel Based Special Taxes, Fees, and Assessments, Presented to Council March 15, 2005

Audit Prepared by: Ann-Marie Hogan, City Auditor, CIA, CGAP, Teresa Berkeley-Simmons, Audit Manager, CIA, CGAP, Jocelyn Nip, Auditor II, CPA

From Background: Our Landscape and Park Maintenance Assessment Fund Review report issued in November 1994 and our Clean Storm Water (CSW) Assessment Audit issued in October 1995 identified many internal control weaknesses in the assessment processes. One finding in the Landscape and Park audit stated, "Changes in improvement square footage are not always entered into the assessment data base timely." One finding in the CSW audit stated, "Due to internal control weaknesses, procedures do not provide a reasonable assurance that all parcels which can be assessed CSW Fees are properly assessed."

In late 2003, members of the public revealed that several properties, including the Gaia Building, were not billed for parcel taxes. Subsequently, Finance conducted investigations of 339 parcels with zero BSFT and identified properties that had escaped assessments.

2.2 Finding 3: There is likelihood that the taxable BSFT for some parcels might have been understated or overstated, resulting in improper assessments. There is no systematic plan in place to capture such parcels, forgoing the opportunities for recovering revenue related to underassessed properties.

The discovery of an underassessment is not a one-time windfall. Additional BSFT brings a future stream of revenues as long as the property remains

There was awareness that overassessments exist, which may include exempt areas such as garages, patios and balconies. Checking for these overcharged and undercharged discrepancies was called a **comprehensive verification exercise**

5.1 On a quarterly basis, the Revenue Collection Manager should on a sample basis review and verify that the BSFT posted to the Land Management System is supported and accurate. This review should be documented.

5.2 Formalize and document the review procedures performed by the Land Management Analyst. **Procedures should include a comparison of the BSFT and LSFT to the County's assessed values**. When a property of high assessed value is assigned a zero square footage or low square footage, it should trigger a concern that the property may not be properly taxed.

July 24, 2012 Information Calendar: Audit Status Report: Improved workflow systems

Finding 3: Finance and Planning have not clearly assigned responsibilities for capturing taxable building square footage. Recommendation 3.5: City Manager should consider whether increased accuracy and efficiency of special tax calculations is worth the cost of a special election to simplify the Berkeley Municipal Code Definition of building square footage. The City Manager, with input from Planning, should consider aligning the definition with Planning's. The City's practice of using square footage for more equitable distribution of the special tax would not change.

ATTACHMENT 4

Address	SqFt Escaped	City sqft	type	Year of Addn	Cost of Addn	Addition type	City Tax Loss-la	Cnty Loss-last 10 yr	
5th	642	3028	4plx			error in sf2 tx	5259		
5th	418	1098				error in sf2 tx	3424		
6th	921	2334	triplx			error in sf2 tx	$7,545		
6th	539	832				error in sf2 tx	$4,415		
6th		1463		2007	$80,000	562 ft2 addition		$9,896	
6th	547	1945	duplx			error in sf2 tx	$4,481		
6th	421	1699		1995	$22,960	remod lower flr	$3,449		
6th	326	2442	triplx			error in sf2 tx	$2,671		$107K/yr ir
6th	2698	3322	8 unit			error in sf2 tx	$22,101		only reass $
6th	485	1360		2006/15	$65,000	485 ft2 2nd str/bsmt	$3,973		
6th	439	1108		2002	$60,000	addn	$3,596		
6th	2578	1340	duplx	1996	$78,400	raise hse/add unit	$21,118		
6th	477	1666	duplx			error on sf2 tax	$3,907		
7th	496	1563		1999	$43,966	fam room	$4,063		
7th	644	604	duplx			error on sf2 tx	$5,276		
7th	1405	2384	triplx	1997/07	$90,000	addn/add meters	$11,509		
7th	1200	1244		2007	$39,000	develp bsmt	$9,830		
7th	988	953		2011	$80,000	add famrm/wkshp	$8,093	$9,896	
7th	500	762				error on sf2 tax	$4,096		
8th	413	1157		2000/08	$51,000	239 ft2/kitchen	$3,383		
8th	510	1563		1992/05	$49,760	addition	$4,178		
8th	322	884		1995	$19,000	addition	$2,638	$2,350	
8th	641	2290	triplx			error on sf2 tax	$5,250		
8th	490	993		1999	$47,000	bed/ba/study	$4,014		
8th	500	1268	duplx			error on sf2 tax	$4,096		
8th	544	1191	duplx	1999	$90,000	544ftconv to duplx	$4,456		
8th	726	1796				error on sf2 tax	$5,947		
8th	694	450				error on sf2 tax	$5,685		
8th	1490	882				error on sf2 tax	$12,206		sold 2018
8th	4900	1612		2016	$800,000	sfr to 4plex	$4,900		$54K done
9th	483	880		2003	$80,000	addition 483 ft2	$3,956		$0 Done
9th	773	1436		2005	$121,000	addn/fire repair	$6,332		$10K only
9th		2793		2003	$214,370	addn 2 story		$24,785	

9th	500	1394				2 story addn	$4,096		
9th	762	944		1994	$152,190	manf hom1716 ft2	$6,324	$3,092	
9th	610	1439		1994	$61,000	attic/stair	$4,997		
9th	653	1057				error on sf2 tax	$5,349		bsmt not ch
9th	1247	991	duplx	1998	$86,686	2 story cott/bsmt	$10,215		
9th	690	1400	duplx			error on sf2 tax	$5,652		
10th	426	916				error on sf2 tax	$3,490		
10th	896	883	duplex			2 homes/1 lot	$7,340		
10th	1318	1409		2003	$15,000	permit 2 new furnc	$10,797		
10th	465	1439				in-law downstairs	$3,809		
10th	580	1234	duplx			error on sf2 tax	$4,751		
10th	455	2983	triplex			error on sf2 tax	$3,727		
62nd	609	1885	duplx	2003	$6,000	renov bsmt	$4,989		
62nd	1000	3148	duplx			cottage in rear	$8,918	unknown	
62nd	520	1967	duplx			error on sf2 tax	$4,260		
63rd	403	2374	duplx			error on sf2 tax	$3,301		
63rd	477	2119	duplx			error on sf2 tax	$3,907		
63rd	497	1026		2004	$52,791	addition	$4,071	done at $31K	
63rd	620	1387		2017	91500	addn	$5,078	unknown	
66th	655	2009				error on sf2 tax	$5,366		
Acton	467	2533		2003	45000	remodel/addit	$3,826	$ 5,565.00	
Acton	508	2137				error on sf2 tax	$4,161		
Acton	373	1746		2002	20000	garg convers	$3,055	$ 2,474.00	
Acton	923	976				2nd story	$7,561	unknown	
Acton	847	1652	duplx			2nd unit not chg	$6,938	unknown	
Acton	680	1008	duplx		1999	gas meter unit2	$5,570		
Acton	871	992				error on sf2 tax	$7,135		
Acton	611	1066		2012	81000	addition 2 story	$5,005		
Acton	629	1140				error on sf2 tax	$5,153		
Adeline	464	1040				error on sf2 tax	$3,801	?	
Adeline	739	911	triplx	1961	unknown	addition	$6,054	$1,000	
Addison	335	985		1994	40000	raise house	$2,744	sold 2004	
Addison	2150	3514		1992	unknown	new duplex	$17,612		
Addison	493	2680				error on sf2 tax	$4,039		
Allston Way		1890		2002	$76,000	raised house addition		$9,401	

Allston Way	1162	1362		1993	$78,140	2nd story		$9,519	$9,665	
Allston Way	552	1098		1994	$40,000	2nd story		$4,522		
Alcatraz	1435	2235	triplex			error on sf2 tax		$11,755		
Alcatraz	482	1836	duplx			error on sf2 tax		$3,948		
Alcatraz	616	2786				error on sf2 tax		$5,046		
Arch	417	2127		2011	$204,041	kitch/ba remod		$3,416		
Arch	600	1289		1997		develp bsmt		$4,915		
Arch	1200	540		1992	$108,180	new 3 bd/2 ba hous		$9,830	$13,382	
Arch	736	1176	duplx	2010	$15,000	unit A repairs		$6,029		
Arch	448	4012	triplx	2001	$133,500	2nd story		$3,670	$16,514	no rnt bd re
Arch	2705	4588	multi			error on sf2 tax		$22,159		
Arch	375	3475	duplx			error on sf2 tax		$3,072		
Arch	493	1289	triplx	1998		3 meters install		$4,039		
Arch	740	3603		2011/17	$390,000	remodel/ADU	?		$19,680	
Arlington	1758	1652		1995		home rebuild		$14,401		
Arlington	1397	2430		2002	$150,000	home rebuild		$11,444		
Arlington	1399	1650		1997/12		addn/sunrooms		$11,460		
Arlington	145	1585		2000	?	ADU size error		$1,187	?	
Arlington	541	1790		2006	$322,000	new 2300 ft2 home		$4,432		
Arlington	920	2228	duplx	1993	$32,000	attic conversion		$7,536		
Arlington	1079	1828		1999/02	$102,500	bsmt remd/2nd stor		$8,839		
Arlington	616	2144		1992	$11,000	bsmt conv		$5,046		
Arlington	883	2207		2002		error on sf2 tax		$7,233		
Arlington	572	2181		2013	$68,700	2nd stor addn		$4,686		
Ashby	928	1810	4plx	2003		many upgrades				
Ashby	536	4525	5plx			error on sf2 tx		$4,391		
Ashby	416	1143				several inspections		$3,408		
Ashby	671	1501		2009	$210,500	renov/addn		$5,497		
Ashby	363	1690				few prmts 07-11		$2,974		
Ashby	1055	1074	duplx	1980		Victrian hse lift		$8,642		
Ashby	542	1086				error on sf2 tax		$4,440		
Ashby	446	2311	duplx			error on sf2 tx				
Ashby	372	6540	8unts	2016		Hsng Rpt-06675				
Ashby	291	1880	duplx	1999	$20,000	Rm addn/kit rmd				
Ashby	1000	2960	5plx	2001	$100,000	conv bsmt to apt		$8,192		

Bancroft	1430	1276				adu/downtairs	$11,714	unknown
Bancroft	468	1513				error on card	$3,834	unknown
Bancroft	644	1544		2002	$3,220	gar conv to living	$5,276	$398
Bay Tree	755	2300				ADU	$6,184	?
Benvenue	950	3463	4plex		residence/cotta	13 bdrms/7 bath	$7,782	
Berkeley W	335	966				error on sf2 tax	$2,744	
Berkeley W	210	888		2000	$6,200	Sunroom	$1,720	$767
Berkeley W	911	864		1994	$71,000	2nd story addn	$7,463	unknown
Belvedere	206	801	1007		?	error on sf2 tax	$1,687	?
Berryman	480	1133		2009	$35,000	ADU	$3,932	$2,066
Blake	817	1105		1995	unkown	error on sf2 tax	$6,693	unknown
Blake	1740	1154		unknown	unknown	addition	$14,253	
Blake	584	1216				error on sf2 tax	$4,784	
Blake	600	1422				error on sf2 tax	$4,915	
Blake	612	1319		2000	$75,000	house raise	$5,013	
Blake	889	1550	duplx	2012		raise bldg duplx	$7,283	
Blake	968	2274				error on sf2 tax	$7,930	
Blake	382	1831		2004	$18,000	addition	$0	$2,227
Blake	711	2842				error on sf2 tax	$5,824	
Blake	216	1087				error on sf2 tax	$1,769	?
Bonita	693	2003	duplx	2003	$66,759	addition	$5,677	
Bonita	1445	2173	duplx	1992	$47,406	addition	$11,837	
Bonita	788	2352	triplx	1995/2017	20000/105000	conv bsmt/attic	$6,455	$13,057
Bridge	700	2709			$25,000	addn:0810832712	$5,734	$3,092
Browning	498	1062				error on sf2 tax	$4,080	
Browning	2647	720		2015	$50,000	renovation	$21,684	$6,185
Browning	433	1591				error on sf2 tax	$3,547	
California	337	1454	duplx			addition	$2,761	
California	516	1244	duplx			addition	$4,227	
California	532	1078		2005	$53,400	addn 2nd story	$4,358	$6,605
California	1099	1444	duplx			error on sf2 tax	$9,003	
California	658	2066		2002	$189,000	2nd story addn		$23,379
California	536	2105	duplx	1995	$8,000	conv SFR to duplx	$4,391	
California	672	942				error on sf2 tax	$5,505	
California	545	1208	duplx	1994	$67,195	ADU	$4,465	

California	843	4913	triplex	2002	$245,013	add 2 units	$6,906		
California	1062	1137		1997	$40,000 plus	2nd story addn	$8,699	unknown	
California	674	966		2013	$31,500	stor conversion	$5,521		
California	504	1360		1994	$35,000	attic conversion	$4,128	unknown	
California	370	944		2002	$40,000	addition	$3,031		$4,948
California	808	2382	duplx			error on sf2 tax	$6,619		
California	399	1625		1994	$19,000	addition	$3,268	unknown	
California	827	1037		1993	$48,793	872 ft2 addn	$7,143		
Camelia	1114	1094		1998		bsmnt made usable	$9,126		
Camelia	451	1224					$3,695		
Camelia	495	1553	duplx				$4,055		
Camelia	1005	1005		2002	$97,365	2nd story addn	$8,233		
Campus Dr.	949	2930				error on sf2 tax	$7,774	?	
Campus Dr.	1231	1769		2003	$115,000	addition	$10,084		
Capistrano	185	2603		2006	$57,873	addition	$1,516		
Carleton	1118	1336	duplx			error on sf2 tax	$10,944		
Carleton	774	1446		2017	$400,000	2nd story addn	$6,340	reass $93K	
Carleton	253	1604	1857	2012	$3,000	basement convers	$2,074		$371
Carleton	1175	1412	trplx			error on sf2 tax		96.6K income	
Carleton	715	517				error on sf2 tax	$5,857		
Carleton	1023	1504	duplx		$2,002	inspect	$8,380		
Carleton	1284	1614	duplx			error on sf2 tax	$10,518		
Carleton	314	1348		1995	$28,000	addition	$2,572	unknown	
Carleton	500	1087		1993	$10,000	2nd story addn	$4,095		$1,237
Cedar	554	1092				error on sf2 tax	$4,538	?	
Cedar	480	844		1999		addition	$3,932	?	
Cedar	433	1466		2005	$154,700	raised house additio	$3,547	?	
Cedar	984	1440				error on sf2 tax	$8,060	?	
Cedar	1186	1116				duplex added	$9,715	?	
Cedar	844	2209	duplx			error on sf2 tax	$6,914		
Cedar	939	1231	duplx			error on sf2 tax	$7,692		
Cedar	2789	2103	triplex	1999	$75,000	reconstr to triplx	$22,847		
Cedar	763	1948		1993	$100,000	add cottage/remode	$6,250		$12,970
Channing	794	3194		1998/2014	$103,620	2nd story addn			$12,818
Channing	736	752		1996	$67,000	addition	$6,029	unknown	

Channing	838	1377	duplx			error on sf2 tax	$6,865	
Channing	831	1013		1996	$84,000	addition	$6,807	unknown
Channing	649	2263		2009	$53,000	addition		$6,556
Channing	810	1600		2002	$125,000	2 bed/1 ba	$6,635	$15,462
Channing	621	1205		2010	$8,500	remodel 2nd stor	$5,087	$1,051
Channing	1032	1371		2003	$20,000	bsmt to liv space	$8,454	$2,474
Chestnut	408	960				errro on sf2 tax	$3,342	
Chestnut	1014	1198				error on sf2 tax	$8,306	
Chestnut	489	1705				error on sf2 tax	$3,932	
Codornices	492	1875				sunroom	$4,030	?
Contra Costa	480	2082		1997	75000	int/ext remdl	$3,932	
Contra Costa	1903	2077				error on sf2 tax	$15,600	
Contra Costa	620	2171		2002	208000	add master/ba	$5,079	
Contra Costa	625	1669				error on sf2 tax	$5,120	
Contra Costa	484	2058		2008/2015	175000	bsmt conv/bedr add	$3,965	
Contra Costa	701	2198				error on sf2 tax	$5,742	
College	902	3218	Bdg Hs	2000	$9,360	build 17th bedrm	$7,389	stdnt rooming hse
College	662	1860	condo			error on sf2 tx	$5,423	Is bsmt chgd?
College	589	851	condo			error on sf2 tx	$4,825	
College	545	3351	duplx			error on sf2 tax	$4,465	comm'l too
Cornell	1072	648				2nd story	$8,782	
Cornell	755	746				2 story	$6,184	
Cornell	775	780				2 story	$6,349	
Cornell	400	1062				back house addn	$3,277	
Cornell	503	504				back addn	$4,120	
Cornell	400	1003				rear 2nd story	$3,277	
Cornell	640	1100			sf2 from zillow	2nd story	$5,243	
Cornell	1240	811				2nd story	$10,158	
Cornell	1224	552				2nd story	$10,027	
Cornell	425	1080				2 story	$3,482	
Cornell	655	1069				full walkable bsmt	$5,366	
Cornell	613	1275				2nd story	$5,022	
Cornell	1000	1326				2nd story	$8,192	
Cornell	1580	1360		2009	$270,000	second unit addn	$12,943	$33,399
Cornell	1000	1360				2nd story	$8,192	

Curtis	1160	1415	duplx	1992	$68,440	2nd story	$9,502	
Curtis	336	1120				ADU	$2,752	
Curtis	670	1317				error on sf2 tx	$5,489	
Curtis	773	2135	triplx				$6,332	
Curtis	803	969		2000	$43,525	remodel	$6,578	
Curtis	763	1559	duplx			error on sf2 tx	$6,250	
Curtis	1420	1112				rear 2 styt addn	$11,632	
Curtis	417	1971	duplx			legalize unit/attc	$3,415	
Curtis	377	1500				error on sf2 tx	$3,088	
Curtis	1804	828		1994	$150,000	1300ft2 addn	$14,778	
Curtis	492	1184		1993	$40,000	2nd story addn	$4,030	
Dana	472	2702	multi	2012	$3,000	attic conversion	$3,867	$371
Dana	2154	1229		1998	$12,000	bsmt conv	$7,577	unknown
Dana	782	1208	duplx			error on sf2 tax	$6,406	
Deakin	608	1252				error on sf2 tax	$4,981	
Deakin	1331	1340		2002	$75,000	bsmt to liv space	$10,903	$9,278
Delaware	2092	2800	4plex			error on sf2 tax	$17,137	
Delaware	655	1740	duplx	1992		create duplex	$5,366	
Delaware	1865	1359	duplx			error on sf2 tax	$15,278	
Delaware	930	1062				error on sf2 tax	$7,618	
Delaware	331	1551				error on sf2 tax	$2,711	
Delaware	331	1551				error on sf2 tax	$2,711	
Delaware	937	1933	triplex	1996	$152,170	raise house/studio	$7,676	unknown
Delaware	1146	1244		2004	$130,000	bsmt to liv space	$9,388	$30K reass
Derby	560	1122		2007	$150,000	2nd flr addition	$4,587	
Derby	1675	739	duplx			error on sf2 tax	$13,721	
Derby	771	987		2013/15	$35,000	bsmt conv/addn	$6,316	$4,330
Derby	1148	1288		1941	unknown	2nd story addn	$9,404	
Derby	449	1313		2002	$90,000	addition	$3,678	$11,133
Derby	892	4033				error on sf2 tax	$7,307	?
Derby		1774		2011	$35,000	ADU		$4,330
Dohr	1451	878				error on sf2 tax	$11,886	unknown
Dohr	452	1506		2006	$75,000	whole hse remod	$3,703	
Dohr	673	1100		2018	$139,160	gar conversion	$673	$3,479
Dwight	677	926				2nd story addn	$5,546	

Dwight	418	2311	duplx			error on sf2 tax	$3,425		
Dwight	275	1775	triplex	2007		add 4th meter	$2,253		
Dwight	1504	4678	units	1992	$125,546	add bldg	$12,320		
Dwight	1806	5776	units	2009	$60,000	bsmt conversion	$14,794		
Edith	1000	1300				art warehouse	$8,192	?	
Edith	463	2179		2011		2nd story addn	$3,793		
Edith	644	984				error on sf2 tax	$5,276		
Edith	920	1990	duplex	1990	unknown	2nd story	$7,536	bsmt/cottg not charged	
Edith	1248	1878		1994	$ 200,000.00	4 bed 2nd story	$10,223		
Edith		2399		2005	$ 137,800.00	2 story addn		$ 17,045.00	
Edith		3646		1998	$ 49,000.00	bsmt addn		$ 6,061.00	$6K reass o
Edith	480	1459		2000	$ 51,000.00	garg conver ADU	$3,932	$ 2,802.00	
Edith	540	1408				sunrm/gar conv	$4,424	?	
Edwards	687	1317		1994	$65,328	2nd story addn	$5,628	$8,081	
Ellis	577	888	dupx	1995	$45,000	1 story addn	$4,727		
Ellis	913	2092	duplx	1993		error on sf2 tax	$7,479		
Ellis	962	993	duplx			error on sf2 tax	$7,881		
Ellsworth	498	2420		2006/12	$83,000	bsmt conv/addn	$4,080	sold in '13	
Ellsworth	1015	2957	triplex			error on sf2 tax	$8,315		
Emerson	1282	1304				error on sf2 tax	$10,502		
Essex	1831	1649	duplx	2002	$127,626	remod bsmt	$14,999		
Essex	1083	1428		1992	$73,000	addition	$8,872		
Euclid	913	1741		2000	$75,000	fam rm addition	$7,479		
Eunice	1346	1768		2005	$120,000	2 story addition	$11,026		
Eunice	1357	1767		2004	$180,000	addition	$11,116		
Fairlawn	1386	570				error on sf2 tax	$11,354		
Fairlawn	724	1646		2004	$350,000	addn 1212 ft2	$5,931		
Fairlawn	728	876		2006	$60,000	remodel/addn	$5,964		
Fairlawn	1254	1117				error on sf2 tax	$10,273		
Fairlawn	527	1105				error on sf2 tax	$4,317		
Fairlawn	704	1154				error on sf2 tax	$5,767		
Fairlawn	397	1248		1994/95/96	$44,900	permits not final	$3,252	very low txs	
Fairlawn	413	1643				2019 AUP	$3,383		
Fairview	400	3333	4plex	1997	$95,481	renovate flat	$3,277	advert 96K income	
Forest	150	2780				error on sf2 tax	$1,229	?	

Forest	3076	3817	duplx	2015	$276,972	remodel	$25,197		
Francisco	621	1142				error on sf2 tax	$5,087		
Francisco	344	1189		1999	$12,200	addition	$2,818		
Francisco	2060	1512		1997	$260,000	raise house	$16,875		
Francisco	1421	1183		2006	$150,940	basement convers	$5,825	$3,151	
Francisco	453	2016	triplex			error on sf2 tax	$3,711		
Francisco	1373	1397		1998	$30,000	2nd story	$11,247		
Francisco	984	1415		2002	$63,000	fire dmg exist triplx	$8,061		
Francisco	658	2704	duplx	1994	$210,000	new carriage hs	$5,390		
Francisco	798	2453	triplex	1997	$93,094	add 2nd unit	$6,536		
Francisco	948	2743	4plex			error on sf2 tax	$7,766		
Fresno	448	1728	no cty	2011	AUP	448ft2 2nd story	$3,670		
Fulton	608	1843		2003	$85,000	basement convers	$4,981	reass. $40K	
Glen	512	1488		1995		ADU and Addtn	$4,194	$2,845	
Grant	800	3750		2005	$47,300	addtn	$0	$5,851	
Grant	761	2716	duplx	2005	$45,000	foundt work	$6,234		
Grant	559	1854				error on sf2 tax	$4,579		
Grant	1209	1343		1998	$5,500	1st floor convers	$9,904		
Grant	668	3629	duplx	1999		hsg viol - 3 H2O heat	$5,472		
Grizzly Peak		2490		2014	$300,000	663 ft2 addn		$18,555	rent ad for $
Grizzly Peak	868	1511				in law unit	$7,110		
Grizzly Peak	792	1828		2013	$55,000	792 ft2 bsmt remod	$6,488		
Grizzly Peak	898	2617		1998,06,10	$60,000	bath/laundry crwl	$7,356		
Grizzly Peak	925	2285				error on sf2 tax	$7,577		
Grizzly Peak		2863		2011	$125,000	364 ft2/remodel		$15,463	
Grizzly Peak	200	2234		2003/13	$80K/$37K	kitchen/sunroom	$1,638	$9,896	
Grizzly Peak		9043		2005	$190,000	remodel		$23,503	
Grizzly Peak	400	1636		2005/2011	$80,000	Gar conv/kitch remd	$3,277	$9,896	
Grizzly Peak		5191		2018	$200,000	whole hse remod		$24,740	
Grizzly Peak	1278	2012		1996	$176,060	2nd story	$10,469		
Grizzly Peak	1708	1938		1994	$80,000	addition	$13,992		
Grizzly Peak	888	3256		1986	unknown	major remodel	$7,273		
Grizzly Peak	341	1972		1993	$17,000	gar. Conv	$2,793		
Grizzly Peak	1131	2032		1996	$153,000	3rd story	$9,265		
Grizzly Peak	632	1784		2006	$173,000	2nd flr addition	$5,177		

Grizzly Peak	1510	2215		2005	$145,000	addn	$12,370		
Grizzly Peak	250	1800		2018	23500	basement convers	$488		$588
Grizzly Peak	434	1999		2010	$20,979	legalz bsmt unit	$3,555		
Grizzly Peak	769	1413		2005	$150,000	769ft2 addn	$6,439		
Grizzly Peak	786	2494		2019	$286,750	786 ft2 addn	$786		
Grizzly Peak	1050	1076				error on sf2 tax	$8,601		
Grizzly Peak	1136	4087		2000/06	$336,429	1327/470 ft2 add	$9,306	?	
Harmon	600	1130	1723			error on sf2 tax	$4,915	?	
Haste	497	1524	triplex			1999 - 3 meters	$4,071		
Haste	1100	1368	BrdgHse			2 story Board	$9,011		
Haste	16929	2670	multi			error on sf2 tax	$138,679		
Hearst	870	1176			unknown	error on sf2 tax	$7,127		
Hearst	855	1569	duplx	2000	125000	duplex renov	$12,853		
Hearst	1554	1241		2001/02	138000	addn/ADU	$12,730		
Hearst	90	2246	1350	1995	$30,000	basemt conv/add	$0		$3,711
Hearst	636	910		1949	unknown	2nd story addn	$7,455		
Hearst	667	1208		1992	$45,000	addition	$5,464		
Hearst	819	1833		2002	$105,000	addition	$6,709		
Hearst	373	3709	triplex	1994	$264,000	conv to triplex	$3,056		
Hearst	897	1791	duplx			error on sf2 tax	$7,348		
Henry	928	1134	condo	2001	$19,000	bsmt excav/rnov	$7,602		
Hilgard	2157	7176	multi	2015		18 bd, renov	$17,670		
Hilgard	2435	2228	units			various pmts	$19,947		
Hilgard	1934	1153	trplx	2000	$140,000	renovations	$15,843		
Hillcrest	446	2020		1995	$39,400	addition	$3,654		$4,874
Hilldale	110	2589		2006	$410,000	roof/attic/entry	$901		$50,717
Hilldale	225	1525		2003	$100,000	2nd stry	$1,843		
Hilldale	546	1446				error on sf2 tax	$4,473		
Hilldale	849	1615		1997		bsmt conv dwllg	$6,955		
Hilldale	406	2102		2010	$20,000	remodel	$3,326		
Hilldale	1131	1540		2000	$30,000	addn/kitch rmdl	$1,073		
Hilldale	1261	1889		2000/10	$58,800	seism/renov	$10,330		
Hilldale	319	1830		1998	$80,000	addn	$2,613		
Hilldale	330	2281		2013	$100,000	kitchen/remdl	$2,701		
Hilldale	845	2792		2014	$45,000	basement remodel	$4,499		$0

Hillegass	2924	15492	multi				error on sf2 tax	$23,953			
Hillegass	270	3409					error on sf2 tax	$2,212			
Hillegass	348	4468	multi				error on sf2 tax	$2,851			
Hillegass	186	1338					error ft2 tax	$1,524	?		
Hillegass	400	2290	duplx				ADU	$3,277			
Hillegass	1850	2130	duplx				addn of duplx	$15,155			
Hillegass	273	2577		2002		$100,000	minor addtn	$2,236	$12,370		
Hopkins	895	2010					ADU/2nd story	$7,332	?		
Hopkins	1022	868		2002		$70,000	2nd story	$8,372			
Hopkins	288	1544				$100,000	Access struct	$0	$12,370		
Hopkins	510	1683	duplx	2012	??			$4,178			
Indian Rock	1121	2294		2003		$150,000	addn	$9,183	only reass. $19K		
Indian Rock	338	1938				$60,000	bsmt renov	$2,769	$7,422		
Indian Rock	633	4229		1995		$30,000	patio walls/elect	$5,185	$3,711	unreass b4	
Jaynes	1160	1344		1997		$107,000	house raise	$9,502	sold 2011		
Jaynes	452	2872		2012		$137,000	bsmt excav 452 ft2	$3,702	$0		
Jones	536	1052					bsmt renov	$4,391			
Jones	566	1141					2nd story	$4,637			
Jones	951	841					2nd story addn	$7,790			
Jones	220	862					gar. Conv	$1,802			
Josephine	334	2355				$230,000	addition	$0	$28,451		
Josephine	1245	1432		1999/2002		$35,000	addtn	$10,199			
Josephine	592	1584		1998		$78,204	addition	$4,850			
Josephine	1038	2008		1995		$100,000	2nd story addn	$8,503			
Josephine				1998		$9,000	basement renov		$1,113		
Josephine	1686	962		1999		$163,000	addition	$13,811			
Josephine	580	2234		2017		$283,000	addition	$4,751			
Josephine	345	1815		1995		$40,000	2 story addn	$2,826			
Julia	1599	1476	duplx				error on sf2 tax	$13,099			
Kains	300	1092		2006		$60,000	bsmt conv	$2,458			
Kains	318	830		2002		$67,000	addn/kitch/ba	$2,605			
Kains	591	828		2007		$200,000	2nd story addn	$6,783			
Kains	704	1658					error on sf2 tax	$5,767			
Kains	1426	1515		2018		$250,000	raise house	$1,426			
Kains	935	1824	triplx	2011		$23,000	fire renovation	$7,659			

Kains	87	1175		plus attic/basmnt			$713	?	
Kains	1004	1716	duplx	2007/2013		bsmt renov/remod	$8,225		
Kains	363	1280		2004	$25,500	addition	$2,974		
Kains	767	1224		1998/2003	$65,000	bsmt(545)/ADU(767)			
Keeler	559	1027		1998	$17,000	basement remodel	$4,579	sold 2011	
Keith	502	1814				error on sf2 tax	$4,112		
Keith	2927	1088	triplx	2007	$248,000	2 story added	$23,977		
Keith	596	1196		1994/2018	$72,000	bsmt/ whole remode	$4,882		
Keith	823	2614		1998	$20,000	raise hse/legalize	$6,742		
Keith	760	2009	duplx	1994	$70,000	add 2nd unit	$6,226		
Keith	368	1560		2006/2008	$75,000	remodels	$3,015	$9,278	
Keith	922	2189		2002	$92,200	bsmt remodel	$7,553	$11,405	
Keith	761	1256		2002	$58,000	addn	$6,234		
Keith	2127	1005		1994	$26,000	addn	$17,424		
Keith	900	2301		1995/2005	$15,000	bsmt/major remod	$7,372	$1,856	
Keith	1166	1844		1993/1995	$20,000	seismic/mstr addn	$9,552		
Keith	1311	2793		1995		work MAY req pmt	$10,739		
Keith	538	2356		1996	$148,000	fam rm addition	$4,407		
Keith	568	1850		1997	$45,000	2nd story addn	$4,653		
King	415	1689	duplx			error on sf2 tax	$3,400		
King	482	1684				error on sf2 tax	$3,948		
King	436	2285		2002	$75,420	bsmt/2 story addn	$3,572		
King	806	4630	duplx	2016	$105,000	lift house add 806	$2,201	$4,948	
King	504	2131	duplx			error on sf2 tax	$4,129		
King	686	3380	4plx			see rent bd report	$5,620		
La Loma	662	1192	1854	2005	$41,000	addition	$5,443	$5,072	
La Loma	973	3240		1999	$55,000	2 bed/fam rm	$7,971		
La Loma	1018	2790		2005	$80,000	renovations	$8,339		
La Loma	667	3105		2007	$35,000	seismic/other pmt	$5,464		
La Loma	480	1664	duplx	2002	$6,000	seismc/error	$3,932		
Lewiston	908	3194		2008	$307,000	addn/remdl	$7,438		
Lewiston	470	3181	duplx	2008	?	instl 2 meters	$3,850		
Lewiston	466	2316		1993	$100,000	conv sunrm bkfst nk	$3,817		
Le Roy	660	2246		1993	$25,000	bsmt renov	$5,407		
Le Roy	457	2557				error on sf2 tx	$3,744		

Le Roy	824	1353		1992	$23,000	conv attc to dwllg	$6,750		
Le Roy	1598	4340	5plx	1997	$43,000	fndtn upgrade	$13,090	student minidorm	
Lincoln	408	1696	4plx		$23,000	basement convers	$3,342	$2,845	
Linden	394	1893		2003	$15,000	gar. Conv	$3,228		
Linden	688	1843				error on sf2 tax	$5,636		
Linden	400	1523				error on sf2 tax	$3,277		
Lorina	1385	1599	duplx			error	$11,346		
Marin	825	2109				error on sf2 tax	$6,758		
Mariposa	548	2464	duplx			error on sf2 tax	$4,489		
M L King	865	2764		1998	$58,910	raise bldg, add room	$0	$7,287	
M L King	1537	2298	duplx	2005	$125,000	raise bldg, add room	$12,590	sold 2009	
M L King	500	1594	duplx	1996	$20,000	bsmt renovation	$4,096		
Mathews	765	1141	duplx			ADU	$6,267	?	
McGee	549	1009	duplx			ADU/basement conv	$4,497	?	
McGee	495	1754		2004	$275,000	2nd story addn	$4,055	reass. $68K	
McGee		1823		2009	$130,000	basement convers	$0	$16,081	
McGee	390	1571		2006	$50,000	powder room	$3,195	sold in 2006	
McGee	763	1453		2016	$175,000	basement convers	$6,250	$6,404	
McGee	161	1350		2005	$4,236	basement convers	$1,318	$535	
McGee	1026	1026		unknown	unknown	attic conv/AccStruct	$8,405	?	
McGee	540	1742	duplx		$1,998	bsmt raise ceiling	$4,424		
McGee	1100	1881		2011	$100,500	addition	$9,018	$12,432	
McKinley	453	2621	triplx			error on sf2 tax	$3,711		
McKinley	576	1635					$4,718		
McKinley	689	2437		1997		convers habit space	$5,644		
McKinley	360	1643		1998	$85,272	garg convers	$2,949	unknown	
Michigan	332	2116		1993/1999	$4,000	finish bsmt	$2,720		
Michigan	395	2708		2005	$300,000	remodel	$3,236	also has bsmt	
Michigan	532	3853		1991		major remod zill	$4,358		$300K-$29
Miller	806	4077		2002	$300,000	addition		$33,523	
Milvia	805	1207				2nd story addn	$6,594		
Milvia	860	2765	duplx			error on sf2 tax	$7,045		
Milvia	1584	1050	triplx	1995	$15,000	renovate flat	$12,976		
Monterrey	966	2476		2011	$75,000	addition	$7,913	$9,278	
Oak Knoll	2608	4291				error on sf2 tax	$21,364		

Ordway		920	864		1996	COB syst dwn	bsmt to liv space	$7,536		
Ordway		644	1664		2006	?	addition	$5,439		
Ordway		489	1139			?	error on sf2 tax	$4,006		
Ordway		383	1192		1996	?	addition	$3,137	unknown	
Oregon		557	1337		2001	$30,000	addition	$4,563		
Oregon		992	1182	duplx			error on sf2 tax	$8,126		
Otis		140	1168				error on tax	$1,147	unknown	
Oxford		521	1514		2001	7500	conv garage	$4,268		
Oxford		540	2707		2004	$95,000	addition		$11,751	more sf2
Oxford		417	926	triplx	1997		bsmt conv	$3,416		
Oxford					2009	$23,300	bsmt conv		$2,882	only 3k add
Oxford			2622		2009	$205,000	add 550 ft2			
Oxford				multi	2013	$27,000	remod/addn		$3,340	
Oxford		1263	1576		2000	$35,000	finsh attc/stairs	$10,346		
Oxford						$55,000	lowr unt addn		$6,804	
Oxford		720	2641		2019	50000	rebuild sunroom	$5,898		7 units
Oxford		1110	3884	multi			error on sf2 tax	$9,093		
Page		301	1528	duplx				$2,466		
Page		500	1341				2nd story	$4,096		
Page		442	1334					$3,621		
Page			1780		2016	$160,500	addition		$7,827	
Parker			2447		2010	$68,000	bsmt to liv space		$7,422	
Parker		609	1733		2012	$91,000	addition	4989	reass $14K	
Parker	unknown		2123		2004	$72,000	ADU	unknown	$8,758	
Parker		329	1505	duplx	2000	unkown	Access struct	$2,695		
Parker		327	2751	duplx	1994	unknown	cottage in rear	$2,679		
Parker		613	1998	duplx			ADU untaxed	$5,022	?	
Parker		1989	1255	99/'04		$33,500	gar conv/attic	$6,013	sold 2007	
Parker		1141	1160		2002	$200,000	house raise	$9,347	reass $44K	
Parker		687	2633	duplx	2009	$68,000	add 687 ft2cottage	$5,628		
Parker		926	3588	triplx	2006	$253,845	3rd flr addition	$7,586	$31,400	
Parker		565	2049	duplx	2009	$38,750	2nd unit	$4,628		
Parker		462	1274		2010	$75,000	addition	$3,785	reass $8K	
Parker		584	5896	5plex			error on sf2 tax	$4,784		
Parker			3140		2005	$70,000	2nd floor addtn		$8,659	

Parker	870	3387		2010	$38,000	build ADU			$4,700
Piedmont	1357	2956	5plx			error on sf2 tax	$1,116		
Piedmont	717	6398	Bdg Hse			SFR conv bdgHse	$5,874		
Piedmont	1369	2421	triplx			error on sf2 tax	$11,215		
Piedmont	641	3068		1994		addition	$5,251	?	
Piedmont	1734	1589				error on sf2 tax	$14,204		
Peralta	440	908		1993	$13,000	addition	$3,604		$1,608
Peralta	480	860		1997	COB syst dwn	fam rm/bed/ba	$3,932		
Peralta	800	857				2nd story	$6,553		
Peralta	606	1038		2004		addition	$4,964		
Peralta	318	1329		1995		2nd story addn	$2,605		
Peralta	1043	1084	1995/03			studio/addn	$8,544		
Peralta	505	1403		2004		addition	$4,137		
Pine	386	1728				addition	$3,162		
Pine	497	1592		2008	$45,000	addition/porch	$4,071		$5,567
Prince	989	1421	duplx			error on sf2 tax	$8,102		
Prince	836	2122	4plx			error on sf2 tax	$6,848		
Prince	435	2461	triplx			error on sf2 tax	$3,563		
Prince	618	3162			$53,337	adddition			$6,598
Prince	603	1981		2001	$45,000	addition	$4,940		
Prince	670	1266	duplx			error on sf2 tax	$5,489		
Prince	314	1210	duplx	1994	unknown	addition	$2,572		
Prince	744	1916	duplx			error on sf2 tax	$6,095		
Queens	882	1454				error on sf2 tax	$7,225		
Queens	407	1840	plus storage			error on sf2 tax	$3,334		
Queens	600	1865	has workshp/util rm			error on sf2 tax	$4,915		
Queens	555	2448				error on sf2 tax	$4,546		
Roosevelt	352	1527				error on sf2 tax	$2,662		
Roosevelt	398	1224				error on sf2 tax	$3,260		
Roosevelt	724	1491	triplx			error on sf2 tax	$5,931		
Rose	532	1499		1994	$49,000	2nd stor/master	$4,358		
Rose	324	1420		1994	$23,548	addition	$2,654		
Rose	1150	1720		1996	$102,350	2nd story	$9,421		
Rose	488	1551		1993	$75,000	2nd story	$3,998		
Rose	457	2803		2014		install 4 meters	$3,744		

Rose	410	3696		2000/07		$405,000	storage convers	$3,359	$30,925		
Rose	197	2609					error on sf2 tax	$1,613	$0		
Rose	105	1616		2005		$100,000	error on sf2 tax	$860	unknown		
Russell	784	2001	duplx	2007		$96,076	raise bldg/conv bst	$6,422			
Russell	302	3478	duplx				2nd bldg not incl	$2,474			
Russell	1000	1038	triplex	2009			convert util to 3	$8,192			
Russell		2258	duplx(	2003		$8,000	sid. 3 flr dwell/cott	$5,063			
Russell	545	3013					error on sf2 tax	$4,465			
Russell	657	1773		1993		$36,000	add guest/bath	$5,382			
sacramento	709	1577		2007		$90,000	add 2nd story	$5,808	62K added		
sacramento	900	1309					2nd story/addn	$7,373			
sacramento	822	1228					2nd story addn	$6,734			
sacramento	1000	1321					basement devel	$8,192			
sacramento	1000	1225					basement devel	$8,192			
sacramento				2017		$170,000	2 story addn		$4,205		
sacramento	210	655	855	2003		$14,340	gar conversion	$1,720	$1,774		
sacramento	400	1379		1994		$42,097	fam rm/bed/ba	$3,277			
sacramento	427	1218		1993		$19,116	2nd story	$3,498		only $16K r	
sacramento	509	851		2008		$80,000	din/fam rm addn	$4,170			
sacramento	1152	843		1993		$71,748	2nd story	$9,437			
sacramento	1700	1904					triplex w/nonconf	$13,926			
sacramento	468	908		1997		$30,000	addition	$3,834			
sacramento	906	1251		1994		$56,366	906 ft2 2nd stry	$7,422			
sacramento	910	4030					error on sf2 tax	$7,455	?		
san Luis	700	1537					ADU not charged	$5,734	?		
san Luis	1152	1473		1994		$95,658	bed/ba addn	$9,437			
Santa Barbara	325	2417					error on sf2 tax	$2,662	?		
Santa Barbara	1069	2969					error on sf2 tax	$8,757			
Santa Barbara	1007	1495					error on sf2 tax	$8,249			
Santa Barbara	368	2183					error on sf2 tax	$3,015			
Santa Barbara	403	1757					error on sf2 tax	$3,301			
Santa Barbara		2947		2015	$	87,000.00	kitch/ba		5381		
Santa Barbara	1375	3390					error on sf2 tax	$11,264			
Santa Barbara	900	1861		2016	$	53,000.00	kitch/ba/garconv	$7,373	3278		
Santa Barbara	372	2656					ADU	$3,047			

Santa Barbara	484	2480		2013	$ 50,000.00	bsmt au pair	$3,965		4123		
Scenic	802	2384		2006	$ 23,500.00	bath/kitch	$6,570				
Scenic	715	2188		2009/11	$ 170,000.00	bsmt renov	$5,857		$21,029		
Scenic	636	4465		1999	$20,000	den/bath/bsmt	$5,209				
Scenic	1014	2104		1994	$7,500	convert garage/bath	$8,306				
Shattuck	720	1711	duplx			error on sf2 tax	$5,898				
Shattuck	1308	3843		1993/2000	$45,000	Bsmt conv/ADU	$10,715				$115K adde
Shattuck	674	1618		2008	$305,000	bsmt to master	$5,521				
Shattuck	545	2567		2000/07	$63,000	conv strg, sunrm	$4,465		$7,793		
Shattuck	1208	3383		1993/6/2010	$120,000	solarium/kitch/bath	$9,896		$14,844		list as SFR
Shattuck	9969	9969	multi			error on sf2 tax	$81,664				zumpr ad
Shattuck	1197	1198	5unit			error on sf2 tax	$9,806				
Sierra	228	2378	duplx	2012	$9,500	ADU	$1,868				
Sonoma	620	2757	duplx	2012	???	ADU	$5,079				sold in 200
Spaulding	364	1521			$14,000	bsmt conversion	$2,982				unknown
Spaulding	1221	1338			unknown	bsmt/2nd story	$10,002				
Spaulding	1393	1221				duplex added	$11,411				
Spruce	534	672		1995/97	$44,000	addn/encls porch	$4,374	?			vry lw txs
Spruce	875	1892		2012	$95,000	2 story addn	$7,168		$11,752		
Spruce	750	2389		1995/96	$75,000	additions	$6,144				
Spruce	756	506				error on sf2 tax	$6,193				
Spruce		2799		2008/12	$112,300	kitch/ba/fin bsmt			$11,257		
Spruce	726	3699		2003	$49,000	finish bsmt	$5,947				
Spruce	152	3555				error on sf2 tax	$1,245	?			
Spruce	646	2212				error on sf2 tax	$3,768				
Spruce	633	1746		2018	$150,000	addition	$633				
Spruce	794	2142		1992/2001	$121,000	art studio/attic ren	$6,504				
Spruce	493	1327				error on sf2 tax	$4,039				fin bsmt/att
Spruce	747	1357		1998	$2,450	seismic foundn	$6,119				
Spruce	1014	1224				error on sf2 tax	$8,306				
Spruce	702	513				error on sf2 tax	$5,751				
Stannage	295	930				error on sf2 tax	$2,417				
Stannage	800	1043				2nd story added	$6,553				
Stannage	252	874				2nd story added	$2,064				
Stannage	502	886				addition	$4,112				

Stannage	982	694				2 story	$8,044			
Stannage	392	936				addition	$3,211			
Stannage	416	1367				2nd story blt	$3,408			
Stannage	653	1515	triplx			units developed	$5,349			
Stannage	676	676				bsmt developed	$5,538			
Stuart	655	1807	duplx			error on sf2 tax	$5,366			
Stuart	373	1670				error on sf2 tax	$3,055	?		
Stuart	1075	2686	duplx			error on sf2 tax	$8,806			
Stuart	842	1009		1994	$16,000	addtn	$6,897			sold 2017
Tamalpais	1350	4353		2012	$400,000	addition 3600ft2	$11,059			
Talbot	160	2494				workshp fullhght	$1,311	?		
The Alameda	1431	1869		1997	$100,000	addition	$11,722		$12,370	
The Alameda	257	2250		2002	$116,000	third floor add'n	$2,105			
The Alameda	779	1510		1992	$23,838	2 bd addition	$6,381			
The Alameda	1025	1791				error on sf2 tax	$8,421			nd to chg bs
The Alameda		3803		2016	$36,000	breakfast nook			$2,227	vry lw txs
The Alameda	510	1902		2012	$110,000	ADU/garage	$4,178	only	$11K	
The Alameda		2805		2002	$100,000	kitchn/bsmt ren			$12,370	
The Alameda	647	2545		2007	$30,000	remod/addition	$5,300			
The Alameda		3131		2014	$160,000	2 bedrm addn			$19,792	
The Alameda	868	2727		1998	$45,000	bath/attic renov	$7,110		$5,567	
The Alameda	590	1238		2010	$49,428	bsmt renovation	$4,833		$6,114	
The Alameda	421	2013		2004	$160,000	attic convsn	$3,448			
The Alameda	640	1530		1998	$25,000	gar. Conv	$5,243			
The Alameda	126	1698		2016	$65,000	addn	$504		$4,020	
Tyler	1990	1992	4plex			error on sf2 tax	$16,318			
Vassar	1030	3042		2011		AUP App 4270ft2	$8,438			
Vallejo	1300	2770				finish bsmt	$10,649			
Vallejo	874	2167				addn	$7,160			
Vicente	4582	1264		2002	PRA 6/25	new home/pool	$37,534			
Vicente	372	1960		2014	$47,500	addn	$2,271			
Vicente	1327	2824		2001	$45,000	bsmt conv to dwll	$10,871			
Vicente	374	2792		1998	$300,000	new 3166ft SFR	$3,064			
Vicente	1072	1698		1996	$300,000	new SFR	$8,782			
Vicente	1029	1617		1995	$241,760	new SFR	$8,429			

Vincente	570	1684		2011	$78,400	addn/remod	$4,669	only $7500 rea	inspc 2x 20
Vincente	1226	1436				seismic 2004	$10,043	very low txs	
Vincente	416	2559		2010	$175,000	addn/remod	$3,408	$21,648	
Vincente	867	1408		2001/2006/1	$65,800	addn/seism/rmdl	$7,102	$2,474	
Vincente	567	1469		1998	$65,000	rmdl	$4,645		
Vincente	362	2578				error on sf2 tax	$2,965		
Vincente	463	1607		2002	$150,000	whle hse rmdl	$3,792	$20K reass	
Vincente	448	1287		1999	$42,000	bsmt renov	$3,670		
Vine	1000	1105				error on sf2 tax	$8,192		reass. $71K
Virginia	760	1272		2014	$115,000	addtn	$8,226		
Virginia	350	1218		2014	$18,000	basement convers	$1,434	$1,080	
Virginia	553	1857	duplx	1997	$110,000	conversion duplx	$4,530		
Virginia	385	1004		1993	$21,394	addtn	$3,154	$2,646	
Virginia	630	1408		1996	$71,016	raise house	$5,161		
Virginia	1080	2146		1992	$68,000	3rd flr addition	$8,847	$8,412	
Virginia	383	2385	duplx			error on sf2 tax	$3,137		
Virginia	242	2812				error on sf2 tax	$1,982	$0	
Virginia	638	3989	4plex	2009	$108,966	2 story addn	$5,226		
Virginia	775	2630		1999	$35,300	bsmt/kitchen	$6,349		sold 2013
wallace	525	1227		2013	$100,000	addition	$4,301		
wallace	525	1140		1988	$30,000	addition	$4,301		
Walnut	1055	1560		1997	$44,411	2nd story	$8,642		
Walnut	400	1392		2011		ADU	$3,277		
Walnut	437	1759		2012	$4,000	2nd story	$3,580		
Walnut	682	1908				error on sf2 tax	$5,586		
Walnut	437	1434				error on sf2 tax	$3,580		
Walnut	1053	1444		2005	$90,000	gar conv rec rm	$8,626		
Walnut	716	1061		1996	$45,000	attic conv/bath	$5,865		
Walnut	655	1972				error on sf2 tax	$5,366		
Walnut	905	2471	duplx			error on sf2 tax	$7,414		unknown
Ward	492	1022		1997	$43,788	addition	$4,030		
Ward	700	1083				bsmt developed	$5,734		
Ward	1173	2303	duplx			error on sf2 tax	$9,609	$0	
Ward	1006	1216	duplx	2002	$47,600	bsmt conversion	$8,241		
Ward	643	1614	duplx			error on sf2 tax	$5,267		unknown

Ward	975	1153	duplx	1990s		variance	raise bldg	$7,987		unknown
Ward	695	1140			1993	84252	rebuilt/addition	$5,693		
Ward	1290	2329			2004	$137,024	new cottage	$10,567	0	sold in 200
Ward	424	948			1998	$28,000	bsmt/loft	$3,473		
Ward	558	1558			2004	$78,000	add mstr bdrm	$4,571		
Ward	148	1803			2002	$21,000	new sunroom	$1,212	$2,598	
Ward	1150	3100	duplx	2003/12		$142,000	convert attic/bsmt	$9,421	$0	
Ward	986	1750			2010	$123,000	addition	$8,077	$15,215	
Ward	1080	2020	4plx		2017	$60,500	bsmt renovation	$8,847		
Warring	5106	11440	frat				error on sf2 tax			
warring	918	4980	Bdg Hse				error on sf2 tax	$7,520		
Webster	848	1561					error on sf2 tax	$6,947		
Webster	651	1966		1996/2007		$116,000	remodel/ADU	$5,332		
Webster	413	3357			2013	$650,000	addition	$3,383	$9,892	
Webster		2220			2015	$140,000	new mstr bath		$8,659	only $60K r
Webster		2542			2006	$340,000	sunrm/bsmt/ADU			$40K done
Webster	444	2056			2012	$35K permitted	major remodel	$3,637		
West	341	900					error	$2,793		sold 2019
West	409	1414			2019	$151,000	space conversion	$410		
Woodmont	1499	1181					error on sf2 tax	$12,280		
Woodmont	544	1964			2019	$207,000	add 544 ft2	$544		
Woodmont	292	2502			2004		addn			2012 AUP s
Woodmont	1166	3461			2001		pmt 112890-41865	$9,552		
Woodmont	604	1600					error on sf2 tax	$4,948		
Woolsey	682	3397	duplx		2017	$250,000	conver to duplx	$5,587		
Woolsey	650	1629	triplx		1994		instll 3 meters	$5,325		
Woolsey	314	1590			2007	$80,000	addition	$2,572	$9,896	
Woolsey	306	1749			2001	$67,000	addition	$2,507		
Woolsey	1000	551			2004	$83,000	2nd story addn	$8,199	$10,267	
Yolo	551	1872			2006	$4,700	basement convers	$4,514	$581	
Yosemite	179	2762			2012		addn 780ft2	$1,466		
Yosemite	335	2625			1993	$82,300	2nd/3rd flr remod	$2,744		
Yosemite	357	1765					untax unfin bsmt	$2,924		
Yosemite	646	3764		1998/2003		$89,000	add unit/738 ftaddn	$6,046		
Yosemite	570	1597			2004	$125,000	add ba crawlspc	$4,669		

Yosemite	665	2788	1992	$15,340	bsmt ba/seismic	$5,448	
Yosemite	1206	2629			sf err/bsmt untx	$9,879	
	549069					$4,120,013	$1,063,556

Key: County tax rate last 10 years
(Year 10/11) 1.2555%, (Y11/12) 1.2563%, (Y12/13) 1.2472%, (Y13/14) 1.2717%, (Y14/15) 1.2447%, (Y15/16) 1.2218%, (Y16/17) 1.2168%, (Y17/18) 1.2136%, (Y18/19) 1.2279%, (Y19/20) 1.2184%
10 year Total 12.37%
City Rate for last 10 years
(Year 10/11) 0.642%, (Y11/12) 0.7211%, (Y12/13) 0.7412%, (Y13/14) 0.7617%, (Y14/15) 0.7752%, (Y15/16) 0.81%, (Y16/17) 0.8325%, (Y17/18) 0.9365%, (Y18/19) 0.9666%, (Y19/20) 1.00558%
10 year Total multiplier 8.19179

Basements/understories in Berkeley that are not charged

2125 6th

2337 9th

1019 Addison

30 Bay Tree

1915 Berryman

808 Camelia

1731 Channing

76 Codornices

620 Colusa

1440 Cornell

1448 Cornell

3107 Deakin

1637 Delaware

1508 Edith

1930 Fairview

1205 Francisco

1136 Fresno

1507 Grant

2819 Grant

1526 Henry

2943 Hillegass

1405 Josephine

1619 Julia

1175 Kains

1209 Kains

1414 Kains

2043 Lincoln

459 Michigan

2832 Milvia

1344 McGee

1925 McGee

1157 Oxford

2909 Pine

2565 Rose

1147 Spruce

1609 Stannage

716 The Alameda

1623 Tyler

787 Vincente

551 Woodmont

Councilmember Ben Bartlett
City of Berkeley, District 3

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author), Councilmember Rashi Kesarwani (Co-Sponsor), Councilmember Susan Wengraf (Co-Sponsor) and Mayor Jesse Arreguín (Co-Sponsor)

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

RECOMMENDATION

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

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

POLICY COMMITTEE RECOMMENDATION

On January 28, 2021, the Budget and Finance Policy Committee voted to send the item to Council with a qualified positive recommendation to confirm the availability of revenues as approved by Council on October 13, 2020, for the 1367 University project and note that the Committee will discuss Measure P allocations in the FY 2022 budget development process. Vote: All Ayes.

CURRENT SITUATION

Homelessness is increasing in the City of Berkeley and throughout the Bay Area. Berkeley currently has 1,108 homeless residents, of whom 813 were living on the street as of a point-in-time count in January 2019. This represents a 14% increase in two years.

Councilmember Ben Bartlett
City of Berkeley, District 3

To help address the need for supportive housing, Building Opportunities for Self-Sufficiency (BOSS) has proposed to operate the Step Up Housing initiative, a new permanent supportive housing project for individuals experiencing homelessness. BOSS is a 501c3 nonprofit organization that will serve as the master tenant and provide supportive services to the residents of the project at 1367 University Avenue.

BOSS has partnered with Panoramic Interests to develop the new permanent housing project, which was unanimously approved by the Berkeley Zoning Adjustments Board on July 9, 2020 and can be built on an accelerated 16-week timeline. As a result, the project will result in huge savings both for costs of and time of development. While Panoramic Interests will be responsible for obtaining building permits, financing construction, and building the project, BOSS will be responsible for all operations and property management.

The project will include 39 fully furnished studio apartments, private bathrooms for each studio, a 400-square-foot community room, a community kitchen, two offices for support staff and services, permanent on-site property management, and 24/7 security. The building will be constructed with modular units built around an approximately 615-square-foot private central courtyard.

BOSS will provide services for Step-Up Supportive Housing including connecting residents to mental health resources, substance abuse recovery services, employment, education, and legal services and will accompany them to service providers when appropriate. The program will ensure participants obtain health insurance coverage and connect them to primary care providers. Opportunities for socialization and peer support will be provided through the organization of on-site support groups, learning workshops, social activities, community meals, and service visits by outside providers. BOSS will also manage an on-site food pantry in collaboration with Alameda County Community Food Bank. These services will help residents maintain stable housing, improve mental and physical health, and decrease social isolation. On-site service hours will be provided Monday-Friday, 9 am-5 pm, but the case manager or another designated staff member will be on-call as needed at all times.

The program will be staffed by a number of employees, including a program manager, housing manager, property manager, cook, maintenance worker, and overnight monitor.

Councilmember Ben Bartlett
City of Berkeley, District 3

Roughly two-thirds of the expenses are related to program operations and delivering supportive services for the residents. The balance of the expense is for housing. The total operating budget is $1,844,515 annually. This resolution would cover $900,000 of the annual operating costs over a 10-year period and a one-time $32,975 allocation for start-up costs, including purchasing household items for the units, kitchen supplies, groceries, office furniture, security cameras, etc.

The remaining $944,515 is being requested from the County of Alameda. The City's commitment is contingent upon the funding of the balance of the project.

BACKGROUND

California has the highest real world poverty rate of any state, 17.2% over the previous three years and much higher than the national rate.[1] A major contributing factor to the state's high poverty indices is that many California residents spend much of their income on housing due to high construction costs.[2] Throughout the state, many affordable housing development projects are stalled, burdened, and have incurred higher than the median costs for development.

For example, in Alameda, CA, Everett Commons, which is a low-income development that provides housing for only 20 families, costs $947,000 per unit.[3] The notoriously high price of land and the rising cost of construction materials are contributing factors. On the other hand, the Step Up Housing Initiative uses an efficient and cost-effective modular construction model that provides 39 individuals with not only stable housing, but a safe and supportive environment where they can access critical employment, health, substance abuse, and community resources and services. Berkeley can help address the shortage of homes and effectively alleviate the City's homelessness crisis through this innovative and practical project.

REVIEW OF EXISTING POLICIES AND PLANS

Berkeley voters overwhelmingly passed Measure P in November 2018 with 72% of the vote. The Measure raised the transfer tax on property sales over $1.5 million from 1.5% to 2%, which is expected to generate approximately $6-8 million annually. These funds

[1] https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf
[2] https://www.sacbee.com/article245815115.html
[3] https://www.latimes.com/homeless-housing/story/2020-04-09/california-low-income-housing-expensive-apartment-coronavirus

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were intended to be allocated towards various homeless services, including permanent housing, supportive services, and navigation centers.

Measure P also created an independent commission, the Homeless Services Panel of Experts, to provide recommendations on funding allocations to the City Council. In December 2019, the Homeless Services Panel of Experts published its first set of recommendations for initial investments from the General Fund to address homelessness in Berkeley. The Panel's recommendations prioritized certain categories of activities and set forth a percentage of funding for each category. Permanent housing was listed as the top priority, with 30% of the funds recommended to be allocated towards such projects. The remainder was recommended to be allocated towards shelter and temporary accommodations, immediate street conditions and hygiene, supportive services, flexible housing subsidies, and infrastructure. The City Council approved on June 30, 2020 Measure P allocations for FY 2020-21 that included $2.5 million for permanent housing subsidy.

In 2017, the City Council also referred staff to create a 1000 Person Plan, which seeks to end homelessness for 1000 people in Berkeley. In 2019, City staff responded to this referral and concluded that the Council needed to provide up-front investments in targeted homelessness prevention, light-touching housing problem-solving, rapid rehousing, and permanent subsidies. This proposal to lease and operate the Step Up Housing initiative at 1367 University would help move forward the 1000 Person Plan and also accomplish the Homeless Services Panel's top priority of providing stable and permanent supportive housing for individuals experiencing homelessness.
In addition, this project also fulfills the goals of Councilmember Bartlett's original Step Up Housing initiative, which passed unanimously on February 14, 2017. See Attachment 3 for the original item.

CONSULTATION/OUTREACH OVERVIEW

Councilmember Bartlett's office collaborated with BOSS and Panoramic Interests to ensure the long-term success of this new permanent supportive housing project, the Step Up Housing initiative. By bringing together BOSS's expertise in the field of supportive services and Panoramic's efficient modular construction model, this project can be operational and begin providing stable housing to 39 individuals within twelve months of receiving this funding commitment, resulting in dramatic savings in costs and delivery time.

Councilmember Ben Bartlett
City of Berkeley, District 3

BOSS was founded in Berkeley in 1971 to serve severe and persistent mentally ill homeless individuals and their families, and has since expanded to serve over 3,000 families and individuals per year across Alameda County, including persons experiencing homelessness, mental illness, former incarceration/justice system involvement, domestic or community violence, unemployment, and other crises. BOSS has 49 years of experience serving the target population, and 45 years of experience operating emergency, transitional, and permanent housing programs.

Panoramic Interests has been building high density infill development projects in the Bay Area since 1990. Its work in downtown Berkeley and San Francisco includes 15 projects, adding more than 1,000 new units of housing, and 100,000 square feet of commercial space. From 1998-2004, Panoramic built seven new mixed-use apartment buildings in downtown Berkeley. During this time, Panoramic housed more than 80 Section 8 tenants, making it the largest private provider of Section 8 housing in the City.

This collaborative effort between the City, the service provider, and the developer can serve as a regional model for future permanent supportive housing projects in Berkeley and throughout the Bay Area.

RATIONALE FOR RECOMMENDATION

The City's funding commitment will help address the homelessness crisis by allowing for the long-term and stable housing of 39 individuals experiencing homelessness as well as the provision of on-site services to help those individuals retain housing, improve their mental and physical health, connect with employment and education opportunities, and decrease social isolation. This Step Up Housing initiative not only will result in huge cost savings through its streamlined processes, but also it can be operational within twelve months of receiving this funding commitment. In addition, this project will serve as a regional model for other jurisdictions to consider when dealing with the homelessness crisis in their cities.

FISCAL IMPACTS

The new permanent supportive housing project, known as the Step Up Housing initiative, at 1367 University is requesting a one-time $32,975 allocation for start-up costs and $900,000 annually for 10 years from Measure P transfer tax receipts. The remaining $944,515, to cover the annual $1,844,515 operating budget, is being requested from the

Councilmember Ben Bartlett
City of Berkeley, District 3

County of Alameda. The supportive housing model will have dramatic savings of cost and delivery time.

ENVIRONMENTAL SUSTAINABILITY

The project itself was determined by the Planning Department to be categorically exempt from the provisions of the California Environmental Quality Act pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines.

CONTACT PERSON

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Katie Ly kly@cityofberkeley.info
James Chang jchang@cityofberkeley.info

ATTACHMENTS AND MATERIALS

1. Resolution
2. Project Summary Sheet
3. Step Up Housing Council Item from February 14, 2017: “Direction to City Manager: “Step Up Housing” Initiative – Supportive Housing for Homeless and Very Low-Income People”

Councilmember Ben Bartlett
City of Berkeley, District 3

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

ALLOCATING APPROXIMATELY $900,000 ANNUALLY FOR 10 YEARS AND A ONE-TIME AMOUNT OF APPROXIMATELY $32,975 OF MEASURE P FUNDS TO LEASE AND OPERATE THE NEW PERMANENT SUPPORTIVE HOUSING PROJECT FOR THE HOMELESS AT 1367 UNIVERSITY AVE.

WHEREAS, the City Council passed unanimously the original Step Up Housing Initiative introduced by Councilmember Bartlett on February 14, 2017; and

WHEREAS, Measure P was passed by Berkeley voters in November 2018 to raise the transfer tax on roughly the top-third of properties from 1.5% to 2% and allocate those funds towards various homeless services, including permanent housing, supportive services, and navigation centers; and

WHEREAS, Measure P designated the Homeless Services Panel of Experts to advise the Council on expenditures for homeless services; and

WHEREAS, in December 2019 the Homeless Services Panel of Experts published their recommendations for initial allocations under Measure P, including highlighting permanent housing as the City's top priority and recommending 30% of Measure P funds be allocated to permanent housing; and

WHEREAS, the City Council approved on June 30, 2020 Measure P allocations for FY 2020-21 that included $2.5 million for permanent housing subsidy; and

WHEREAS, the Berkeley Zoning Adjustments Board approved the permanent supportive housing development project at 1367 University on July 9, 2020.

Councilmember Ben Bartlett
City of Berkeley, District 3

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the following for the project at 1367 University Ave:

- A reservation of approximately $32,975 in Measure P funds for start-up costs associated with the project.

- A reservation of approximately $900,000 in ongoing funds annually for 10 years for the leasing and operation of the proposed project, with funding adjusted annually based on the Consumer Price Index for Oakland-Hayward-Berkeley, CA.

- In the event BOSS is unable to perform its function as the service provider, an alternative qualified service provider may operate the project with the review and approval of the City Manager, or her designee.

- Further, the City's commitment is contingent upon the funding of the balance of the project.

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

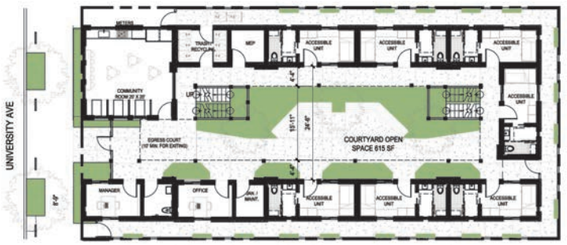
Step-Up Housing, 1367 University Ave. Berkeley (39 studios, community room, two offices)



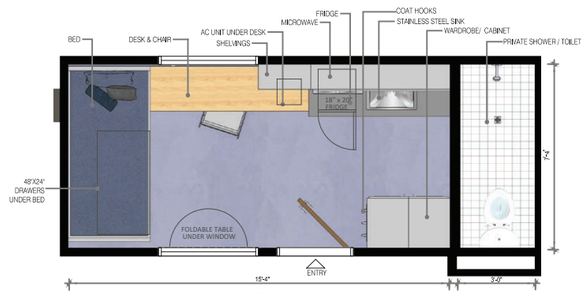
1367 University Ave. entrance



Interior courtyard and community space



Ground floor plan, with offices and community room



Typical studio

PROJECT SUMMARY

Name & Location:	Step-Up Housing, 1367 University Ave. (at Acton)
Target Population:	Homeless, low-income, single adults
Number of Units:	39 studios, with community room, and mgmt. offices
Service Provider:	BOSS 24/7 presence on-site
Services:	Case management, health/mental health/employment referrals. On-site peer support/socialization and life-skills activities.

GOALS/SERVICES

- Get 39 individuals off the streets and into stable housing
- Provide safe and supportive environment for training & assistance
- Improve participants overall health by connecting them to primary care, mental health resources, substance abuse recovery services and socialization/peer support
- Reduce participant hospitalizations and use of emergency response systems
- Improve participant mental health status and daily functioning
- Support participants in increasing income and managing finances
- Support participants to obtain employment
- Increase meaningful activity and decrease social isolation among participants
- Organize on-site support groups, learning workshops, social activities, community meals and service visits by outside providers
- Manage an on-site food pantry in collaboration with Alameda County Community Food Bank

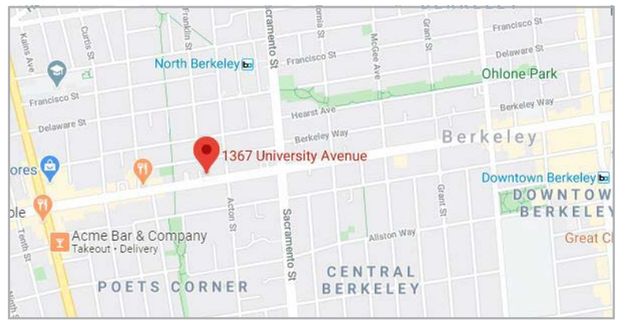
LOCATION

The Step-Up Housing project by BOSS is centrally located, close to stores, offices, and transit. It has a Walkscore of 90/100 ("Walker's Paradise') and a Bikescore of 98 ("Biker's Paradise'). Residents will not need a car for daily errands, and will have easy access to BART and AC Transit.

THE HOUSING

The Step-Up Housing will consist individual studios, community space, outdoor areas, and management offices for BOSS. The project will include:

- 39 individual studios, fully furnished
- Private bath and showers for each studio
- Engineered soundproofing and HVAC for all spaces
- Direct access in each unit to outdoor space
- Private outdoor courtyard and community space
- Community kitchen, laundry, and social space
- Two private offices for support staff and client services
- Permanent on-site property management and support staff (BOSS)
- Secured entrance and 24/7 security
- Modular units. Construction time: 16 weeks



Project Location: 1367 University Ave. Berkeley (at Acton)

FOR FURTHER INFORMATION

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Patrick Kennedy
Panoramic Interests
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Patrick@panoramic.com

Councilmember Ben Bartlett
District 3

CONSENT CALENDAR
~~January 24~~February 14, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett & Councilmember Linda Maio & Councilmember Lori Droste

Subject: ~~Referral~~ Direction to City Manager: "Step Up Housing" Initiative ~~– Micro-Units to House~~ – Supportive Housing for Homeless and Very Low-Income People

RECOMMENDATION
~~Refer~~ Direct ~~to~~ the ~~City Manager~~Ad-Hoc subcommittee to discuss and facilitate implementing the following actions:

1. Identify parcels of City owned land for siting assisted-living buildings.
2. Amend the permitting and approvals process to facilitate the rapid creation of below market housing.
3. Issue requests for proposals through a competitive bidding process for a development of up to 100 units of housing~~. Expedite the process of inviting proposals through the competitive bidding process and begin the process as soon as possible.~~ in an expedited manner. For-profit and non-profit developers can be included in the bidding process. The proposal should demonstrate partnerships with a housing non-profit and a service provider.
~~4. Assist the selected developer with obtaining zoning approval and a building permit in an expedited manner.~~
4. ~~Select a housing non-profit to partner with.~~ Identify potential obstacles in creating prefabricated micro-units in a timely fashion. Recommend courses of action to remove those obstacles.
5. The housing non-profit ~~partner~~, in partnership with Federally Qualified Healthcare Centers, will be responsible for managing and operating the building. ~~The tenants will be required~~ Request the non-profit to ~~work with~~employ a cooperative model in managing the ~~housing non-profit to maintain and operate the building~~property.
6. Establish criteria for selecting individuals and determining eligibility. These need-based criteria will take into account seniors, people with disabilities, and former Berkeley ~~natives~~residents who have become homeless.
7. This project shall be ~~considered a public works project and be~~ subject to the terms of ~~a~~the community workforce agreement with existing prevailing wage requirements.

8. Priority consideration will be given to: (i) Proposals that most quickly provide the maximum number of units for the least amount of cost, and (ii) proposals that include locally sourced materials and construction.

FINANCIAL IMPLICATIONS
~~Minimal costs and staff~~Staff time.

BACKGROUND
On January 14, Laura Jadwin, a homeless resident of Berkeley, was found dead of exposure. ~~This was one of several deaths~~Deaths of homeless individuals ~~in recent weeks~~are tragic and preventable. Our City is experiencing a homelessness and housing affordability crisis. City staff estimates that there are currently between 900 and 1200 homeless people living in Berkeley. Due to high housing costs, numerous low-income members of the Berkeley community are at risk of homelessness. Furthermore, the Trump administration's anticipated funding cuts ~~will~~may cause the City's homeless population to multiply exponentially. This is a health and safety emergency that has cost lives and degraded standards of living for all residents.

~~Councilmember Bartlett sees~~We see this crisis as an opportunity for innovation. This item referral seeks to jumpstart innovative financing and development models for assisted and low-income housing that emphasize speed, durability, and cost efficiency.

~~Conventionally built buildings cost the City an average of $429,400[1] per unit. This high price results from expensive land costs, costs associated with a slow and complex permitting system, and high costs of development and execution. This item~~This referral will reduce costs by constructing the building above City owned land and by empowering the City to speed up its permitting and approvals process. Additionally, this item seeks to mitigate prohibitively high building costs ~~by encouraging prospective~~. Prospective developers are encouraged to ~~design~~present innovative financing and construction solutions ~~which will result in a large number~~for the rapid creation of ~~homeless individuals housed quickly for~~ scalable assisted living models at reduced costs.

Step Up housing will foster human resiliency, leverage scarce resources, and rationalize the regulatory process. Given the urgency of the homeless crisis, the City must immediately ~~initiate the bidding process and begin exploring~~identify and implement solutions.

~~[1] City of Berkeley Affordable Housing Nexus Study http://www.cityofberkeley.info/Clerk/City_Council/2015/07_Jul/City_Council__07-14-2015_-_Special_Meeting_Agenda.aspx~~

The City Council, just like all local governments, has a duty to ensure the welfare of its people. Berkeley's Step Up Housing Initiative will provide a road map for future supportive housing developments that can be replicated in other affected communities.

ENVIRONMENTAL SUSTAINABILITY

This item will result in a positive environmental impact on the community. Increasing local access to low-income housing reduces automobile dependence and tailpipe emissions.

CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130
Councilmember Linda Maio, 510-981-7110
Councilmember Lori Droste, 510-981-7180

Councilmember Ben Bartlett
District 3

CONSENT CALENDAR
February 14, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett & Councilmember Linda Maio & Councilmember Lori Droste

Subject: Direction to City Manager: "Step Up Housing" Initiative – Supportive Housing for Homeless and Very Low-Income People

RECOMMENDATION

Direct the Ad-Hoc subcommittee to discuss and facilitate implementing the following actions:

1. Identify parcels of City owned land for siting assisted-living buildings.
2. Amend the permitting and approvals process to facilitate the rapid creation of below market housing.
3. Issue requests for proposals through a competitive bidding process for a development of up to 100 units of housing in an expedited manner. For-profit and non-profit developers can be included in the bidding process. The proposal should demonstrate partnerships with a housing non-profit and a service provider.
4. Identify potential obstacles in creating prefabricated micro-units in a timely fashion. Recommend courses of action to remove those obstacles.
5. The housing non-profit, in partnership with Federally Qualified Healthcare Centers, will be responsible for managing and operating the building. Request the non-profit to employ a cooperative model in managing the property.
6. Establish criteria for selecting individuals and determining eligibility. These need-based criteria will take into account seniors, people with disabilities, and former Berkeley residents who have become homeless.
7. This project shall be subject to the terms of the community workforce agreement with existing prevailing wage requirements.
8. Priority consideration will be given to: (i) Proposals that most quickly provide the maximum number of units for the least amount of cost, and (ii) proposals that include locally sourced materials and construction.

FINANCIAL IMPLICATIONS

Staff time.

BACKGROUND

On January 14, Laura Jadwin, a homeless resident of Berkeley, was found dead of exposure. Deaths of homeless individuals are tragic and preventable. Our City is experiencing a homelessness and housing affordability crisis. City staff estimates that there are currently between 900 and 1200 homeless people living in Berkeley. Due to high housing costs, numerous low-income members of the Berkeley community are at risk of homelessness. Furthermore, the Trump administration's anticipated funding cuts may cause the City's homeless population to multiply exponentially. This is a health and safety emergency that has cost lives and degraded standards of living for all residents.

We see this crisis as an opportunity for innovation. This item referral seeks to jumpstart innovative financing and development models for assisted and low-income housing that emphasize speed, durability, and cost efficiency.

This referral will reduce costs by constructing the building above City owned land and by empowering the City to speed up its permitting and approvals process. Additionally, this item seeks to mitigate prohibitively high building costs. Prospective developers are encouraged to present innovative financing and construction solutions for the rapid creation of scalable assisted living models at reduced costs.

Step Up housing will foster human resiliency, leverage scarce resources, and rationalize the regulatory process. Given the urgency of the homeless crisis, the City must immediately identify and implement solutions.

The City Council, just like all local governments, has a duty to ensure the welfare of its people. Berkeley's Step Up Housing Initiative will provide a road map for future supportive housing developments that can be replicated in other affected communities.

ENVIRONMENTAL SUSTAINABILITY

This item will result in a positive environmental impact on the community. Increasing local access to low-income housing reduces automobile dependence and tailpipe emissions.

CONTACT PERSON

Councilmember Ben Bartlett, 510-981-7130
Councilmember Linda Maio, 510-981-7110
Councilmember Lori Droste, 510-981-7180

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Susan Wengraf, Mayor Jesse Arreguin, Councilmember Sophie Hahn, Councilmember Kate Harrison

Subject: Virtual Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $250 per Councilmember, including $250 from Councilmember Wengraf, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinquishment of funds from Councilmember Wengraf's discretionary Council Office Budget and all other Councilmembers who would like to contribute allows the City of Berkeley to invite the community to the City's Virtual 19th Annual Holocaust Remembrance Day program, put together by the community with Council support. This year's program will be held on April 8, 2021.

FINANCIAL IMPLICATIONS

No General Fund impact: up to $250 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

The City of Berkeley's Annual Holocaust Remembrance Day program has been supported by the City Council since its inception in 2002. The program typically includes a candle lighting ceremony, a Holocaust Survivor's story, an artist's presentation, a grandchild's story, a student contribution and live music. The community event invites attendees to honor those who survived and perished in the Holocaust and strengthen convictions to never let the Holocaust happen again.

The 2020 program (the 18th Annual) was canceled due to the COVID-19 pandemic. We are asking for Councilmember's generous support to continue the legacy of the City's Annual Holocaust Remembrance Day in 2021

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Councilmember Wengraf Council District 6 510-981-7160

Attachments: 1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Susan Wengraf has surplus funds in her office expenditure account and will contribute $250, and invite the Mayor and other Councilmembers to join her in contributing; and

WHEREAS, a California nonprofit tax-exempt corporation, The Jewish Community Center, serves as the fiscal sponsor of the Holocaust Remembrance Day event and will receive funds in an amount up to $250 per contributing Councilmember's discretionary account; and

WHEREAS, the provision of such services would fulfill the municipal public purpose of providing a community program supporting Holocaust survivors, community recognition and education about the Holocaust, and unity among Berkeley residents. The grants will provide funds to produce the virtual event.

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 office, shall be granted to the Jewish Community Center to fund the City of Berkeley's virtual 19th Annual Holocaust Remembrance Day program on April 8, 2021.

Office of the City Manager

PUBLIC HEARING
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Interim Director, Planning & Development Department

Subject: ZAB Appeals: 1850 and 1862 Arch Street, Use Permits #ZP2019-0212 and ZP2019-0213

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt Resolutions affirming the Zoning Adjustments Board (ZAB) decisions to approve Use Permits #ZP2019-0212 and ZP2019-0213 to reconfigure the interiors of the existing buildings to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building at 1850 Arch Street, to add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building at 1862 Arch Street, and dismissing the appeals.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On December 20, 2019, Rhoades Planning Group submitted two applications for Use Permits #ZP2019-0212 and #ZP2019-0213 at 1850 and 1862 Arch, respectively, to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building for a total of 30 bedrooms on the parcel at 1850 Arch, and to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building for a total of 30 bedrooms on the parcel at 1862 Arch.

On April 16, 2020, after one round of comments from staff, the application was deemed complete.

On April 30, 2020 the City received a letter from a resident of the building expressing concerns regarding the impacts to trash, laundry, parking, and bathrooms that would result from the project, and complaints regarding property maintenance of the existing building. The applicant responded to those concerns in a letter dated May 26, 2020 (See Attachment 3).

On September 24, 2020 the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit applications. After considering the staff report and administrative record, and hearing public comments and holding discussion, the ZAB

added Condition #10 requiring a Transportation Network Company (TNC) management plan, revised Condition #18 limiting construction hours to Monday through Friday from 8:00AM to 6:00PM and approved the Use Permits by a vote of 5-3-0-1 (Yes: Clark, Kahn, Kim, O'Keefe, Pinkston; No: Olson, Selawsky, Sheahan; Recused: Tregub).

On September 29, 2020, staff issued the ZAB Notice of Decision. On October 13, 2020, Robin O'Donnell, a resident at 1850 Arch Street, filed an appeal of the ZAB decision with the City Clerk. The appeal was signed by an additional 19 neighbors who reside within 300 feet of the project site. On January 12, 2021, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

PROJECT DESCRIPTION

The subject sites are located in the Multiple Family Residential (R-3), Hillside Overlay zoning district on the west side of Arch Street, in a mixed-use residential neighborhood that consists of educational uses as well as multiple-family apartment and condominium buildings that range from two to three stories in height (See Attachment 3, Figure 1: Zoning Map). The sites are one-half block north of Hearst Avenue and the University of California campus, two blocks east of Shattuck Avenue and downtown Berkeley, and two blocks west of the commercial district on lower Euclid Avenue. The subject parcels are rectangular, sloping down toward the southwest and are currently developed with two three-story multi-family residential buildings constructed in 1923, each containing 10 units. Both parcels are non-conforming to current zoning standards in terms of minimum setbacks and parking; 1850 Arch exceeds the maximum allowable lot coverage.

The applicant is seeking approval to reconfigure the building floor plans by moving and adding interior walls to accommodate an additional 18 bedrooms within 1850 Arch (total of 30 bedrooms) and an additional 15 bedrooms within 1862 Arch (total of 25 bedrooms). No exterior alterations are proposed. The unit mix would change as follows:

- **1850 Arch**
  - Existing: six 1-bedroom, two 2-bedroom, and two 3-bedroom units
  - Proposed: one 1-bedroom, one 2-bedroom, six 3-bedroom and two 4-bedroom units

- **1862 Arch**
  - Existing: two studio, two 1-bedroom, five 2-bedroom, and one 4-bedroom units
  - Proposed: two studio, one 1-bedroom, one 2-bedroom, five 3-bedroom and one 5-bedroom units

BACKGROUND

At the September 24, 2020 ZAB hearing, neighbors voiced concerns about impacts from an increased number of occupants, including traffic and deliveries. The ZAB voiced

concerns about impacts from deliveries, and confirmed requirements for tenant notification prior to construction and temporary relocation during construction. In response to those concerns, the ZAB modified Condition of Approval #18 (construction to begin at 8:00 AM rather than 7:00 AM, no construction on Saturdays) and added Condition of Approval #10 to the Use Permit. They read as follows:

18. *Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday. No construction-related activity shall occur on Saturday, Sunday or any Federal Holiday.*

10. *Transportation Network Company (TNC) Plan. The applicant shall submit a TNC management plan to Land Use Planning staff for review and approval. The management plan shall clearly articulate the allowable uses of the driveway for deliveries and passenger pick-up and drop-offs; this plan shall be distributed to all residents of the building.*

In addition, current tenants of the buildings as well as member of the ZAB expressed concerns regarding tenant protections. As a result, the ZAB approved a revised condition of approval acknowledging that the applicant must comply with both the Rent Stabilization and Eviction for Good Cause Ordinance as well as the Tenant Protection Ordinance, as follows:

33. *Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) and the Tenant Protection Ordinance (BMC Section 13.79.060).*

The ZAB found that the project satisfied the required findings and approved the Use Permit for the addition of bedrooms on the parcels (See Attachment #4, Captioner's Record, for a written record of the hearing).

Staff received communications from the appellant regarding the appeal process after the ZAB's September 24, 2020 approval of the Use Permit. A resident of 1850 Arch Street, Robin O'Donnell, filed a timely appeal.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all state and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter (Attachment #2: Appeal Letter) for the full text.

Issue #1: The projects would be inconsistent with policies in the City's General Plan: The appellant contends that the projects would be inconsistent with several General Plan Land Use Element and Urban Design & Preservation Element policies that relate to preservation of the character and historical integrity of the hillside residential neighborhood, as the addition of bedrooms would result in two high-density rooming houses within buildings that have notable architectural design and are century-old, elegant, multi-family residences, in a neighborhood characterized by century-old structures, institutions, and diverse residents; the neighborhood should not be an appendage to the University. Therefore, the projects would impact the architectural integrity of the properties and detrimentally alter the balance of the residential community.

The appellant also contends that the projects will result in noise impacts that are inconsistent with Environmental Management Element policies related to noise reduction and land use compatibility.

Response: The appellant asserts that the project is inconsistent with policies in the Urban Design & Preservation Element, which regulates building style and design of new buildings and exterior alterations to existing buildings. Because no exterior alterations to the buildings are proposed, the Urban Design & Preservation Element policies cited by the appellant do not apply to the project. Therefore, an evaluation of the project's consistency with these policies is unwarranted. Secondly, the appellant asserts that high-density rooming houses would impact the architectural integrity of the properties and be detrimental to the residential community, and would be inconsistent with the Land Use Element Policy LU-7 *Neighborhood Quality of Life*. However, the R-3 district does not have a density standard, and one of its purposes is to "encourag[e] development of relatively high-density residential areas." In addition, rooming houses, or group living accommodations, are allowed in this district subject to approval of a Use Permit, and the City is prohibited from regulating the composition of households. Therefore, the project is consistent with the policies of the Land Use Element.

The appellant also cites two policies in the Environmental Management Element, which applies to management and conservation of the city's natural resources and the protection of the community from hazards, pollution, and excessive noise. Policy EM-43 *Noise Reduction* is

implemented through the Community Noise Ordinance, which the project would be required to comply with (the Ordinance includes standards for both exterior and interior noise). Finally, staff believes the project is consistent with Policy EM-47 *Land Use Compatibility*, as it is a residential use in a residential district. Therefore, staff recommends the Council dismiss this appeal point.

Issue #2: Construction activity involved in the projects and the projects' lasting legacy will detrimentally impact the residents of the properties and their neighbors: The appellant contends that the projects' construction and the addition of bedrooms on the parcel would substantially adversely affect the property, its residents, adjacent properties, and the neighborhood by generating impacts related to noise, traffic, trash, and parking, without materially advancing Berkeley's broader concerns for affordable housing, and would therefore be detrimental under BMC Section 23B.32.040.

Response: The appellant asserts that the proposed project would be detrimental under BMC 23B.32.040 without providing evidence to support these assertions. Regarding construction noise, the ZAB, in response to neighbor and resident concerns, limited the allowed construction hours (Condition of Approval #18) to between the hours of 8:00AM and 6:00PM Monday through Friday. Further, the Community Noise Ordinance sets interior noise standards for multi-family residential dwellings in order to limit noise inside dwelling units after construction.[1] Further, the Zoning Ordinance does not include a standard to evaluate potential detriment of the proposed project based on the number of occupants, but rather evaluates detriment based on impacts to views, privacy, light or air, general non-detriment, and whether the proposal conforms to the development standards of the district. As described in the ZAB staff report dated September 24, 2020, the project conforms to the development standards of the R-3(H) district, and meets the findings for non-detriment as described in the findings and conditions (Attachment 1 to the staff report). Therefore, staff recommends the Council dismiss this appeal point.

Issue #3: ZAB's discussion of the project's impacts and conditions was inadequate: The appellant contends that the ZAB did not adequately address impacts of additional bedrooms and did not attach needed limitations on potentially 30 new residents and residential parking permits.

Response: The appellant is referencing the ZAB's discussion of a condition of approval in response to neighbors' and residents' concerns regarding the impacts of the additional bedrooms on traffic and on-street parking in the vicinity of the

[1] BMC Section 13.40.060

project sites. The project sites are located in Area “F” of the Residential Preferred Parking (RPP) Program. ZAB members discussed adding a condition of approval to disallow new tenants from receiving a residential parking permit starting January 1, 2021. However, ZAB members decided this condition would be difficult to administer and enforce, and may be unfair to tenants. Then, ZAB members discussed and approved adding a condition of approval requiring the applicant to submit a Transportation Network Company (TNC) Plan to Land Use staff for review and approval (See Attachment 1, Exhibit A, Findings and Conditions). ZAB members agreed that this Condition would be more administratively friendly and enforceable than disallowing new tenants from obtaining an RPP permit (see Attachment 4, Captioner’s Record). Therefore, staff recommends the Council dismiss this appeal point.

Issue #4: <u>The projects are inconsistent with the purpose of the Hillside (H) overlay zoning district, and the ZAB did not apply the appropriate standards for (H) overlay district, which would have supported rejection of the projects</u>: The appellant contends that the ZAB did not apply the appropriate standards for Hillside Districts, and that consideration of the applicable standards of the Hillside District provisions would have supported rejection of the projects.

Response: The appellant correctly states that the ZAB staff reports dated September 24, 2020 do not include a consistency analysis with the purposes of the Hillside (H) overlay district. Staff has revised the staff reports (See Attachment 5) to include this analysis, which is also provided below:

The purposes of the Hillside Overlay District (BMC Section 23E.96.2020) are to:

A. Implement the Master Plan’s policies regarding Hillside Development
B. Protect the character of Berkeley’s hill Districts and their immediate environs
C. Give reasonable protection to views yet allow appropriate development of all property
D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area.

The subject residential buildings are two 10-unit apartment buildings in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. The subject properties are five blocks east of numerous AC Transit routes on University and Shattuck Avenues, are one-half mile from the Downtown Berkeley BART station, and are located on a bikeway. In addition, the

projects are one-half block north of the University of California-Berkeley campus; no exterior changes are proposed, consistent with purpose B. The projects would not result in any exterior changes to the building, such as any new window openings or an extension of the building footprint; there would not be any impacts to views, consistent with purpose C. Although the existing buildings are non-conforming in terms of minimum setbacks, no exterior changes are proposed, consistent with purpose D.

Staff believes this omission does not impact any conclusions or recommendations in the reports, as the project would be consistent with the purposes of the (H) overlay district, and recommends that Council dismiss this appeal point.

Issue #5: The ZAB applied the wrong zoning district standards in its evaluation of the projects: The appellant contends that the ZAB erroneously applied BMC Chapter 23B.32 standards for Restricted Multiple Family Residential (R-2A) districts instead of Multiple Family Residential (R-3) districts under Chapter 23D.36.

Response: Staff reviewed Table 4, Development Standards, in the ZAB staff reports and determined that the usable open space and parking requirements incorrectly reference the Restricted Two-Family (R-2) district. In the R-3 district, a minimum of 200 square feet per dwelling unit of usable open space is required, and at least one off-street parking space per 1,000 square feet of gross floor area must be provided. Table 4 has been updated below as well as in both staff reports (see Attachment 5). Staff believes these minor errors do not impact any conclusions or recommendations in the reports – the parcels remain conforming in terms of minimum usable open space and non-conforming in terms of minimum number of parking spaces required, and recommends that Council dismiss this appeal point.

Table 4: Development Standards: 1850 Arch Street

R-3 Standards BMC Section 23D.36.070-080		**Existing**	**Proposed**	**Permitted/ Required**
Lot Area (sq. ft.)		9,930	no change	5,000 min.
Gross Floor Area (sq. ft.)		12,935	no change	n/a
Dwelling Units		10	no change	n/a
Bedrooms		12	30	n/a (≥5 w/permit)
Building Height	Average	32’-6”	no change	35’ max.
	Maximum	36’	no change	n/a

R-3 Standards BMC Section 23D.36.070-080		**Existing**	**Proposed**	**Permitted/ Required**
	Stories	3	no change	3 max.
Building Setbacks	Front	13'-9"	no change	15' min.
	Rear	28'-11"	no change	15' min.
	Left (South) Side	7'-5"	no change	6' min.
	Right (North) Side	4'-1"	no change	6' min.
Lot Coverage (%)		44.6	no change	40 max. (For 3 stories)
Usable Open Space (sq. ft.)		3,631	no change	2,000 min. (~~400~~ 200 per du)
Parking		5	no change	~~10~~ 13 min. (1 per ~~unit~~ 1,000 sq. ft. of gross floor area)

Table 4: Development Standards: 1862 Arch Street

R-3 Standards BMC Section 23D.36.070-080		**Existing**	**Proposed**	**Permitted/ Required**
Lot Area (sq. ft.)		10,300	No change	5,000 min.
Gross Floor Area (sq. ft.)		10,126	10,146[2]	n/a
Dwelling Units		10	No change	n/a
Bedrooms		10	25	n/a (≥5 w/permit)
Building Height	Average	27'-4"	No change	35' max.
	Maximum	28'-5"	No change	n/a
	Stories	3	No change	3 max.
Building Setbacks	Front	9'-8"	No change	15' min.
	Rear	50'-11"	No change	15' min.
	Left (South) Side	0'	No change	6' min.
	Right (North) Side	4'-5"	No change	6' min.
Lot Coverage (%)		32.6	No change	40 max. (For 3 stories)

[2] On the basement level, 20 square feet of unfinished area would be converted to floor area in order to expand the existing bedroom and closet area within Unit 8 (see Table 6 below).

R-3 Standards BMC Section 23D.36.070-080	**Existing**	**Proposed**	**Permitted/ Required**
Usable Open Space (sq. ft.)	2,186	No change	2,000 min. (~~400~~ 200 per du)
Parking	5	No change	10 min. (1 per ~~unit~~ 1,000 sq. ft. of gross floor area)

The ZAB considered all of the information received from staff, the applicant, the appellant and the neighbors and determined that the projects are consistent with the zoning ordinance and applicable policies of the General Plan, and would not result in detrimental impacts to residents, adjacent properties, the surrounding area or the general welfare of the city.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed projects. Therefore, staff recommends that the City Council uphold the ZAB decision to approve the conversion of interior space to add bedrooms on the parcels with the ZAB-approved conditions of approval related to the TNC plan and construction hours, and clarification of the applicable Rent Stabilization Board regulations.

ALTERNATIVE ACTIONS CONSIDERED
Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:
Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS
Jordan Klein, Interim Director, Planning & Development Department, (510) 981-7534
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Ashley James, Project Planner, (510) 981-7458

Attachments:
1. Draft Resolution re 1850 Arch Street
    - Exhibit A: Findings and Conditions
    - Exhibit B: Project Plans, dated March 18, 2020
2. Draft Resolution re 1862 Arch Street
    - Exhibit A: Findings and Conditions
    - Exhibit B: Project Plans, dated March 18, 2020

3. Appeal Letter dated October 13, 2020
4. ZAB Staff Reports, dated September 24, 2020
5. Captioner's Record, ZAB Hearing September 24, 2020
6. Revised ZAB Staff Reports and Findings and Conditions, dated December 8, 2020
7. Index and Administrative Record, 1850 Arch St.
8. Index and Administrative Record, 1862 Arch St.
9. Public Hearing Notice

Attachment 1

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT #ZP2019-0212 TO ADD 18 BEDROOMS TO AN EXISTING 10-UNIT, 12-BEDROOM MULTI-FAMILY RESIDENTIAL BUILDING, FOR A TOTAL OF 30 BEDROOMS ON THE PARCEL, AND DISMISSING THE APPEAL

WHEREAS, on December 20, 2019, Rhoades Planning Group ("applicant") filed an application for a Use Permit to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building, for a total of 30 bedrooms on the parcel; and

WHEREAS, on April 16, 2020, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines ("Existing Facilities"); and

WHEREAS, on September 10, 2020 staff posted the ZAB Notice of Public Hearing at the site in three locations and mailed 504 notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on September 24, 2020, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the application with Conditions; and

WHEREAS, on September 29, 2020, staff issued the notice of the ZAB decision; and

WHEREAS, on October 13, 2020, Robin O'Donnell filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before February 9, 2021, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on February 23, 2021, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP2019-0212, adopts the conditions of approval in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits
A: Findings and Conditions
B: Project Plans, dated March 18, 2020

FINDINGS AND CONDITIONS
SEPTEMBER 24, 2020

1850 Arch Street

Use Permit #ZP2019-0212 to add 18 bedrooms to an existing 10-unit, 12 bedroom multi-family residential building, for a total of 30 bedrooms on the parcel.

PERMITS REQUIRED

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.32.040.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   A. The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, number of stories, rear and left side yard setbacks, and usable open space in BMC Section 23D.36.070-080 (Development Standards), as detailed in the August 27, 2020 staff report. The proposed project is non-conforming for front yard setback (13'-9" where 15' is the minimum), lot coverage (44.6 percent where 40 percent in the maximum) and parking (providing five spaces where ten are required) under the current Zoning Ordinance. The proposed development is permissible because: (1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space.

   B. The project is consistent with the purposes of the District in that it will permit the addition of bedrooms through conversion of floor area within the existing building footprint on a

residential property, which continues the existing pattern of high residential density of the neighborhood. The project will not reduce the existing non-conforming 13'-9" front setback, the non-conforming 4'-1" right side setback, the non-conforming 44.6% lot coverage, or the non-conforming off-street parking (5 spaces where 10 is the minimum). The project will, therefore, retain the existing pattern of development that is conveniently located and provides a reasonable amount of usable open space of the District while protecting adjacent properties from unreasonable obstruction of light and air.

C. The project plans dated March 18, 2020 indicate the proposed addition will not unreasonably obstruct sunlight on nearby existing dwellings, impact the privacy between neighbors, unreasonably impact air and light between neighbors, or impact views. As discussed in the project staff report dated September 24, 2020, the proposed project will not create any new window openings or otherwise change the exterior of the building or the building's footprint. Therefore, the impacts are determined to be non-detrimental.

2. Pursuant to BMC Section 23D.32.050.A, the Zoning Adjustments Board finds that the proposed addition of bedrooms thirteen through eighteen supports the residential use on the parcel, consistent with the purposes of the R-3 District. The project represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus. The parcel contains a reasonable amount of open space, 3,631 square feet of useable open space where a minimum of 2,000 square feet is required.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

I. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

☐ **Project Liaison** _____

Name Phone #

11. Notice of Violation - Unit 5A. All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that: 1) per Housing Code Enforcement Case H2019-00471, Unit 5A may not be rented on either a short- or long-term basis , and Unit 5A shall be combined with Unit 5 in accordance with the approved plans dated February 5, 2020; 2) once Unit 5A and Unit 5 have both been voluntarily vacated by the sitting tenant, or the tenant and owner have come to an agreement for temporary relocation pursuant to BMC Chapter 13.84, the units shall be combined per the project plans dated February 5, 2020; and 3) there are no grounds for eviction of any existing tenant households in the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) due to the unpermitted status of Unit #5A or the work proposed in this application. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

12. Unit Vacancy. Demolition and/or construction activities approved under this permit shall not commence in any unit unless the existing tenants have either voluntarily vacated the unit or have reached an agreement for temporary relocation pursuant to BMC Chapter 13.84. The applicant shall submit evidence of such to the Rent Stabilization Board (i.e. tenant's notice to vacate, relocation agreement).

13. Construction and Demolition. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

14. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine whether the following document is required and timing for its submittal:

A. Building Materials Survey:

1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including

fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

Prior to Issuance of Any Building (Construction) Permit

15. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

16. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

17. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

18. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

19. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.

E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

20. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer‘s specifications. All equipment shall be checked by a certified visible emissions evaluator.
H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District‘s phone number shall also be visible to ensure compliance with applicable regulations.

21. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

22. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

23. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

24. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

25. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

26. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

27. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

Prior to Final Inspection or Issuance of Occupancy Permit:

28. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

29. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 18, 2020 except as modified by conditions of approval.

30. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

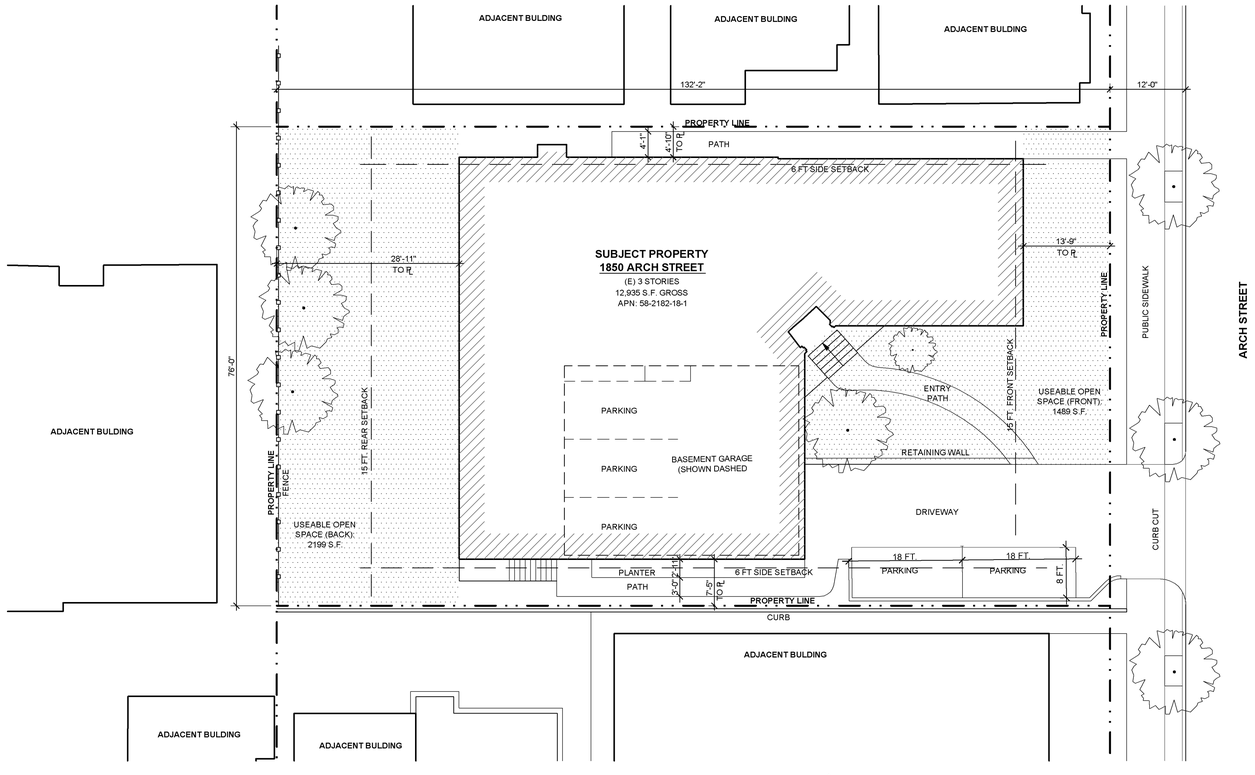
31. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

32. Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance.

33. Units 5 and 5A. Units 5 and 5A shall not be rented to a new tenant household until Housing and Zoning Enforcement determine that the conditions of the Notice of Violation (H2019-00471) have been satisfied and the Building permit to combine these two units has been finaled.

INTERIOR ALTERATIONS
1850 ARCH STREET
BERKELEY, CA 94709

APPLICABLE CODES:	PROJECT DESCRIPTION:	PROJECT TEAM:	PROJECT DATA:	SHEET INDEX:
2019 CALIFORNIA BUILDING CODE 2019 CALIFORNIA ELECTRICAL CODE 2019 CALIFORNIA MECHANICAL CODE 2019CALIFORNIA PLUMBING CODE 2019 CALIFORNIA ENERGY CODE 2019 CALIFORNIA FIRE CODE 2019 CALGREEN	INTERIOR ALTERATIONS WITHIN AN EXISTING 10 UNIT MULTIFAMILY BUILDING HAVING 2 STORIES OVER HABITABLE BASEMENT. SCOPE OF WORK TO INCLUDE: -DEMOLITION OF INTERIOR PARTITIONS -CONSTRUCTION OF NEW INTERIOR PARTITIONS -NEW INTERIOR DOORS -NEW PLUMBING FIXTURES AND APPLIANCES *PROJECT SCOPE DOES NOT INCLUDE ANY EXTERIOR WORK*	**BUILDING OWNER:** TURNING POINT INVESTMENTS 222 Monte Vista Avenue Larkspur, CA 94939 (415) 271-2996 Riccardo@TurningPointInvested.com **ARCHITECT:** MARC DIGIACOMO ARCHITECT (415) 334-7516 Marc@DiGiacomoArchitect.com **PLANNING DEVELOPMENT CONSULTANT:** RHOADES PLANNING GROUP 46 Shattuck Square Berkeley, CA 94704 (510) 545-4341 Alex@RhoadesPlanningGroup.com	APN: 58-2182-18-1 LOT 2182, BLOCK 18-1 LOT AREA: 9,930 S.F. ZONING DISTRICT: R-3H EXISTING BUILDING (NO CHANGE:) MULTIFAMILY, GROUP R-2 CONSTRUCTION TYPE V-B NON-SPRINKLERED 3 STORIES (INCLUDING "BASEMENT" STORY) 10 DWELLING UNITS GROSS AREAS (NO CHANGE:) BASEMENT: 4037 S.F. 1ST FLOOR: 4424 S.F. 2ND FLOOR: 4474 S.F. TOTAL: 12,935 S.F. TOTAL BEDROOMS EXISTING: 12 TOTAL BEDROOMS PROPOSED: 30 EXISTING PARKING: 5 (NO CHANGE) EXISTING COMMON OPEN SPACE: 3688 S.F. (NO CHANGE) EXISTING AVERAGE BLDG HEIGHT: 32'-6" EXISTING MAXIMUM BUILDING HEIGHT: 36'-0"	A1 COVER SHEET AND SITE PLAN A2 EXISTING PLANS A3 PROPOSED PLAN- BASEMENT A4 PROPOSED PLAN- 1ST FLOOR A5 PROPOSED PLAN- 2ND FLOOR



SITE PLAN
SCALE 1:10

N
PLAN NORTH

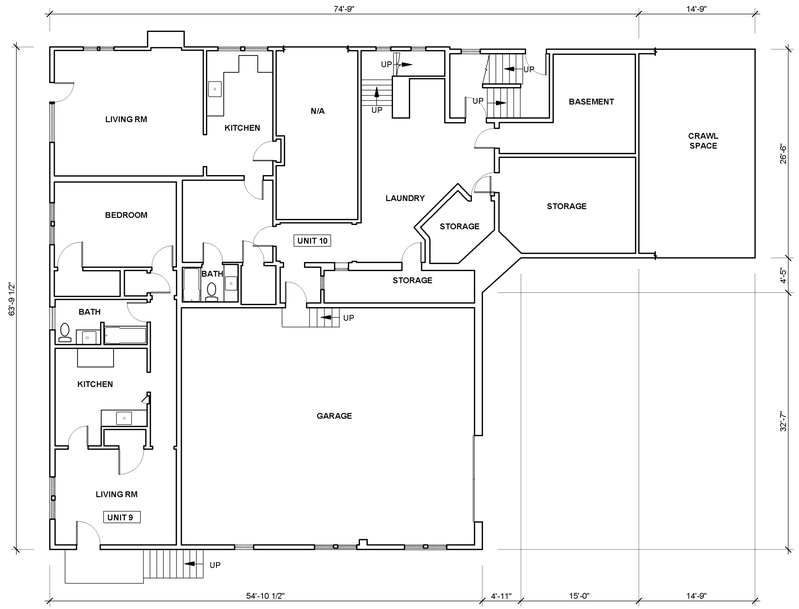
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LICENSED ARCHITECT
MARC DI GIACOMO
7-29-22
7/31/24
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1850 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT		12-19-19
1	REVISION 1	3-18-20

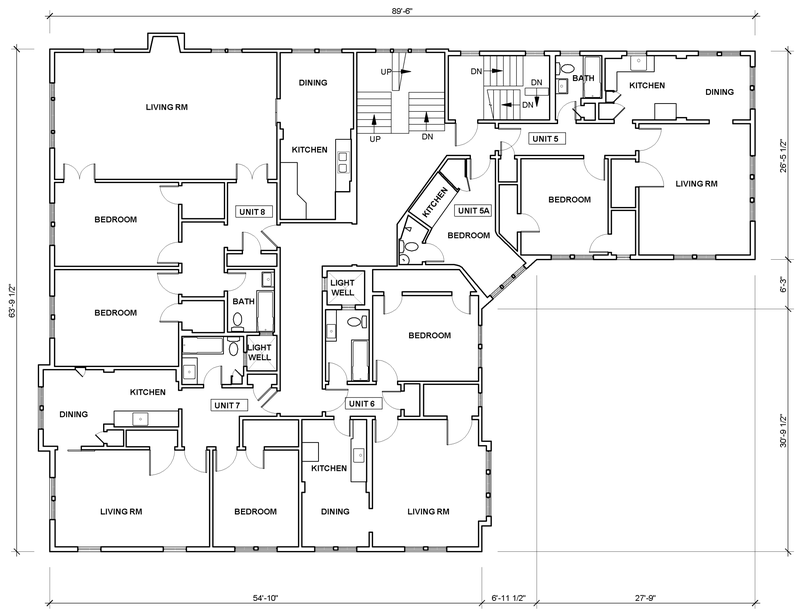
A1



1 EXISTING PLAN- BASEMENT FLOOR
SCALE: 1/8" = 1'-0"



2 EXISTING PLAN- 1ST FLOOR
SCALE: 1/8" = 1'-0"



3 EXISTING PLAN- 2ND FLOOR
SCALE: 1/8" = 1'-0"

N
PLAN NORTH

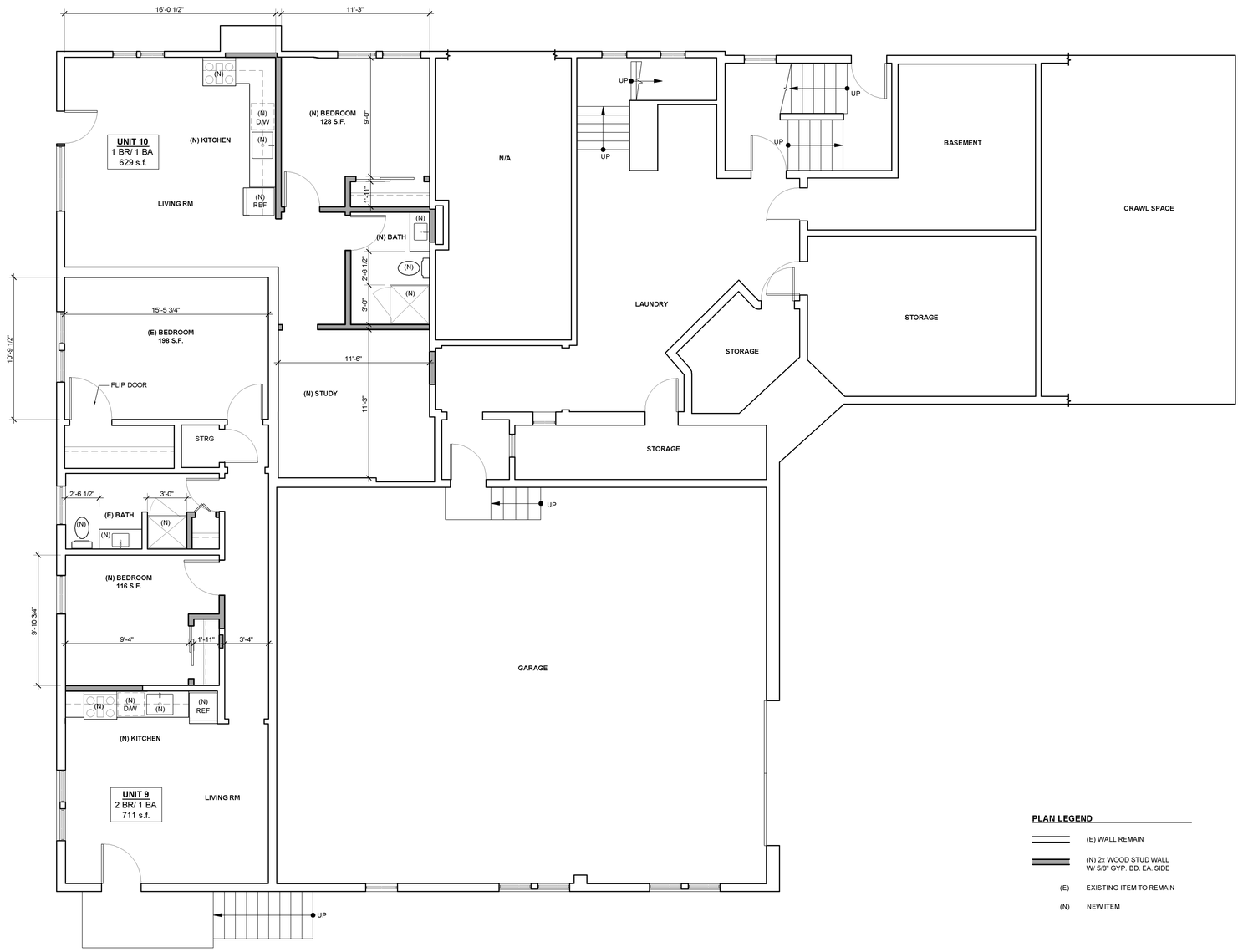
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LICENSED ARCHITECT
MARC DI GIACOMO
C-29892
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1850 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT		12-19-19
1	REVISION 1	3-18-20

A2



1 PROPOSED PLAN- BASEMENT
SCALE: 1/4" = 1'-0"

PLAN LEGEND

	(E) WALL REMAIN
	(N) 2x WOOD STUD WALL W/ 5/8" GYP. BD. EA. SIDE
(E)	EXISTING ITEM TO REMAIN
(N)	NEW ITEM

PLAN NORTH

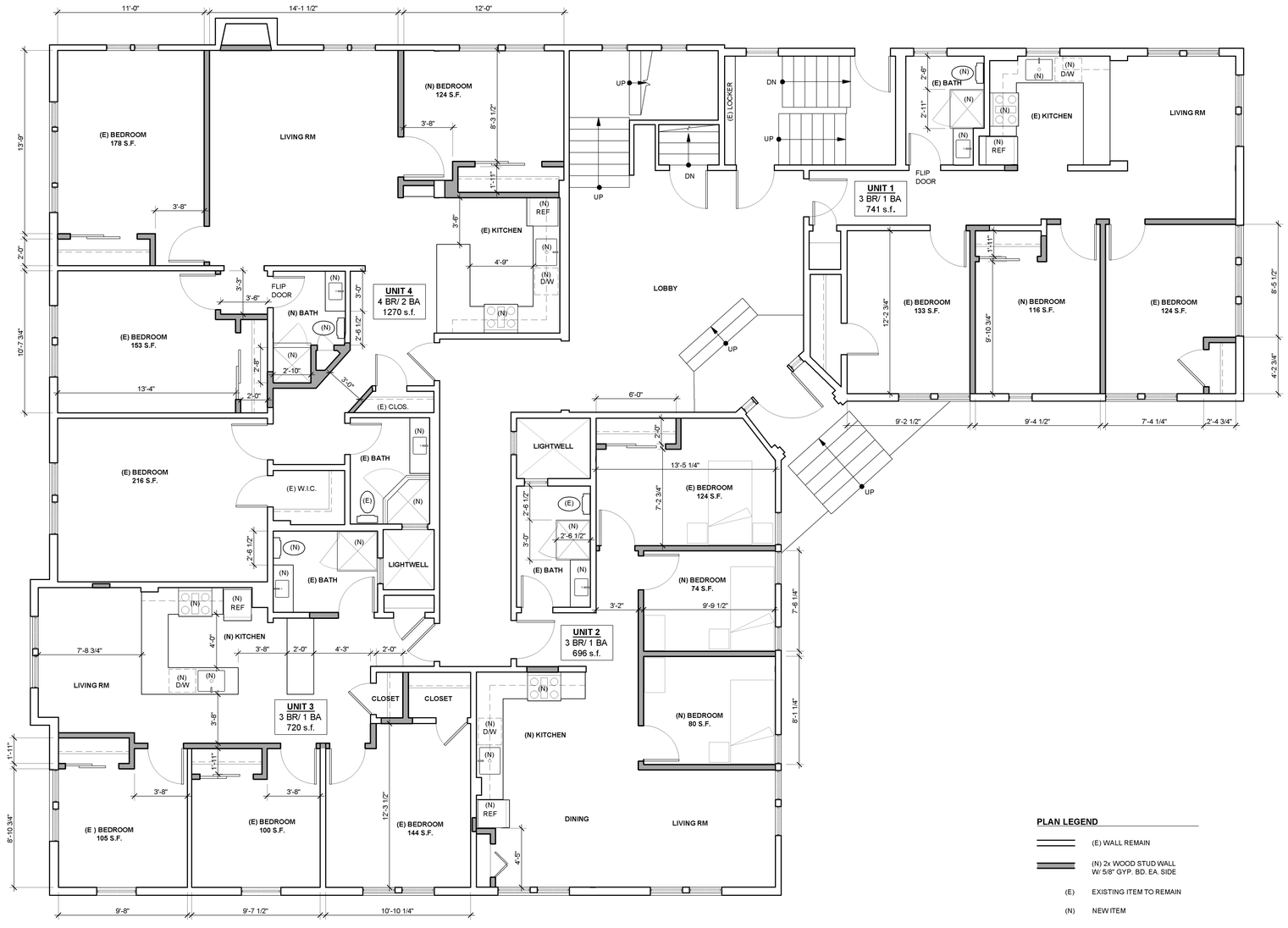
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LICENSED ARCHITECT
MARC DI GIACOMO
12/31/22
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1850 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT	12-19-19
1 REVISION 1	3-18-20

A3



1 PROPOSED PLAN- 1ST FLOOR
SCALE: 1/4" = 1'-0"

PLAN LEGEND

- (E) WALL REMAIN
- (N) 2x WOOD STUD WALL W/ 5/8" GYP. BD. EA. SIDE
- (E) EXISTING ITEM TO REMAIN
- (N) NEW ITEM

PLAN NORTH

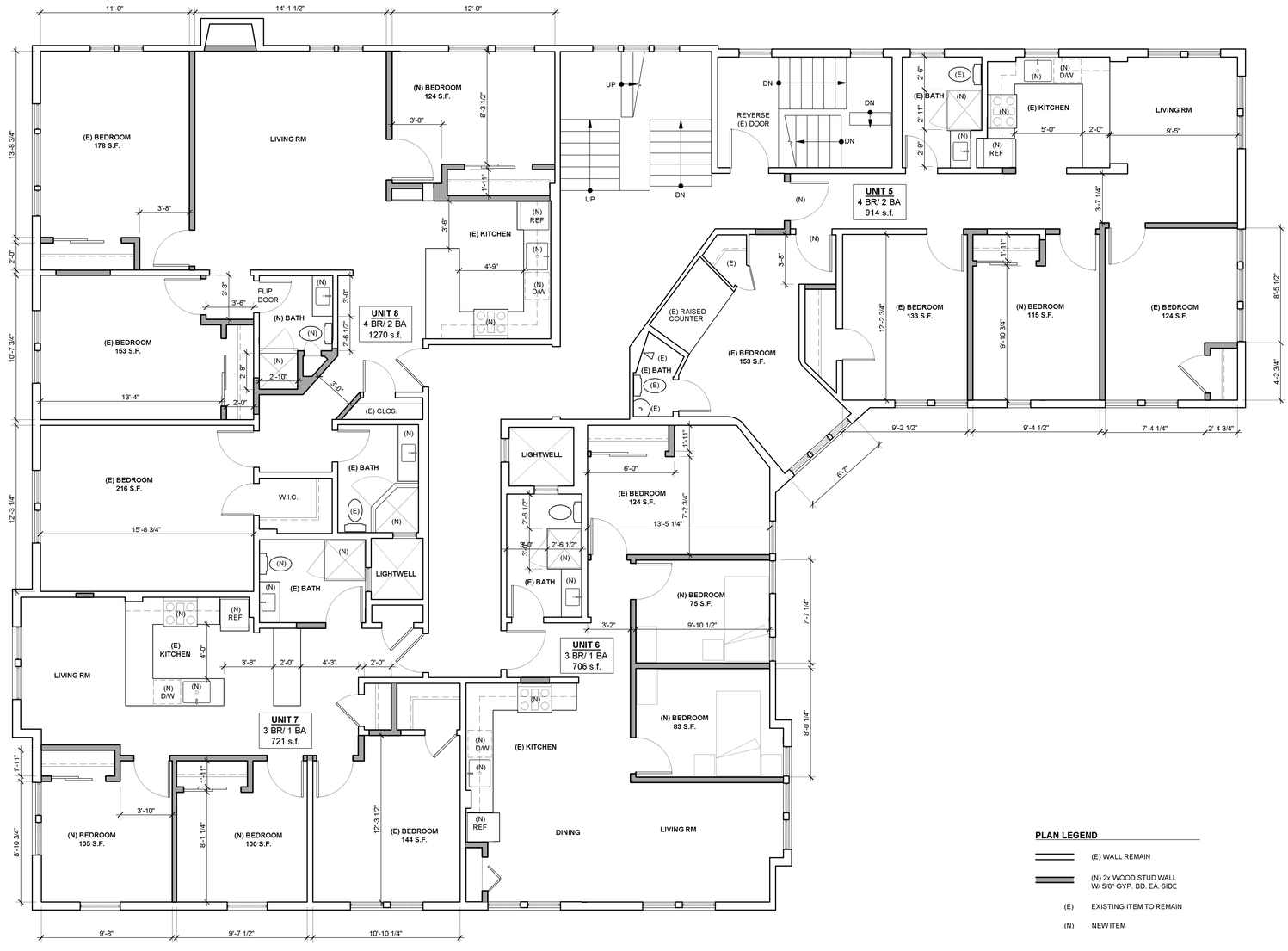
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LICENSED ARCHITECT
MARC DI GIACOMO
12-20-20
7/31/22
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1850 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT		12-19-19
1	REVISION 1	3-18-20

A4



1 PROPOSED PLAN- 2ND FLOOR
SCALE: 1/4" = 1'-0"

PLAN LEGEND

	(E) WALL REMAIN
	(N) 2x WOOD STUD WALL W/ 5/8" GYP. BD. EA. SIDE
(E)	EXISTING ITEM TO REMAIN
(N)	NEW ITEM

PLAN NORTH

MARC DI GIACOMO
ARCHITECT, LEED AP
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Alameda, CA 94501
Cell (415) 334-7516

LICENSED ARCHITECT
MARC DI GIACOMO
C-29902
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1850 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT		12-19-19
1	REVISION 1	3-18-20

A5

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT #ZP2019-0213 TO ADD 15 BEDROOMS TO AN EXISTING 10-UNIT, 10-BEDROOM MULTI-FAMILY RESIDENTIAL BUILDING, FOR A TOTAL OF 25 BEDROOMS ON THE PARCEL, AND DISMISSING THE APPEAL

WHEREAS, on December 20, 2019, Rhoades Planning Group ("applicant") filed an application for a Use Permit to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building, for a total of 30 bedrooms on the parcel; and

WHEREAS, on April 16, 2020, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines ("Existing Facilities"); and

WHEREAS, on September 10, 2020 staff posted the ZAB Notice of Public Hearing at the site in three locations and mailed 504 notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on September 24, 2020, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the application with Conditions; and

WHEREAS, on September 29, 2020, staff issued the notice of the ZAB decision; and

WHEREAS, on October 13, 2020, Robin O'Donnell filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before February 9, 2021, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on February 23, 2021, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP2019-0213 adopts the conditions of approval in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits
A: Findings and Conditions
B: Project Plans, dated March 18, 2020

1862 Arch Street

Use Permit #ZP2019-0213 to add 13 bedrooms to an existing 10-unit, 10 bedroom multi-family residential building, for a total of 25 bedrooms on the parcel.

PERMITS REQUIRED

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.32.040.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   A. The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, number of stories, rear yard setback, lot coverage, and usable open space in BMC Section 23D.36.070-080 (Development Standards), as detailed in the August 27, 2020 staff report. The proposed project is non-conforming for front yard setback (9'-8" where 15' is the minimum), left yard setback (0' where 6' is the minimum), right yard setback (0' where 6' is the minimum), and parking (providing five spaces where ten are required) under the current Zoning Ordinance. The proposed development is permissible because: (1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space.

   B. The project is consistent with the purposes of the District in that it will permit the addition of bedrooms through conversion of existing floor area and conversion of 20 square feet of

existing unfinished area within the existing building footprint on a residential property, which continues the existing pattern of high residential density of the neighborhood. The project will not reduce the existing non-conforming 9'-8" front setback, the non-conforming 0' left and right side setbacks, or the non-conforming off-street parking (5 spaces where 10 is the minimum). The project will, therefore, retain the existing pattern of development that is conveniently located and provides a reasonable amount of usable open space of the District while protecting adjacent properties from unreasonable obstruction of light and air.

C. The project plans submitted on April 6, 2020 indicate the proposed addition will not unreasonably obstruct sunlight on nearby existing dwellings, impact the privacy between neighbors, unreasonably impact air and light between neighbors, or impact views. As discussed in the project staff report dated September 24, 2020, the proposed project will not create any new window openings or otherwise change the exterior of the building or the building's footprint. Therefore, the impacts are determined to be non-detrimental.

2. Pursuant to BMC Section 23D.32.050.A, the Zoning Adjustments Board finds that the proposed addition of bedrooms eleven through twenty five supports the residential use on the parcel, consistent with the purposes of the R-3 District. The project represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus. The parcel contains a reasonable amount of open space, 2,186 square feet of useable open space where a minimum of 2,000 square feet is required.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

I. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

☐ **Project Liaison** _____

Name Phone #

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

11. Unit Vacancy. Demolition and/or construction activities approved under this permit shall not commence in any unit unless the existing tenants have either voluntarily vacated the unit or have reached an agreement for temporary relocation pursuant to BMC Chapter 13.84. The applicant shall submit evidence of such to the Rent Stabilization Board (i.e. tenant's notice to vacate, relocation agreement).

12. Construction and Demolition Diversion. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

13. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine whether the following document is required and timing for its submittal:

A. Building Materials Survey:

1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

Prior to Issuance of Any Building (Construction) Permit

14. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

15. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

16. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

17. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

18. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater

pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

19. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

20. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

21. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

22. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

23. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

24. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

25. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

26. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

Prior to Final Inspection or Issuance of Occupancy Permit:

27. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

28. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated February 5, 2020 except as modified by conditions of approval.

29. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

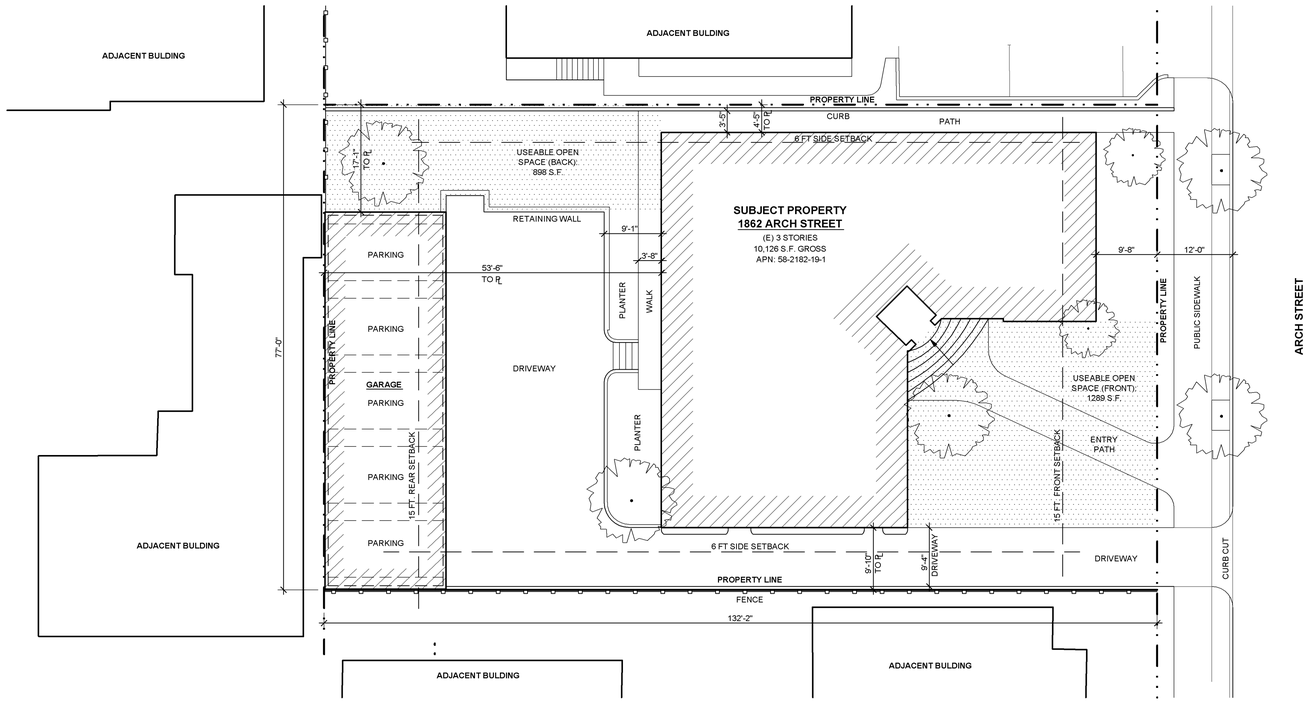
At All Times:

30. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

31. Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance.

INTERIOR ALTERATIONS
1862 ARCH STREET
BERKELEY, CA 94709

APPLICABLE CODES:	PROJECT DESCRIPTION:	PROJECT TEAM:	PROJECT DATA:	SHEET INDEX:
2019 CALIFORNIA BUILDING CODE 2019 CALIFORNIA ELECTRICAL CODE 2019 CALIFORNIA MECHANICAL CODE 2019 CALIFORNIA PLUMBING CODE 2019 CALIFORNIA ENERGY CODE 2019 CALIFORNIA FIRE CODE 2019 CALGREEN	INTERIOR ALTERATIONS WITHIN AN EXISTING 11 UNIT MULTIFAMILY BUILDING HAVING 2 STORIES OVER HABITABLE BASEMENT. SCOPE OF WORK TO INCLUDE: -DEMOLITION OF INTERIOR PARTITIONS -CONSTRUCTION OF NEW INTERIOR PARTITIONS -NEW PLUMBING FIXTURES AND APPLIANCES *PROJECT SCOPE DOES NOT INCLUDE ANY EXTERIOR WORK*	**BUILDING OWNER:** TURNING POINT INVESTMENTS 222 Monte Vista Avenue Larkspur, CA 94939 (415) 271-2996 Riccardo@TurningPointInvested.com **ARCHITECT:** MARC DIGIACOMO ARCHITECT (415) 334-7516 Marc@DiGiacomoArchitect.com **PLANNING DEVELOPMENT CONSULTANT:** RHOADES PLANNING GROUP 46 Shattuck Square Berkeley, CA 94704 (510) 545-4341 Alex@RhoadesPlanningGroup.com	APN: 58-2182-19-1 LOT 2182, BLOCK 19-1 LOT AREA: 10,300 S.F. ZONING DISTRICT: R-3H EXISTING BUILDING (NO CHANGE:) MULTIFAMILY, GROUP R-2 CONSTRUCTION TYPE V-B NON-SPRINKLERED 3 STORIES (INCLUDING HABITABLE "BASEMENT" STORY) 10 DWELLING UNITS GROSS AREAS (NO CHANGE:) BASEMENT: 3366 S.F. 1ST FLOOR: 3356 S.F. 2ND FLOOR: 3404 S.F. TOTAL: 10,126 S.F. TOTAL BEDROOMS EXISTING: 18 TOTAL BEDROOMS PROPOSED: 25 EXISTING PARKING: 5 (NO CHANGE) EXISTING COMMON OPEN SPACE: 2186 S.F. (NO CHANGE) EXISTING AVERAGE BLDG HEIGHT: 27'-4"	A1 COVER SHEET AND SITE PLAN A2 EXISTING PLANS A3 PROPOSED PLAN- BASEMENT A4 PROPOSED PLAN- 1ST FLOOR A5 PROPOSED PLAN- 2ND FLOOR



SITE PLAN
SCALE 1:10

N
PLAN NORTH

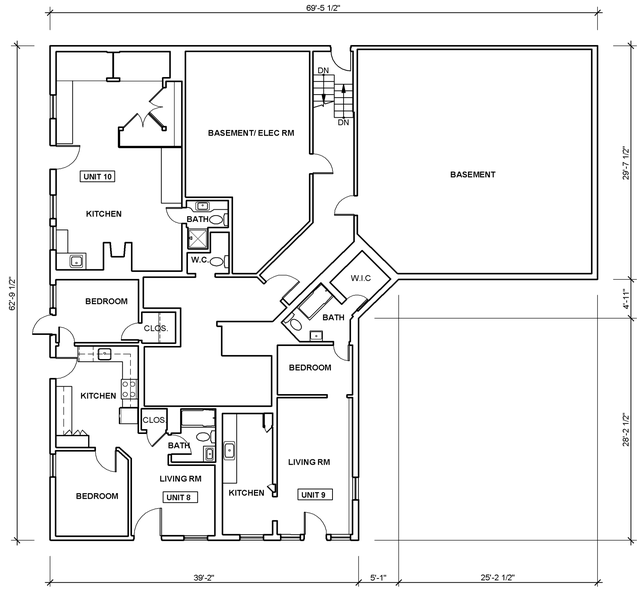
Marc DiGiacomo
Architect, LEED AP
3110 Fernside Blvd
Alameda, CA 94501
Cell (415) 334-7516

LICENSED ARCHITECT
MARC DIGIACOMO
C-29822
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

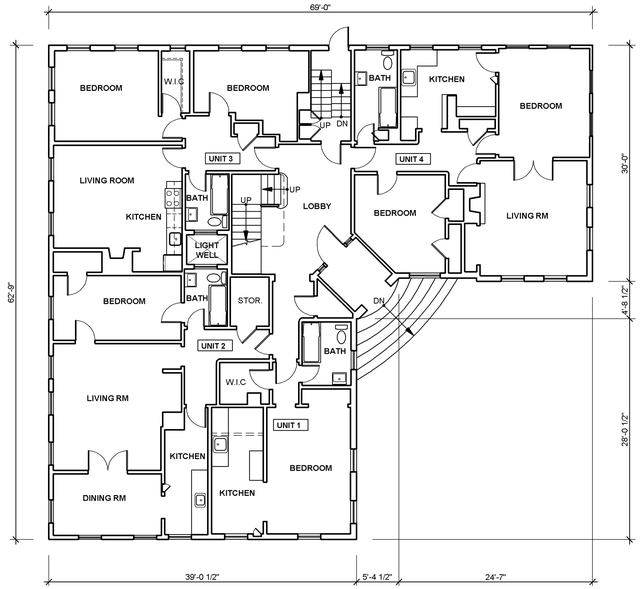
INTERIOR ALTERATIONS
1862 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT	12-19-19
1 REVISION 1	2-5-20

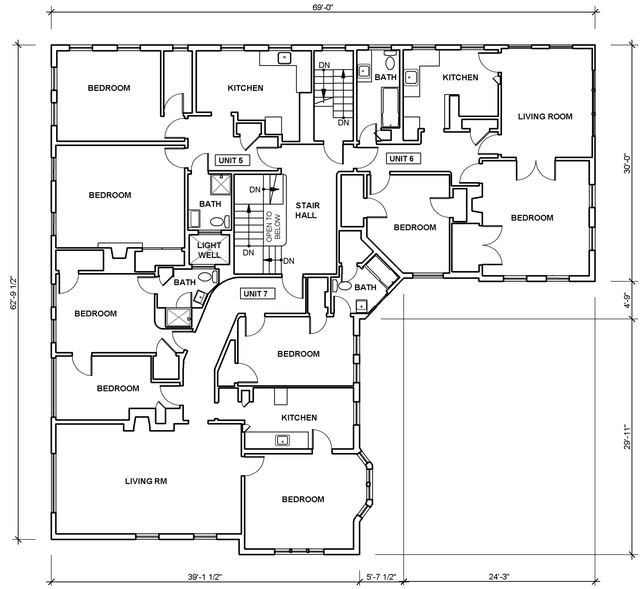
A1



1 EXISTING PLAN- BASEMENT FLOOR
SCALE: 1/8" = 1'-0"



2 EXISTING PLAN- 1ST FLOOR
SCALE: 1/8" = 1'-0"



3 EXISTING PLAN- 2ND FLOOR
SCALE: 1/8" = 1'-0"

N
PLAN NORTH

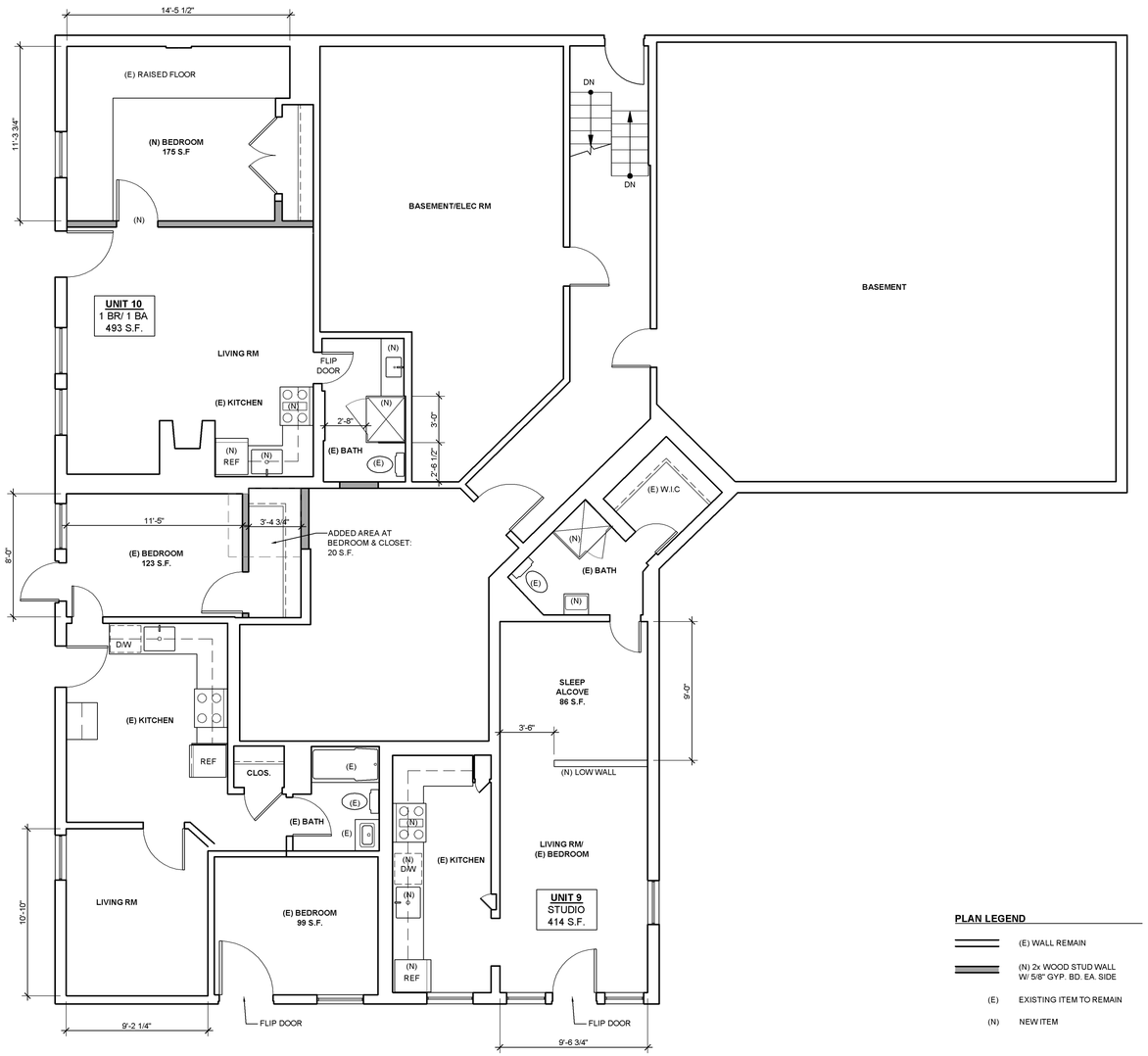
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LICENSED ARCHITECT
MARC DI GIACOMO
C-29882
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1862 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT		12-19-19
1	REVISION 1	2-5-20

A2



1 PROPOSED PLAN- BASEMENT FLOOR
SCALE: 1/4" = 1'-0"

PLAN LEGEND

	(E) WALL REMAIN
	(N) 2x WOOD STUD WALL W/ 5/8" GYP. BD. EA. SIDE
(E)	EXISTING ITEM TO REMAIN
(N)	NEW ITEM

PLAN NORTH

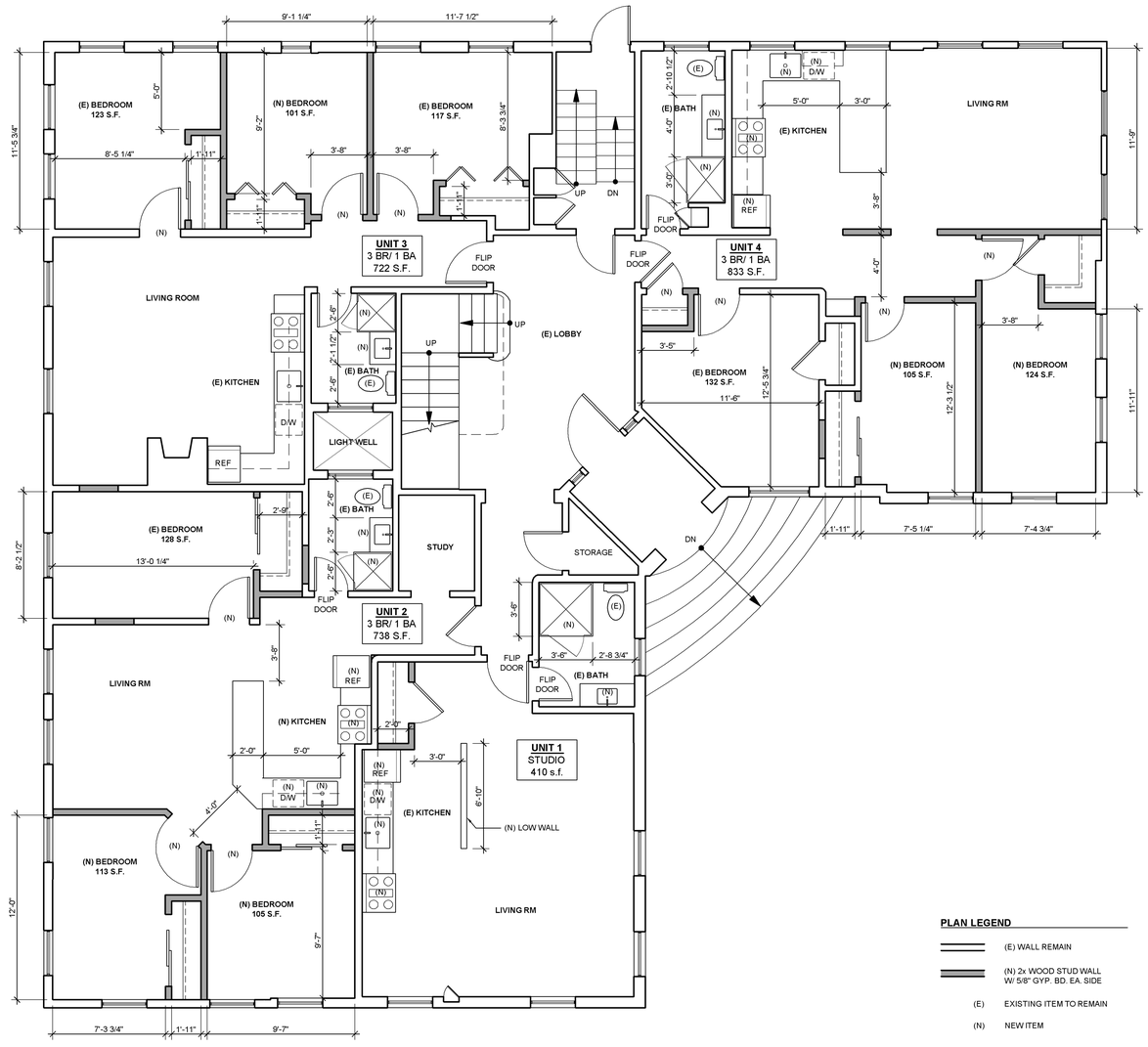
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LICENSED ARCHITECT
MARC DI GIACOMO
C-29822
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1862 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT	12-19-19
1 REVISION 1	2-5-20

A3



PLAN LEGEND

	(E) WALL REMAIN
	(N) 2x WOOD STUD WALL W/ 5/8" GYP. BD. EA. SIDE
(E)	EXISTING ITEM TO REMAIN
(N)	NEW ITEM

1 PROPOSED PLAN- 1ST FLOOR
SCALE: 1/4" = 1'-0"

PLAN NORTH

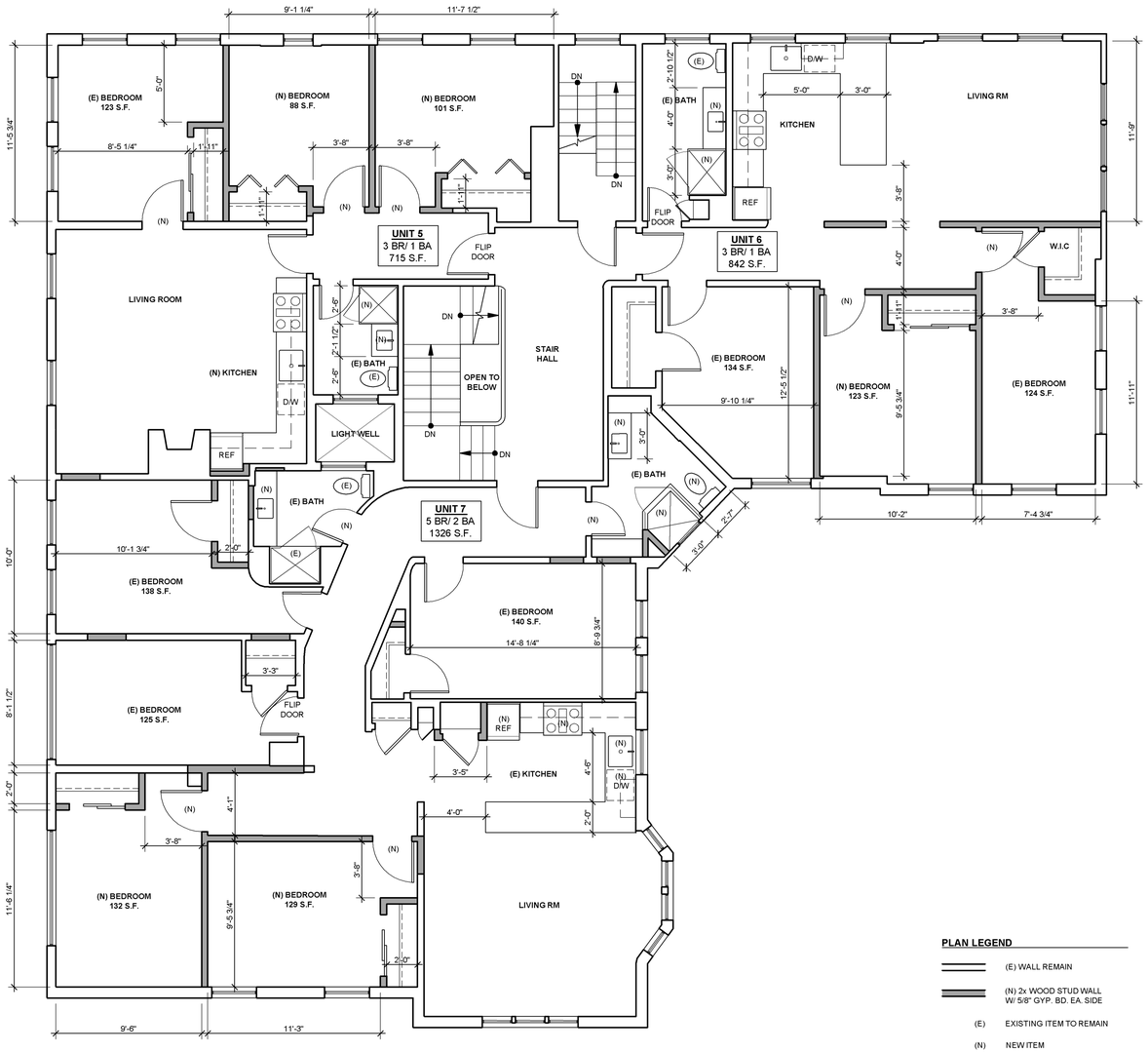
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LICENSED ARCHITECT
MARC DI GIACOMO
C-29882
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1862 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT	12-19-19
1 REVISION 1	2-5-20

A4



PLAN LEGEND

	(E) WALL REMAIN
	(N) 2x WOOD STUD WALL W/ 5/8" GYP. BD. EA. SIDE
(E)	EXISTING ITEM TO REMAIN
(N)	NEW ITEM

1 PROPOSED PLAN- 2ND FLOOR
SCALE: 1/4" = 1'-0"

PLAN NORTH

Marc DiGiacomo
Architect, LEED AP
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Alameda, CA 94501
Cell (415) 334-7516

LICENSED ARCHITECT
MARC DI GIACOMO
C-29582
7/31/21
RENEWAL DATE
STATE OF CALIFORNIA

INTERIOR ALTERATIONS
1862 ARCH STREET
BERKELEY, CA 94709

PLANNING PERMIT	12-19-19
1 REVISION 1	2-5-20

A5

October 13, 2020

Berkeley City Council
2180 Milvia Street
First Floor
Berkeley, CA 94704

Re: Appeal of Decision of Zoning Adjustments Board Dated September 24, 2020 Concerning Use Permits #ZP2019-0212 Property Addresses 1850 Arch Street

Dear Members of the Berkeley City Council:

We are submitting this appeal of the decision of the Berkeley Zoning Adjustments Board ("ZAB") concerning Use Permit #ZP2019-0212 pertaining to the property at 1850 Arch Street in Berkeley. We have simultaneously submitted a separate appeal of the decision of ZAB concerning Use Permit #ZP2019-0213 pertaining to the property at 1862 Arch Street. Because the applicant for the use permits is the same in both instances, the buildings at 1850 and 1862 Arch Street (the "Properties") are adjacent, and the permitting decision and appeals present virtually identical issues of fact and law, we are submitting substantially identical letters for each appeal.

While the COVID pandemic has made it difficult to coalesce citizen input into the renovations of the 1850 and 1862 Arch Street (collectively, the "Projects"), the list of signatures attached to this letter and opposing the ZAB decisions demonstrates widespread opposition to the Projects from the majority of residents of the Properties. This oppositions arises because the Projects are deeply flawed attempt to maximize revenue from the Properties with little consideration of the relevant requirements of the Berkeley Municipal Code for the issuance of the permits. Many of these considerations, including considerations about the character of the Hillside community and the detrimental effects of the construction and the development on the residents of the Properties and the broader community, were either completely ignored or improperly weighed by ZAB.

The 1850 Arch Street Project would add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building that was constructed in 1927, immediately after the 1923 fires, and has been largely in its same configuration for almost 100 years. The building is non-confirming; it exceeds the district's maximum lot coverage (44.6% v. 40%); has non-conforming front-yard and side setbacks; and only provides five parking spacings, half of the BMC's requirement. Similarly, the 1862 Arch Street Project would add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building of a similar vintage, which, like its counterpart, has largely remained in its current configuration for almost 100 years. 1862 Arch Street is also non-

conforming is multiple ways: for front-yard setback (9'-8" v. 15' minimum), left yard setback (0' v. 6' minimum), right-yard setback (0' v. 6' minimum), and only provides five parking spaces where ten are required.

Taken together, the Projects would increase the number of bedrooms in each property by 150% (with total bedrooms increasing from 22 to 55) and could be expected to result in similar increase in the number of residents. The buildings are essentially situated on top of each other and the adjoining buildings – there is about 15 between 1862 Arch Street and 1876 Arch Street – on a restricted access one-way street with limited street parking. The buildings are designated as R-3(H), with the H representing a designation that the Properties are located in the ecological fragile and historically important Hillside District. Consistent with its classification as Medium Density Residential ("MDR"),[1] this block of Arch Street is characterized by a mix of gracious single-family condominiums, single-family homes and small to medium sized multi-family structures. The block also houses several cultural and religious institutions, such as the Institute of Salesian Studies, which is diagonally across the Street for the Projects, and the Pacific School of Religion and affiliated institutions, which are located on Holy Hill at the intersection of Arch Street and Virginia Street at the end of the block

A. **The Projects are inconsistent with the purposes of Hillside Districts and the Berkeley General Plan and the character and historical integrity of the neighborhood**

In its Staff Reports and Findings and Conditions for the Projects, ZAB erroneously applied BMC Chapter 23B.32's standards for Restricted Multiple-family Residential (R-2A) districts instead of those for Multiple Family Residential (R-3) Districts under Chapter 23D.36. Unlike for R-2 Districts, ZAB is required to consider additional permitting requirements for Hillside Districts where, as here, project is located in a district classified as R-3(H).[2] Perhaps confused by which standards were applicable, ZAB completely failed to apply the appropriate standards for Hillside Districts. This error was not harmless. Notably, BMC requires ZAB to consider of the purposes of Hillside Districts, including to "[p]rotect the character of Berkeley's hill Districts and their immediate environs" and to "[i]mplement the Master Plan's policies regarding Hillside Development."[3] Consideration of the applicable standards of the Hillside District provisions and the Berkeley General Plan would have supported rejection of the Projects.

Put simply, the Projects are the applicant's attempt to maximally monetize the Properties by transforming elegant and proportioned historic multi-family apartment buildings in a quiet residential neighborhood into extremely high-density rooming houses for transient students

[1] *See* City of Berkeley General Plan ("General Plan"), Land Use Element (explaining that MDR areas "are generally characterized by a mix of single-family homes and small to medium sized multi-family structures.").

[2] *See* BMC 23D.36.010.

[3] *See BMC* 23E.96.020.

willing to pay exorbitant rents. The detrimental impacts of the Projects on the residents of the Properties, the neighbors, and the broader hillside environment are immense.

As explained above, in their current configurations, the Properties are non-conforming and take up a higher proportion of the allocated lot space and have non-conforming setbacks from the property lines. For example, the south wall of the 1862 Arch Street is about 15 feet from 1876 Arch Street. The immediate neighborhood's density, without introducing 30 or 40 more residents in the two buildings is already a problem given its precarious infrastructure. Noise pollution from the overcrowded apartment buildings is an issue for neighbors. Even amid the COVID pandemic, it is difficult to get a parking space on street, and the Properties already have a deficient number of parking spaces. This block of Arch Street is narrow, and, in response to pedestrian crossing issues at its base, has recently been made a one-way street. With the existing density, the noise and congestion from car traffic, construction, trash pickup, and deliveries already stretches the neighborhood's infrastructure to its capacity. Because the Properties are so close to the street and neighboring buildings, increasing the residency by more than a factor of two will greatly exacerbate these problems.

The Arch Street neighborhood was designed as and organically developed into a medium density area, and there are no provisions in the plan to accommodate the increased density of the Projects. In its public hearing on the Projects, ZAB spent an inordinate time discussing potential parking impacts and ultimately decided that even though the parking in the building was already non-conforming and residential parking would likely not be approved for a new construction, it was completely acceptable to permit, without limitation, the potential 30 plus new residents of the Properties to receive residential parking permits. Given the current parking situation, of which ZAB seemed to be ill-informed,[4] ZAB's failure to attach limitations on parking permits or otherwise address the parking problems was a mistake. But, more fundamentally, ZAB's inability to adequately address the parking issue is emblematic of its unwillingness to soberly confront the immense impact of the Projects on the local infrastructure -- increasing the bedrooms from 22 to 55 in small structures packed into undersized lots on a narrow one-way street. Even if a proportion of the new residents do not have automobiles, they nevertheless will create more noise, they will be heavily reliant on food and other deliveries, and they will produce more trash.

The applicant has avoided otherwise applicable density restrictions by maintaining the existing number of units but greatly increasing the number of bedrooms. While this is a gap in the regulatory scheme, ZAB is directed to consider the density and other effects of this project by the BMC's requirement that the character of the Hill District and its immediately environs be considered and similar considerations raised in Berkeley's General Plan. For example, the General Plan's Urban Design and Preservation Element has stressed the need to preserve community identity through recognition of the beauty and continuity of older buildings. It cautions that a "design [that] is suitable in any specific case significantly depends on the particular location." Creating two high-density rooming houses are inconsistent with the

[4] For example, ZAB was unaware of the current parking situation and relied on speculation that the potential additional residents of the Properties would not own automobiles.

original, notable architectural design of these two, century-old, elegant multi-family residences.[5] In addition to needless vitiating the architectural integrity of the Properties, the introduction of overly dense student dormitories detrimentally alters the balance of the residential community.[6]

The Projects may preserve the façade of the Properties, but this carapace would belie the damage to the architectural integrity of the building and fabric of the neighborhood.[7]

B. The construction involved in the Projects and the Projects' lasting legacy will detrimentally impact the residents of the Properties and their neighbors

BMC section 23B.32.040 requires the ZAB to approve an application for a use permit only upon finding that the project "will not be detrimental to the health, safety, peace, morals, comfort or

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[5] *See* Policy UD-20 ("Alterations to a worthwhile building should be compatible with the building's original architectural character"); Policy UD-22 ("Regulate new construction and alterations to ensure that they are individually well-designed and that they are so designed and located as to duly respect and where possible enhance the existing built environment."); Policy UD-5 Architectural Features ("Encourage, and where appropriate require, retention of ornaments and other architecturally interesting features in the course of seismic retrofit and other rehabilitation work.")

[6] *See* Policy UD-3 ("[u]se regulations to protect the character of neighborhoods and districts"); Policy UD-24 Area Character ("Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in."); (Policy LU-2) (ensuring that development be compatible with "scale, historic character, and surrounding uses in the area").

[7] On this point, the hearing comments of ZAB member Sheahan reviewing the 1850 Arch Street project before voting against the Projects deserve to be quoted at length:

"TO CALL IT ELEGANT DENSITY I THINK IS A JOKE. THIS IS A BEAUTIFUL APARTMENT BUILDING. OF NICELY SCALED APARTMENTS OF A SIZE THAT IS DESPERATE NEED IN THIS CITY. AND IT'S A VERY MIXED POPULATION. I KNOW PEOPLE ON THIS STREET, THEY AREN'T ALL STUDENTS. THEY AREN'T ALL ONE-YEAR LEASE HOLDERS. PEOPLE LIVE THERE. THEY LIVE ON THE STREET. IN THIS NEIGHBORHOOD. AND THESE ARE THE PLACES THEY LIVE IN. AND THIS PROJECT ENCOURAGES BY VIRTUE OF THE CONSTRUCTION PROCESS FOR ONE, AND A HIGHER RATE OF TURNOVER, REALLY MAKES IT THAT MUCH LESS DESIRABLE PLACE TO LIVE AND I THINK IS EFFECTIVELY DISCOURAGING LONG-TERM TENANTS FROM EITHER MOVING OUT OR NOT MOVING IN. I THINK IT'S A SERIOUS OVERSIGHT OF THE CITY NOT TO HAVE DENSITY STANDARDS FOR THIS ZONE. IT BOGGLES ME. AND YOU KNOW, WITH WE ARE WELL WEAR ESPECIALLY THIS YEAR OF THE ISSUES OF DENSITY AND EXTREME DENSITY. IT ALREADY IS HIGH DENSITY. THIS PROPOSAL IS EXTREME DENSITY…. I CAN'T SUPPORT THIS. I THINK IT'S AN ILL-CONCEIVED OBVIOUS ATTEMPT TO EXTRACT THE MAXIMUM RENT OUT OF A PROPERTY BY MORE THAN DOUBLING THE NUMBER OF BEDROOMS AND IN CUTTING THE LIVING SPACE -- COMMON LIVING SPACE IN HALF OR WORSE. IT'S A DISASTER. I CAN'T VOTE FOR IT. IT'S ENCOURAGING UNSAFE AND UNHEALTHY LIVING."

general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City."

In its Staff Reports and Findings and Conditions for the Projects, ZAB summarily concluded that the Projects were permissible because: "(1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space." This superficial treatment of the issues does not address the myriad detrimental effects of the Projects. In fact, both the construction of the project and the resultant renovations will substantially adversely affect the property, its residents, adjacent properties, and the neighborhood.

First, the construction plan for the Projects ensures that there will be constant construction noise for at least the next several years. The applicant plans to add the 33 bedrooms to the properties by adding interior walls and substantially reconfiguring the layout over the building. The renovations will occur when each of the 22 units becomes vacant. Some of the current residents have been living in the Properties for years; many others are students who reside for only a year or two. The result will be that vacancies will be staggered and that there will be construction ongoing for years.[8] The effects of modest, non-structural modifications made to the Properties in the past several months are not auspicious. This work has been disruptive with work trucks blocking resident parking and contractors working and walking around the property at times without masks, as required by public health regulations directed against the COVID epidemic.[9]

The prospect of continuous construction over the next several years is particularly alarming given the use of the building and the likely effects on the neighborhood. Many of the residents will be students who will be working from home during construction hours. The other residents are a mix of retirees who similarly spend many working hours at home, and other workers who are increasingly working from home given the transition to a distributed workforce that has been accelerated by the COVID epidemic. This is not to suggest that well planned and proportionate renovations should be opposed on the ground of construction impacts. But the Projects are not well planned: the scale of the Projects is immense, yet discrete in timing, and thus the timeline is uncertain and most likely attenuated, promising massive ongoing disruption to residents and

[8] The authors of this letter have heard from multiple tenants of the Properties that they have recently been forced to sign 6-month and 12-month leases with the implication that the leases will not be renewed. This is disturbing because these practices may be inconsistent with applicable rent regulations, including protections for rent control apartments. In any event, they underscore the applicant's eagerness to monetize the Properties at the expense of its current residents and countervailing considerations.

[9] ZAB's attempt to mitigate this harm by prohibiting construction on Saturday's is plainly insufficient for the magnitude and duration of the harm. Resident will only have to live with constant construction five days a week for years, instead of six.

neighbors.[10] Every current and future resident of the Properties can expect to experience construction-related noise and disruption for many years.

Unfortunately, the detrimental effects of the Projects to the "health, safety, peace, morals, comfort or general welfare" of residents and the community will not be confined to the construction period; in fact, the Projects themselves will make these effects the permanent condition of the Properties and the neighborhood. The Properties are already non-conforming for their lots; squeezing more than twice as many residents into the same building footprint will have a litany of adverse effects. The Projects will increase the noise levels for residents of the Properties and neighbors, some of whom are not students and keep more regular hours.[11] The housing itself will be cramped and substandard.[12] These effects are multiplied by the density of the buildings themselves and the close proximity of neighboring buildings, which are a result of the non-conforming condition of the Properties and adjacent buildings, such as 1876 Arch Street, which directly abuts the lot line.[13]

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[10] ZAB Member Sheahan's hearing comments on this point are particularly instructive:

"I THINK AS HAS BEEN POINTED OUT, THE CONSTRUCTION PROCESS, THIS PHASED CONSTRUCTION LIKELY ONE UNIT IN EACH OF THE BUILDINGS IS UNDER CONSTRUCTION ALL THE TIME. THAT MAKES IT REALLY INTOLERABLE FOR EVERYONE LIVING THERE TO HAVE NONSTOP CONSTRUCTION GOING ON."

[11] While opposition to the Projects among residents of the Properties is overwhelming, the situations of two of this letter's authors, are instructive. Robin O'Donnell is a 72-year-old single man who has lived at 1850 Arch Street for 24 years and spends many working days in his apartment. In April 2020, he submitted a letter to the City detailing the possible negative effects of the Projects He remains concerned about the implications of the massive increase in building density to his health and welfare, including the noise arising from the project and new residents, the constant parade of construction workers, at the possible health impacts in the age of COVID from packing many young residents into a small footprint structure with retirees. Carey Pelton is a 65-year-old single women who has lived at 1850 Arch Street for 30 years. She is a former employee of the University of California and is disabled. She shares Mr. O'Donnell's concerns about the Projects.

[12] As ZAB Member Sheahan explained while discussing the 1862 Arch Street project:

"I RAISE THE ISSUE OF DENSITY STANDARDS. AND WHAT I KEPT THINKING OF AS I WAS LOOKING AT THIS IS MINI DORMS. THIS IS LIKE TAKING AN APARTMENT BUILDING AND MAKING A BUNCH OF MINI DORMS OUT OF IT. MINI DORMS HAVE BECOME REGULATED. IN THE ABSENCE OF REGULATION, THAT APPLIES TO THIS KIND OF THING. THAT IS EXTREMELY DENSE, VERY LITTLE LIVING SPACE IN PROPORTION TO BEDROOMS. AND THERE IS DETRIMENT TO THAT. THERE IS SUCH A THING AS TO DETRIMENT TO LIGHT, AIR, SUN. EXCESSIVE DENSITY COMPROMISES. FOR THE CAUSES. AND I'M GOING TO VOTE NO ON THIS ALSO BECAUSE I THINK THIS IS NOT THE KIND OF -- THIS IS HOUSING GEARED TOWARDS SHORT TERM TENANTS AND A TURNOVER BECAUSE IT ALLOWS RENT INCREASE. OR MAXIMIZES POTENTIAL RENT INCREASE. THAT'S WHAT THIS PROJECT IS TRYING TO DO. AND I'LL VOTE NO AGAIN. IT'S NOT RIGHT."

[13] The deleterious impact of noise arising from new development is cognizable in the General Plan. *See* Policy LU-7 (stressing preserving historic buildings and "minimize[ing] or eliminat[ing] negative impacts

In addition to noise, levels the Projects will have multiple other tangible detrimental effects on the immediate neighborhood. First, the already difficult parking situation will undoubtedly worsen because some of the new residents will park on the street. The applicant takes advantage of a regulatory loophole arising from developing a building with non-conforming parking but, because, despite its substantial effect on the parking situation, it is not classified as a new construction, it is not subject to parking restrictions. Even if only five of the 30 plus new residents parked on the street, there would be inadequate spaces available. Second, to the extent that residents are not automobile owners, they will be heavily reliant on deliveries for goods. This is true even. as ZAB noted, the proximity of shopping areas. It is unrealistic to think that young adults will tote much of their shopping needs from the cheap restaurant district on Euclid Avenue or hike one mile from Safeway with groceries. Even without the new residents, deliveries are constant on this narrow one-way street, and they can be expected to increase. Finally, it is not a knock on the exuberance and vitality of students to note that they keep unconventional hours, listen to loud music, and may be less sensitive to the fabric of their neighborhoods and the concerns of neighbors. Students are already a welcome part of this block of Arch Street, but the thoughtless, unplanned introduction of this density of students will disrupt the balance of this unique, diverse community.

The need for student housing in Berkeley is real. It is true that the Properties are close to the University. But the historic hillside residential neighborhood of Arch Street, with its graceful century-old structures, venerated institutions, and diverse residents, is not and should not become a mere appendage to the University. Contrary to some opinions expressed at the ZAB hearing, the Projects do not materially advance Berkeley's broader concerns for affordable housing. The reconfigured apartments will be expensive and should not be expected to serve the housing needs of the broader Berkeley community.[14]

We do not oppose the Projects because they promise a healthy economic return for the property owners or because we categorically oppose renovations or improvements to old buildings, including the Properties. There are real reasons support development, and proposals should balance developmental goals, such as the provision of new housing, with broader goals, such as

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on adjacent residential uses"); Policy EM-43 ("minimize new sources of noise"); Policy EM-47 ("Ensure that noise-sensitive uses, including, but not limited to, residences … are protected from detrimental noise levels.").

[14] As ZAB member Selawsky explained at the hearing:
"BRINGING UP PEOPLE LIVING UNDER THE BRIDGES, PAYING $3,000 A MONTH FOR RENT? I'M NOT SURE WHAT THE CONNECTION IS THERE. YOU LOST ME ON THAT ONE. THERE IS A SET OF DIFFERENT SOLUTIONS FOR THE HOMELESS. AND IT'S NOT $3,000 A MONTH RENT. MOST OF WHAT I SEE ABOUT THIS PROJECT -- THESE TWO PROJECTS … IT'S A WAY OF RECEIVING MORE PROFITS. I DON'T THINK IT SOLVES ANY HOUSING ISSUES. ESPECIALLY FOR THE CURRENT TENANTS. AND I GO BACK TO THAT. AND THEY'RE GOING TO BE LIVING WITH CONSTRUCTION FOR THE NEXT I DON'T KNOW HOW MANY MONTHS, YEARS, DECADES. I DON'T KNOW. NOBODY KNOWS. AND PUTTING TENANTS IN THAT SITUATION, I'M SORRY, IT'S -- IT TROUBLES ME. IT TROUBLES ME THE WAY THE CITY PRETENDS THAT IT'S SOLVING THE HOUSING CRISIS WITH BUILDING MORE UNITS AT HIGH RENT. WE'RE NOT SOLVING ANY HOUSING CRISIS THAT WAY."

the protection of residents' rights and the integrity of the neighborhood. This balance is fostered by a proper application of Berkeley's laws and enshrined in its General Plan. But the Projects do not strike this balance. The addition of 33 bedrooms to two building that currently have 22 will have a myriad of negative short and long-term effects. Berkeley can do better. For these reasons, we respectively urge the City Council to reverse the decision of ZAB.

Very truly yours,

(signature)
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Date: October 13, 2020
Address: 1850 Arch Street, Apt. 6
Berkeley, CA 94709

(signature)
Name: Carey Pelton
Date: October 13, 2020
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Attachment: Signatures in Opposition to the ZAB Decisions

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Date: October 19, 2020 per PH
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Petition In Opposition to the 9/24 ZAB Ruling

As a tenant at or near 1850/1862 Arch Street — known by the developers as Arch Village — I oppose the projects for these buildings as approved by the Berkeley ZAB at their meeting on September 24, 2020.

Signature	Name	Address	Email
	ROBIN O'DONNELL	1852 ARCH ST. #6	ODE@LACRIAN.COM
	CAREY PELTON	1850 Arch #1	carey.pelton@gmail.com
	KATHERINE EATIS	1850 Arch #7	[illegible]
Katherine Gardner	Katherine Gardner	1850 Arch #5	mattykat@gmail.com
Matthew Gardner	Matthew Gardner	1850 Arch #5	mguardner@gmail.com
	Daniel Chaghon	1850 Arch #3	d.chag3@gmail.com
	Anthony Rosato	1850 Arch #3	anthony.s.rosato @gmail.com
	John Sibony	1850 Arch #2	john.sibony@[illegible]
	AUSTIN SERIF	1850 ARCH ST. #4	aserif@me.com
	Noah Goss	1850 Arch St. #4	noahgoss37@gmail.com
	Abhineet Agrawal	1850 Arch St #4	aa3797@berkeley.edu
	Emma Steigerwald	1862 Arch St #10	emma.c.steigerwald@[illegible]gmail.com
	Jared Porter	1862 Arch St #4	thejaredporter@gmail
	Baladitya Yellapragada	1862 Arch St #14	aditya23@gmail.com
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	Daniel Chagnon	1850 Arch st #3	d.chag3@gmail.com
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	Anton Sorokin	1862 Arch #10	Antonsrkn@gmail.com
	Ross O'Donnell	1850 Arch #6	rod@berkeley.edu

October 13, 2020

Berkeley City Council
2180 Milvia Street
First Floor
Berkeley, CA 94704

Re: Appeal of Decision of Zoning Adjustments Board Dated September 24, 2020 Concerning Use Permits #ZP2019-0213 Property Addresses 1862 Arch Street

Dear Members of the Berkeley City Council:

We are submitting this appeal of the decision of the Berkeley Zoning Adjustments Board ("ZAB") concerning Use Permit #ZP2019-0213 pertaining to the property at 1862 Arch Street in Berkeley. We have simultaneously submitted a separate appeal of the decision of ZAB concerning Use Permit #ZP2019-0212 pertaining to the property at 1850 Arch Street. Because the applicant for the use permits is the same in both instances, the buildings at 1850 and 1862 Arch Street (the "Properties") are adjacent, and the permitting decision and appeals present virtually identical issues of fact and law, we are submitting substantially identical letters for each appeal.

While the COVID pandemic has made it difficult to coalesce citizen input into the renovations of the 1850 and 1862 Arch Street (collectively, the "Projects"), the list of signatures attached to this letter and opposing the ZAB decisions demonstrates widespread opposition to the Projects from the majority of residents of the Properties. This oppositions arises because the Projects are deeply flawed attempt to maximize revenue from the Properties with little consideration of the relevant requirements of the Berkeley Municipal Code for the issuance of the permits. Many of these considerations, including considerations about the character of the Hillside community and the detrimental effects of the construction and the development on the residents of the Properties and the broader community, were either completely ignored or improperly weighed by ZAB.

The 1850 Arch Street Project would add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building that was constructed in 1927, immediately after the 1923 fires, and has been largely in its same configuration for almost 100 years. The building is non-confirming; it exceeds the district's maximum lot coverage (44.6% v. 40%); has non-conforming front-yard and side setbacks; and only provides five parking spacings, half of the BMC's requirement. Similarly, the 1862 Arch Street Project would add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building of a similar vintage, which, like its counterpart, has largely remained in its current configuration for almost 100 years. 1862 Arch Street is also non-

conforming is multiple ways: for front-yard setback (9'-8" v. 15' minimum), left yard setback (0' v. 6' minimum), right-yard setback (0' v. 6' minimum), and only provides five parking spaces where ten are required.

Taken together, the Projects would increase the number of bedrooms in each property by 150% (with total bedrooms increasing from 22 to 55) and could be expected to result in similar increase in the number of residents. The buildings are essentially situated on top of each other and the adjoining buildings – there is about 15 between 1862 Arch Street and 1876 Arch Street – on a restricted access one-way street with limited street parking. The buildings are designated as R-3(H), with the H representing a designation that the Properties are located in the ecological fragile and historically important Hillside District. Consistent with its classification as Medium Density Residential ("MDR"),[1] this block of Arch Street is characterized by a mix of gracious single-family condominiums, single-family homes and small to medium sized multi-family structures. The block also houses several cultural and religious institutions, such as the Institute of Salesian Studies, which is diagonally across the Street for the Projects, and the Pacific School of Religion and affiliated institutions, which are located on Holy Hill at the intersection of Arch Street and Virginia Street at the end of the block

A. **The Projects are inconsistent with the purposes of Hillside Districts and the Berkeley General Plan and the character and historical integrity of the neighborhood**

In its Staff Reports and Findings and Conditions for the Projects, ZAB erroneously applied BMC Chapter 23B.32's standards for Restricted Multiple-family Residential (R-2A) districts instead of those for Multiple Family Residential (R-3) Districts under Chapter 23D.36. Unlike for R-2 Districts, ZAB is required to consider additional permitting requirements for Hillside Districts where, as here, project is located in a district classified as R-3(H).[2] Perhaps confused by which standards were applicable, ZAB completely failed to apply the appropriate standards for Hillside Districts. This error was not harmless. Notably, BMC requires ZAB to consider of the purposes of Hillside Districts, including to "[p]rotect the character of Berkeley's hill Districts and their immediate environs" and to "[i]mplement the Master Plan's policies regarding Hillside Development."[3] Consideration of the applicable standards of the Hillside District provisions and the Berkeley General Plan would have supported rejection of the Projects.

Put simply, the Projects are the applicant's attempt to maximally monetize the Properties by transforming elegant and proportioned historic multi-family apartment buildings in a quiet residential neighborhood into extremely high-density rooming houses for transient students

[1] *See* City of Berkeley General Plan ("General Plan"), Land Use Element (explaining that MDR areas "are generally characterized by a mix of single-family homes and small to medium sized multi-family structures.").

[2] *See* BMC 23D.36.010.

[3] *See BMC* 23E.96.020.

willing to pay exorbitant rents. The detrimental impacts of the Projects on the residents of the Properties, the neighbors, and the broader hillside environment are immense.

As explained above, in their current configurations, the Properties are non-conforming and take up a higher proportion of the allocated lot space and have non-conforming setbacks from the property lines. For example, the south wall of the 1862 Arch Street is about 15 feet from 1876 Arch Street. The immediate neighborhood's density, without introducing 30 or 40 more residents in the two buildings is already a problem given its precarious infrastructure. Noise pollution from the overcrowded apartment buildings is an issue for neighbors. Even amid the COVID pandemic, it is difficult to get a parking space on street, and the Properties already have a deficient number of parking spaces. This block of Arch Street is narrow, and, in response to pedestrian crossing issues at its base, has recently been made a one-way street. With the existing density, the noise and congestion from car traffic, construction, trash pickup, and deliveries already stretches the neighborhood's infrastructure to its capacity. Because the Properties are so close to the street and neighboring buildings, increasing the residency by more than a factor of two will greatly exacerbate these problems.

The Arch Street neighborhood was designed as and organically developed into a medium density area, and there are no provisions in the plan to accommodate the increased density of the Projects. In its public hearing on the Projects, ZAB spent an inordinate time discussing potential parking impacts and ultimately decided that even though the parking in the building was already non-conforming and residential parking would likely not be approved for a new construction, it was completely acceptable to permit, without limitation, the potential 30 plus new residents of the Properties to receive residential parking permits. Given the current parking situation, of which ZAB seemed to be ill-informed,[4] ZAB's failure to attach limitations on parking permits or otherwise address the parking problems was a mistake. But, more fundamentally, ZAB's inability to adequately address the parking issue is emblematic of its unwillingness to soberly confront the immense impact of the Projects on the local infrastructure -- increasing the bedrooms from 22 to 55 in small structures packed into undersized lots on a narrow one-way street. Even if a proportion of the new residents do not have automobiles, they nevertheless will create more noise, they will be heavily reliant on food and other deliveries, and they will produce more trash.

The applicant has avoided otherwise applicable density restrictions by maintaining the existing number of units but greatly increasing the number of bedrooms. While this is a gap in the regulatory scheme, ZAB is directed to consider the density and other effects of this project by the BMC's requirement that the character of the Hill District and its immediately environs be considered and similar considerations raised in Berkeley's General Plan. For example, the General Plan's Urban Design and Preservation Element has stressed the need to preserve community identity through recognition of the beauty and continuity of older buildings. It cautions that a "design [that] is suitable in any specific case significantly depends on the particular location." Creating two high-density rooming houses are inconsistent with the

[4] For example, ZAB was unaware of the current parking situation and relied on speculation that the potential additional residents of the Properties would not own automobiles.

original, notable architectural design of these two, century-old, elegant multi-family residences.[5] In addition to needless vitiating the architectural integrity of the Properties, the introduction of overly dense student dormitories detrimentally alters the balance of the residential community.[6]

The Projects may preserve the façade of the Properties, but this carapace would belie the damage to the architectural integrity of the building and fabric of the neighborhood.[7]

B. The construction involved in the Projects and the Projects' lasting legacy will detrimentally impact the residents of the Properties and their neighbors

BMC section 23B.32.040 requires the ZAB to approve an application for a use permit only upon finding that the project "will not be detrimental to the health, safety, peace, morals, comfort or

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[5] *See* Policy UD-20 ("Alterations to a worthwhile building should be compatible with the building's original architectural character"); Policy UD-22 ("Regulate new construction and alterations to ensure that they are individually well-designed and that they are so designed and located as to duly respect and where possible enhance the existing built environment."); Policy UD-5 Architectural Features ("Encourage, and where appropriate require, retention of ornaments and other architecturally interesting features in the course of seismic retrofit and other rehabilitation work.")

[6] *See* Policy UD-3 ("[u]se regulations to protect the character of neighborhoods and districts"); Policy UD-24 Area Character ("Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in."); (Policy LU-2) (ensuring that development be compatible with "scale, historic character, and surrounding uses in the area").

[7] On this point, the hearing comments of ZAB member Sheahan reviewing the 1850 Arch Street project before voting against the Projects deserve to be quoted at length:

"TO CALL IT ELEGANT DENSITY I THINK IS A JOKE. THIS IS A BEAUTIFUL APARTMENT BUILDING. OF NICELY SCALED APARTMENTS OF A SIZE THAT IS DESPERATE NEED IN THIS CITY. AND IT'S A VERY MIXED POPULATION. I KNOW PEOPLE ON THIS STREET, THEY AREN'T ALL STUDENTS. THEY AREN'T ALL ONE-YEAR LEASE HOLDERS. PEOPLE LIVE THERE. THEY LIVE ON THE STREET. IN THIS NEIGHBORHOOD. AND THESE ARE THE PLACES THEY LIVE IN. AND THIS PROJECT ENCOURAGES BY VIRTUE OF THE CONSTRUCTION PROCESS FOR ONE, AND A HIGHER RATE OF TURNOVER, REALLY MAKES IT THAT MUCH LESS DESIRABLE PLACE TO LIVE AND I THINK IS EFFECTIVELY DISCOURAGING LONG-TERM TENANTS FROM EITHER MOVING OUT OR NOT MOVING IN. I THINK IT'S A SERIOUS OVERSIGHT OF THE CITY NOT TO HAVE DENSITY STANDARDS FOR THIS ZONE. IT BOGGLES ME. AND YOU KNOW, WITH WE ARE WELL WEAR ESPECIALLY THIS YEAR OF THE ISSUES OF DENSITY AND EXTREME DENSITY. IT ALREADY IS HIGH DENSITY. THIS PROPOSAL IS EXTREME DENSITY…. I CAN'T SUPPORT THIS. I THINK IT'S AN ILL-CONCEIVED OBVIOUS ATTEMPT TO EXTRACT THE MAXIMUM RENT OUT OF A PROPERTY BY MORE THAN DOUBLING THE NUMBER OF BEDROOMS AND IN CUTTING THE LIVING SPACE -- COMMON LIVING SPACE IN HALF OR WORSE. IT'S A DISASTER. I CAN'T VOTE FOR IT. IT'S ENCOURAGING UNSAFE AND UNHEALTHY LIVING."

general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City."

In its Staff Reports and Findings and Conditions for the Projects, ZAB summarily concluded that the Projects were permissible because: "(1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space." This superficial treatment of the issues does not address the myriad detrimental effects of the Projects. In fact, both the construction of the project and the resultant renovations will substantially adversely affect the property, its residents, adjacent properties, and the neighborhood.

First, the construction plan for the Projects ensures that there will be constant construction noise for at least the next several years. The applicant plans to add the 33 bedrooms to the properties by adding interior walls and substantially reconfiguring the layout over the building. The renovations will occur when each of the 22 units becomes vacant. Some of the current residents have been living in the Properties for years; many others are students who reside for only a year or two. The result will be that vacancies will be staggered and that there will be construction ongoing for years.[8] The effects of modest, non-structural modifications made to the Properties in the past several months are not auspicious. This work has been disruptive with work trucks blocking resident parking and contractors working and walking around the property at times without masks, as required by public health regulations directed against the COVID epidemic.[9]

The prospect of continuous construction over the next several years is particularly alarming given the use of the building and the likely effects on the neighborhood. Many of the residents will be students who will be working from home during construction hours. The other residents are a mix of retirees who similarly spend many working hours at home, and other workers who are increasingly working from home given the transition to a distributed workforce that has been accelerated by the COVID epidemic. This is not to suggest that well planned and proportionate renovations should be opposed on the ground of construction impacts. But the Projects are not well planned: the scale of the Projects is immense, yet discrete in timing, and thus the timeline is uncertain and most likely attenuated, promising massive ongoing disruption to residents and

[8] The authors of this letter have heard from multiple tenants of the Properties that they have recently been forced to sign 6-month and 12-month leases with the implication that the leases will not be renewed. This is disturbing because these practices may be inconsistent with applicable rent regulations, including protections for rent control apartments. In any event, they underscore the applicant's eagerness to monetize the Properties at the expense of its current residents and countervailing considerations.

[9] ZAB's attempt to mitigate this harm by prohibiting construction on Saturday's is plainly insufficient for the magnitude and duration of the harm. Resident will only have to live with constant construction five days a week for years, instead of six.

neighbors.[10] Every current and future resident of the Properties can expect to experience construction-related noise and disruption for many years.

Unfortunately, the detrimental effects of the Projects to the "health, safety, peace, morals, comfort or general welfare" of residents and the community will not be confined to the construction period; in fact, the Projects themselves will make these effects the permanent condition of the Properties and the neighborhood. The Properties are already non-conforming for their lots; squeezing more than twice as many residents into the same building footprint will have a litany of adverse effects. The Projects will increase the noise levels for residents of the Properties and neighbors, some of whom are not students and keep more regular hours.[11] The housing itself will be cramped and substandard.[12] These effects are multiplied by the density of the buildings themselves and the close proximity of neighboring buildings, which are a result of the non-conforming condition of the Properties and adjacent buildings, such as 1876 Arch Street, which directly abuts the lot line.[13]

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[10] ZAB Member Sheahan's hearing comments on this point are particularly instructive:

"I THINK AS HAS BEEN POINTED OUT, THE CONSTRUCTION PROCESS, THIS PHASED CONSTRUCTION LIKELY ONE UNIT IN EACH OF THE BUILDINGS IS UNDER CONSTRUCTION ALL THE TIME. THAT MAKES IT REALLY INTOLERABLE FOR EVERYONE LIVING THERE TO HAVE NONSTOP CONSTRUCTION GOING ON."

[11] While opposition to the Projects among residents of the Properties is overwhelming, the situations of two of this letter's authors, are instructive. Robin O'Donnell is a 72-year-old single man who has lived at 1850 Arch Street for 24 years and spends many working days in his apartment. In April 2020, he submitted a letter to the City detailing the possible negative effects of the Projects He remains concerned about the implications of the massive increase in building density to his health and welfare, including the noise arising from the project and new residents, the constant parade of construction workers, at the possible health impacts in the age of COVID from packing many young residents into a small footprint structure with retirees. Carey Pelton is a 65-year-old single women who has lived at 1850 Arch Street for 30 years. She is a former employee of the University of California and is disabled. She shares Mr. O'Donnell's concerns about the Projects.

[12] As ZAB Member Sheahan explained while discussing the 1862 Arch Street project:

"I RAISE THE ISSUE OF DENSITY STANDARDS. AND WHAT I KEPT THINKING OF AS I WAS LOOKING AT THIS IS MINI DORMS. THIS IS LIKE TAKING AN APARTMENT BUILDING AND MAKING A BUNCH OF MINI DORMS OUT OF IT. MINI DORMS HAVE BECOME REGULATED. IN THE ABSENCE OF REGULATION, THAT APPLIES TO THIS KIND OF THING. THAT IS EXTREMELY DENSE, VERY LITTLE LIVING SPACE IN PROPORTION TO BEDROOMS. AND THERE IS DETRIMENT TO THAT. THERE IS SUCH A THING AS TO DETRIMENT TO LIGHT, AIR, SUN. EXCESSIVE DENSITY COMPROMISES. FOR THE CAUSES. AND I'M GOING TO VOTE NO ON THIS ALSO BECAUSE I THINK THIS IS NOT THE KIND OF -- THIS IS HOUSING GEARED TOWARDS SHORT TERM TENANTS AND A TURNOVER BECAUSE IT ALLOWS RENT INCREASE. OR MAXIMIZES POTENTIAL RENT INCREASE. THAT'S WHAT THIS PROJECT IS TRYING TO DO. AND I'LL VOTE NO AGAIN. IT'S NOT RIGHT."

[13] The deleterious impact of noise arising from new development is cognizable in the General Plan. *See* Policy LU-7 (stressing preserving historic buildings and "minimize[ing] or eliminat[ing] negative impacts

In addition to noise, levels the Projects will have multiple other tangible detrimental effects on the immediate neighborhood. First, the already difficult parking situation will undoubtedly worsen because some of the new residents will park on the street. The applicant takes advantage of a regulatory loophole arising from developing a building with non-conforming parking but, because, despite its substantial effect on the parking situation, it is not classified as a new construction, it is not subject to parking restrictions. Even if only five of the 30 plus new residents parked on the street, there would be inadequate spaces available. Second, to the extent that residents are not automobile owners, they will be heavily reliant on deliveries for goods. This is true even. as ZAB noted, the proximity of shopping areas. It is unrealistic to think that young adults will tote much of their shopping needs from the cheap restaurant district on Euclid Avenue or hike one mile from Safeway with groceries. Even without the new residents, deliveries are constant on this narrow one-way street, and they can be expected to increase. Finally, it is not a knock on the exuberance and vitality of students to note that they keep unconventional hours, listen to loud music, and may be less sensitive to the fabric of their neighborhoods and the concerns of neighbors. Students are already a welcome part of this block of Arch Street, but the thoughtless, unplanned introduction of this density of students will disrupt the balance of this unique, diverse community.

The need for student housing in Berkeley is real. It is true that the Properties are close to the University. But the historic hillside residential neighborhood of Arch Street, with its graceful century-old structures, venerated institutions, and diverse residents, is not and should not become a mere appendage to the University. Contrary to some opinions expressed at the ZAB hearing, the Projects do not materially advance Berkeley's broader concerns for affordable housing. The reconfigured apartments will be expensive and should not be expected to serve the housing needs of the broader Berkeley community.[14]

We do not oppose the Projects because they promise a healthy economic return for the property owners or because we categorically oppose renovations or improvements to old buildings, including the Properties. There are real reasons support development, and proposals should balance developmental goals, such as the provision of new housing, with broader goals, such as

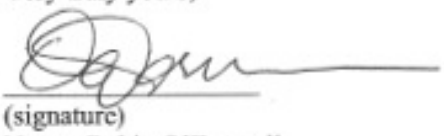
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on adjacent residential uses"); Policy EM-43 ("minimize new sources of noise"); Policy EM-47 ("Ensure that noise-sensitive uses, including, but not limited to, residences … are protected from detrimental noise levels.").

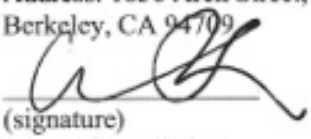
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the protection of residents' rights and the integrity of the neighborhood. This balance is fostered by a proper application of Berkeley's laws and enshrined in its General Plan. But the Projects do not strike this balance. The addition of 33 bedrooms to two building that currently have 22 will have a myriad of negative short and long-term effects. Berkeley can do better. For these reasons, we respectively urge the City Council to reverse the decision of ZAB.

Very truly yours,



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ZONING ADJUSTMENTS BOARD

STAFF REPORT

FOR BOARD ACTION
SEPTEMBER 24, 2020

1850 Arch Street

Use Permit #ZP2019-0212 to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building, for a total of 30 bedrooms on the parcel.

I. Background

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning: R-3(H) – Multiple Family Residential District, Hillside Overlay

B. Zoning Permits Required:

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

C. CEQA Recommendation: It is staff's recommendation to the ZAB that the project is Categorically exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and is not subject to any exception noted in Section 15300.2 of the CEQA Guidelines. The determination is made by the ZAB.

D. Parties Involved:

- Applicant: Rhoades Planning Group, 46 Shattuck Square, Berkeley
- Owner: Arch Street Village, LLC, c/o Rhoades Planning Group

Figure 1: Zoning Map



Zoning District
R-1(H): Single-Family Residential District, Hillside Overlay
R-3(H): Multiple-Family Residential District, Hillside Overlay
R-4: Multi-Family Residential District
R-4(H): Multi-Family Residential District, Hillside Overlay
R-5: High-Density Residential District

N

Figure 2: Site Plan

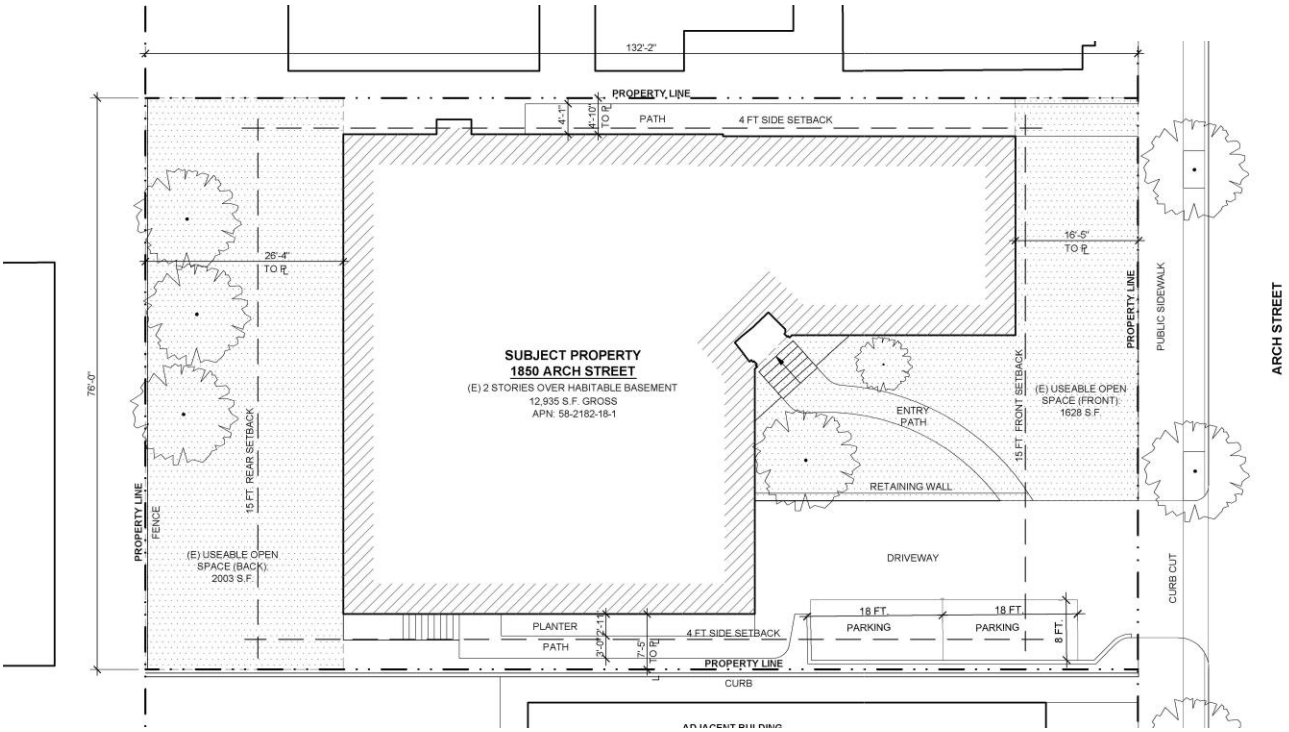


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		10-unit multi-family building	Multiple-Family Hillside Overlay (R-3H)	Medium Density Residential (MDR)
Surrounding Properties	North	Multi-family building		
	East	Triplex		
	South	11-unit multi-family building		
	West	22-unit multi-family development (Normandy Village)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new non-residential gross floor area is proposed.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new gross floor area is proposed.

Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project does not include the creation of any new rental units, and therefore this requirement does not apply.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is not a "housing development project," as no additional units would be created. The project is to expand two existing units on the site. Therefore, the HAA findings do not apply to this project.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not near a creek or within a creek buffer.
Density Bonus	No	The project is not seeking a Density Bonus.
Green Building Score	No	The project does not propose the construction of a new building.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a main building. In addition, there is no evidence to suggest the building is a historic resource.
Rent Controlled Units	Yes	According to the Rent Stabilization Board (RSB), the building contains 11 units, all of which are claimed as "rented or available to rent" and considered controlled rental units, and are therefore subject to BMC Chapter 13.76; the project must comply with RSB noticing and vacancy rules (See Attachment 4 and section V.B below).
Residential Preferred Parking (RPP)	Yes	The project site is located in Area "F" of the Residential Preferred Parking Program.
Seismic Hazards (SHMA)	No	The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act.
Soil/Groundwater Contamination	No	The project site is not located within the City's Environmental Management Area.
Transit and Bicycle Access	Yes	The project site is five blocks east of numerous AC transit routes on University and Shattuck Avenue. There is a bikeway on Arch Street (N-S) and Hearst Avenue (E-W). Also, the project site is approximately ½ mile from the Downtown Berkeley BART station.

Table 3: Project Chronology

Date	Action
December 20, 2019	Application submitted
January 7, 2020	Application deemed incomplete
March 16, 2020	Shelter in Place Order issued, multiple ZAB hearings cancelled
April 6, 2020	Revised application submitted
April 16, 2020	Application deemed complete
September 10, 2020	Public hearing notices mailed/posted
September 24, 2020	ZAB hearing

Table 4: Development Standards

R-3 Standards BMC Section 23D.36.070-080		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		9,930	no change	5,000 min.
Gross Floor Area (sq. ft.)		12,935	no change	n/a
Dwelling Units		10	no change	n/a
Bedrooms		12	30	n/a (≥5 w/permit)
Building Height	Average	32'-6"	no change	35' max.
	Maximum	36'	no change	n/a
	Stories	3	no change	3 max.
Building Setbacks	Front	13'-9"	no change	15' min.
	Rear	28'-11"	no change	15' min.
	Left (South) Side	7'-5"	no change	6' min.
	Right (North) Side	4'-1"	no change	6' min.
Lot Coverage (%)		44.6	no change	40 max. (For 3 stories)
Usable Open Space (sq. ft.)		3,631	no change	2,000 min. (400 per du)
Parking		5	no change	10 min. (1 per unit)

II. Project Setting

A. Neighborhood/Area Description: The subject site is located on the west side of Arch Street, in a mixed-use residential neighborhood that consists of educational uses as well as multiple-family apartment and condominium buildings that range from two to three stories in height (See Figure 1: Zoning Map). The site is located one-half block north of Hearst Avenue and the University of California – Berkeley campus. It is also located two blocks west of Shattuck Avenue and downtown Berkeley (C-DMU District), and two blocks east of the goods and services on Euclid Avenue.

B. Site Conditions: The subject parcel is rectangular, with a 76' front along Arch Street and 132'-2" depth, and slopes down toward the southwest. The parcel is currently developed with a three-story residential building constructed in 1926. It was originally constructed with nine dwelling units, and in 1961, an additional unit was created in the basement for a total of ten dwelling units (six 1-bedroom, two 2-bedroom, and two 3-bedroom). Also added in 1961 was a laundry room, storage areas and garage on the basement level. The building is accessed on the first level through a driveway and front entry pat/stairway along Arch Street. Outdoor usable open space is provided in the rear and front yards.

The parcel is non-conforming to current zoning standards in terms of maximum height, minimum building setback from the front (east) and right (north) side property lines, lot

coverage, and parking. (See Figure 2: Site Plan and Table 4: Development Standards). The property contains a total of five parking spaces where 10 is the minimum, including three spaces in the garage and two spaces adjacent to the driveway.

In addition to the 10 existing units within this residential building, there is one non-conforming space labeled Unit 5A by the applicant, shown in the Existing Second Floor Plan (Attachment 2, Sheet A2). According to a Special Inspection conducted by the City Building Division on November 2, 1987, this space appears to have been created out of a portion of the adjacent unit (Unit 6) by plastering over a door in the bedroom closet and adding a door to the hallway. While City records indicate 10 units, there is no evidence that Unit 5A was created with permits. In 1987, the City recommended that Unit 5A be reconnected as part of the larger unit for the following reasons:

1) Unit 5A has a combined sleeping/living room of barely 120 sq. ft., which is the minimum required floor area for a habitable room under existing code.

2) Unit 5A does not have a kitchen and is therefore a sleeping room- not a dwelling unit. Inspection revealed that the tenant was conducting illegal cooking practices on a hot plate and doing dishes in the bathroom due to lack of proper kitchen facilities.

On February 4, 1992, the Building Division approved Unit 5A for habitable use as a guest room with a bathroom. More recently, on January 6, 2020. the Rental Housing Code Enforcement Division inspected the building and issued a Notice of Violation (NOV) under the City's rental housing safety program. The NOV included violations within Unit 5A. On June 25, 2020 the Rental Housing Code Enforcement Division issued an addendum to the NOV, stating that Unit 5A had been converted as a separate unit without permits and approvals. To correct the violation, the owner must remove all illegal construction and either restore the space to its legal use or obtain permits and zoning approvals to legalize as a separate unit, and was referred to Zoning Code Enforcement. (See Attachment 5). As part of this zoning permit application process, Staff recommended that Unit 5A could be brought into compliance with the Zoning Code through 1) combination with an existing legal unit, 2) renovation to meet minimum building code requirements for a dwelling or efficiency unit, or 3) conversion to non-habitable space. The project proposes to combine Unit 5A with Unit 5, providing an additional bedroom and bathroom (See Attachment 2, Sheet A5) once both units are voluntarily vacated or a temporary relocation plan has been implemented, which will correct this violation (see Condition of Approval #11, #12, #32, and #33, as well as Attachment 5).

III. Project Description

The applicant proposes to reconfigure the building floor plan by moving and adding interior walls to accommodate an additional 18 bedrooms and two bathrooms within the existing 10-unit building. The building would contain one 1-bedroom, one 2-bedroom, six 3-bedroom and two 4-bedroom units. A total of one bedroom would be added to the basement level, eight bedrooms and one bathroom would be added to the first level, and

nine bedrooms and one bathroom would be added to the second level (see Table 5 below). No exterior alterations are proposed.

Table 5: Bedroom and Bathroom Count, Floor Area, and Location

Location within Building	Floor Area	Number of Bedrooms			Number of Bathrooms		
Floor	**Sq. Ft.**	**Entitled**	**As-Built**	**Proposed**	**Entitled**	**As-Built**	**Proposed**
Basement	4,037	2	2	3	2	2	2
First	4,424	5	9	13	4	4	5
Second	4,474	5	6	14	4	4	5
Total	**12,935**	**12**	**17**	**30**	**10**	**10**	**12**

Note: City records indicate the building contained 12 bedrooms and 10 bathrooms as of 1961, when the most recent building permit was finaled. As part of this Use Permit application, the applicant submitted as-built plans indicating the building contained 17 rooms that met the City's definition of a "bedroom," per BMC Section 13.42.020.B. Therefore, this Table presents the entitled, as-built, and proposed number of bedrooms and bathrooms. For the purpose of this Use Permit, the project description is to add 18 bedrooms to the building, which previously contained 12, as entitled.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on December 20, 2019, a pre-application poster was installed by the applicant at the project site and the project plans were reviewed at a community meeting hosted by the applicant. Four people attended the meeting, including two residents of the building and two neighbors. Concerns included timely repairs, excessive noise from both the door buzzer and residents during quiet hours, and disruptions (i.e. noise) from the proposed construction. On March 30, 2020, the applicant notified all tenants of the proposed renovations as well as their rights under the Rent Stabilization Ordinance (BMC Section 13.76) and Tenant Protection Ordinance (BMC Section 13.79.060). On April 30, 2020 the City received a letter from a resident of the building expressing concerns regarding the impacts to trash, laundry, parking, and bathrooms that would result from the project, and complaints regarding property maintenance of the existing building. The applicant responded to those concerns in a letter dated May 26, 2020 (Attachment 3). See the discussion in section V.B for more information.

On September 10, 2020, the City mailed 505 public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in two locations. As of the writing of this staff report, Staff has not received any communications regarding the project.

B. Committee Review: This project is not subject to advisory committee review.

V. Issues and Analysis

A. Addition of Bedrooms to the Parcel: Pursuant to BMC Section 23D.32.050.A, the addition of bedrooms 13 through 18 on the parcel requires the approval of a Use Permit. Specifically, the Board must make the required "non-detriment" findings pursuant to BMC Section 23B.32.040 related to the "health, safety, peace, morals,

comfort or general welfare of persons residing or working in the area or neighborhood…or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City." "The Board shall deny an application for a Use Permit if it determines that is unable to make any of the required findings, in which case it shall state the reasons for that determination." Recently, the ZAB has considered the amount of common space (living room/dining room/kitchen) relative to the number of bedrooms, as well as the amount of usable open space on the parcel, as factors when evaluating the addition of bedrooms. While there is no adopted standard, that information is compiled below, in Table 6.

As shown in Table 6 below, the proposed project would convert common living areas to create new bedrooms in eight of the ten units, and new bathrooms in two units. On average, 50% of the existing floor area within each unit is currently dedicated to common living spaces. The project would result in a 16% reduction in the share of floor area dedicated to common living spaces, for a new average of 34%, which continues to provide a reasonable amount of common living space in each unit. According to the applicant statement, the conversion of common living spaces to bedrooms and bathrooms would improve the layout of the units, for example by relocating the kitchen to create a more natural great room in Unit 3, and relocating the kitchen to create an open floor plan and private bedroom in Unit 10.

As shown in Table 4 above, the parcel has a non-conforming front and right (north) side yard setbacks, exceeds the maximum lot coverage by 4.6%, and has five off-street parking spaces where 10 is the minimum. The proposed renovations would not change the building footprint, and thus would not exacerbate any non-conforming condition, and would maintain the existing amount of usable space on the parcel (3,631 square feet), which exceeds the minimum requirement by 1,631 square feet.

Table 6: Change in amount and share of common living area per unit

Unit#	Floor Area	Common (Living/Dining/Kitchen) Area			Share of Common Living Spaces to Total Floor Area			Location within Building
	Sq. Ft	As-Built	+/-	Proposed	As-Built	+/-	Proposed	Floor
Unit 1	741	404	-178	226	54	-24	30	First
Unit 2	696	152	+132	284	22	+19	41	
Unit 3	720	165	+67	232	23	+9	32	
Unit 4	1,270	515	-181	334	41	-14	26	
Unit 5	741	435	-214	221	59	-29	30	Second
Unit 6	706	396	-106	290	56	-15	41	
Unit 7	721	430	-170	260	60	-24	36	
Unit 8	1,270	705	-349	356	56	-27	28	
Unit 9	711	405	-190	215	57	-27	30	Basement
Unit 10	629	470	-215	255	75	-34	41	
Average	**820**	**407**	**-140**	**267**	**50%**	**-16%**	**34%**	

Staff believes the proposed addition is consistent with the purposes of the R-3 District, which are to:

A. Implement Master Plan policy by encouraging the development of relatively high-density residential areas;

B. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;

C. Protect adjacent properties from unreasonable obstruction of light and air; and

D. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City requirements for this type of housing; (Ord. 7210-NS § 8 (part), Ord. 6478-NS § 4 (part), 1999).

Staff Analysis: As described in section II above, the subject residential building is a 10-unit apartment building in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. As described in Table 2 above, the subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus, consistent with purpose B. The parcel contains a reasonable amount of open space, 3,631 square feet of useable open space where a minimum of 2,000 square feet is required. As the project would not result in any exterior changes to the building, such as new window openings or extension of the building footprint, there would not be any impacts to light and air, consistent with purpose C.

Staff believes the addition of 18 bedrooms to the 10-unit residential building would support the high-density residential use on the parcel, consistent with the purposes of the R-3 District.

B. Tenant Protections: As of the writing of this staff report, all rent controlled units are occupied and currently rented to tenants whose tenancy began prior to the submittal of this Use Permit application. The applicant intends to complete the project over time as tenants move out of the building voluntarily, and has committed to not unlawfully evict or otherwise displace any current tenant in order to accommodate construction. The applicant informed the existing tenants of the development plan at a community meeting held on December 20, 2019, where at least two tenants were present, and mailed a notice to each tenant on March 30, 2020 restating the development plans and their rights under the City's Rent Stabilization Ordinance. Per the Rent Stabilization Ordinance, the existing rental units would remain as rent controlled rental units after renovation, and the property owner has committed to providing notice to any prospective new tenant of their rights under the Ordinance prior to execution of a new lease (see Condition of Approval #32). In addition, the applicant has committed to providing notice in advance of the City's noticing requirements before tenants might be relocated for construction on their units and has confirmed that all tenants would be relocated voluntarily or temporarily as

provided for in Condition of Approval #12, as recommended by the Rent Stabilization Board (see RSB Memorandum in Attachment 4).

C. General Non-Detriment: Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area, as no exterior changes are proposed. In addition, staff believes the project would not unreasonably obstruct sunlight, air, or views as no exterior changes are proposed. Finally, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and storm water requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

D. General Plan Consistency: Based on the foregoing project description and analysis, staff concludes that the project would comply with the following 2002 General Plan goals and policies:

1. Policy H-8–Maintain Housing: Maintain and preserve the existing supply of housing in the City.
2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

   Staff Analysis: The residential project would increase the number of bedrooms on the parcel and renovate the interior of the building, thus maintaining and preserving the existing housing supply in the city. The subject property is located in a mixed-use residential neighborhood containing a mix of multiple-family dwellings and condominiums that are two- to three-stories in height, and does not propose any changes to the exterior of the building or expand its footprint. Because the changes proposed would maintain the existing building footprint, would not increase the building height, and would maintain the amount of usable open space on the property, staff believes that the project would maintain the existing design, scale and compatibility with the neighborhood.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2019-0212 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:
1. Findings and Conditions
2. Project Plans, dated March 18, 2020
3. Correspondence, received May 26, 2020
4. Rent Stabilization Board memo, prepared on August 5, 2020
5. Notice of Violation, Unit 5A, dated June 25 ,2020
6. Notice of Public Hearing

Staff Planner: Ashley James, ajames@cityofberkeley.info, (510) 981-7458

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 24, 2020

1850 Arch Street

Use Permit #ZP2019-0212 to add 18 bedrooms to an existing 10-unit, 12 bedroom multi-family residential building, for a total of 30 bedrooms on the parcel.

PERMITS REQUIRED

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.32.040.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   A. The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, number of stories, rear and left side yard setbacks, and usable open space in BMC Section 23D.36.070-080 (Development Standards), as detailed in the August 27, 2020 staff report. The proposed project is non-conforming for front yard setback (13'-9" where 15' is the minimum), lot coverage (44.6 percent where 40 percent in the maximum) and parking (providing five spaces where ten are required) under the current Zoning Ordinance. The proposed development is permissible because: (1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space.

   B. The project is consistent with the purposes of the District in that it will permit the addition of bedrooms through conversion of floor area within the existing building footprint on a

residential property, which continues the existing pattern of high residential density of the neighborhood. The project will not reduce the existing non-conforming 13'-9" front setback, the non-conforming 4'-1" right side setback, the non-conforming 44.6% lot coverage, or the non-conforming off-street parking (5 spaces where 10 is the minimum). The project will, therefore, retain the existing pattern of development that is conveniently located and provides a reasonable amount of usable open space of the District while protecting adjacent properties from unreasonable obstruction of light and air.

C. The project plans dated March 18, 2020 indicate the proposed addition will not unreasonably obstruct sunlight on nearby existing dwellings, impact the privacy between neighbors, unreasonably impact air and light between neighbors, or impact views. As discussed in the project staff report dated September 24, 2020, the proposed project will not create any new window openings or otherwise change the exterior of the building or the building's footprint. Therefore, the impacts are determined to be non-detrimental.

2. Pursuant to BMC Section 23D.32.050.A, the Zoning Adjustments Board finds that the proposed addition of bedrooms thirteen through eighteen supports the residential use on the parcel, consistent with the purposes of the R-3 District. The project represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus. The parcel contains a reasonable amount of open space, 3,631 square feet of useable open space where a minimum of 2,000 square feet is required.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

I. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

☐ **Project Liaison** _____

Name Phone #

11. Notice of Violation - Unit 5A. All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that: 1) per Housing Code Enforcement Case H2019-00471, Unit 5A may not be rented on either a short- or long-term basis , and Unit 5A shall be combined with Unit 5 in accordance with the approved plans dated February 5, 2020; 2) once Unit 5A and Unit 5 have both been voluntarily vacated by the sitting tenant, or the tenant and owner have come to an agreement for temporary relocation pursuant to BMC Chapter 13.84, the units shall be combined per the project plans dated February 5, 2020; and 3) there are no grounds for eviction of any existing tenant households in the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) due to the unpermitted status of Unit #5A or the work proposed in this application. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

12. Unit Vacancy. Demolition and/or construction activities approved under this permit shall not commence in any unit unless the existing tenants have either voluntarily vacated the unit or have reached an agreement for temporary relocation pursuant to BMC Chapter 13.84. The applicant shall submit evidence of such to the Rent Stabilization Board (i.e. tenant's notice to vacate, relocation agreement).

13. Construction and Demolition. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

14. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine whether the following document is required and timing for its submittal:

A. Building Materials Survey:

1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including

fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

Prior to Issuance of Any Building (Construction) Permit

15. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

16. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

17. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

18. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

19. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.

E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

20. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer‘s specifications. All equipment shall be checked by a certified visible emissions evaluator.
H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District‘s phone number shall also be visible to ensure compliance with applicable regulations.

21. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

22. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

23. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

24. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

25. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

26. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

27. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

Prior to Final Inspection or Issuance of Occupancy Permit:

28. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

29. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 18, 2020 except as modified by conditions of approval.

30. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

31. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

32. Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance.

33. Units 5 and 5A. Units 5 and 5A shall not be rented to a new tenant household until Housing and Zoning Enforcement determine that the conditions of the Notice of Violation (H2019-00471) have been satisfied and the Building permit to combine these two units has been finaled.

1850 Arch St., #6
Berkeley, CA 94709
April 30, 2020

Berkeley Zoning Adjustment Board
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley CA 94704

Dear Members of the Zoning Adjustment Board:

I have been a tenant at 1850 Arch Street for over 24 years, a building that was recently purchased, along with 1862 Arch Street, by Rhoades Planning Group.

Rhoades' plan is to subdivide existing one bedroom apartments into multiple bedroom apartments, adding as many as 20 new bedrooms to the two buildings.

With regard to Rhoades' plan to make modifications at 1850 and 1862 Arch Street, I have serious objections to this for the following reasons:

There are several units in both buildings that have already been divided, and are now shared by three or four unrelated people.

This has resulted in additional trash, additional use of laundry room machines, and additional parking issues, as well as a shortage of bathrooms.

— We have one dumpster, two cans for paper and cardboard, one for glass, metal and plastic, and one for compostables. Before these conversions, the containers were rarely full on pickup days. Since the conversions, the dumpster, the paper

bins and the glass, metal and plastic bin are regularly filled to overflowing.

The trash collectors will, I'm sure, verify that the dumpster has been regularly overfilled, even with twice a week pickups.

In short, even five more people in these buildings will result in more trash. The addition of twenty new bedrooms will result in quite a bit more.

— There are two washers and two dryers in the basement of 1850 Arch, shared by both buildings. Again, previously, these were sufficient for the needs of residents.

Already, these have proven to be insufficient for all the new tenants; in fact, there are regularly lines waiting to use these machines. More tenants will make this situation untenable.

— There are seven spaces and two garages available for parking cars on the premises. Currently, the garages are in use, as are five of the seven spaces. Additional tenants will mean more cars, and requests for spaces. Those tenants who are unable to secure a space will park on the street when spaces are free, which is rare, especially so during the months that University of California Berkeley is in session. In other words, more traffic in the entire neighborhood, more searching for spaces, and more parking chaos.

When workers come to make repairs, they park in the driveway and block access from the people who pay for these spaces. This has been a problem for many years, and has been especially awkward during the massive electrical "upgrade".

— Since the date when Rhoades purchased these buildings, they have proven to be inattentive and negligent landlords.

At a meeting in December, their representatives told us that “there will be no major changes” to these buildings. They “pooh-poohed” the question of whether the additional bedrooms would qualify as “major changes”.

When challenged about the “major changes” issue — it would seem that changing a one bedroom unit into a three bedroom unit is very much “major work” — they had no reasonable response.

— Within just a couple of weeks of that meeting, they had a team of electricians installing 125 amp panels in every apartment, and major panels and pipes attached to the sides of the buildings. They claimed that PG&E mandated these changes.

Aside from the daily and constant noise five days a week, and often six, workers “discovered” a need to do concrete work to accommodate people who used the walkway between buildings, where their electrical fittings were installed. The result was a very clumsy and badly positioned cutout in the existing wall of the walkway, and the new concrete work interrupted the gradual slope from the front to the back of the buildings, which, in turn, caused a pool of water to be trapped every time it rains. Right in front of the main panels. This work also created a step, making it impossible for people in wheelchairs to use the walkway.

— Rhoades has a very poor record of maintaining these buildings.

For just one example, Unit 1 at 1850 is occupied by a woman who has been a tenant for over 25 years. When the electricians worked on her apartment, they caused extensive and massive holes in her plaster (among other work), and have refused to fix them “until the electrical work is completed”. She has had to endure this mess until … when??

Also, on their website was a schematic that showed the planned work on her apartment, without asking her whether that was a problem. She is a retired person, and this is an affront to her safety. She has been anxious about this since she first discovered it, and admits to becoming more so the longer it stays on the website. (Rhoades has since removed this schematic from their website.)

In Unit 6 at 1850, the worker who did the panel install caused cracks and other damage to the walls, and plaster dust in every room. And while he casually swept up some of the mess, this only resulted in spreading more plaster dust throughout the apartment. Plus, the panel is basically just hanging rather than being fixed.

As if this weren't bad enough, the worker disconnected the phone and answering machine, which resulted in four people who tried to call but were unable to leave a message.

I occupy Unit 6. Once I noticed these items, I met with the Berkeley Rent Board and determined that I had the right to deny any further access. I then notified the electricians that they could no longer enter my apartment.

Unit 7 has also had problems with workers whose proposed route for the conduits would have routed their lines through the interior of the apartment, rather than through the hallways.

The workers left holes in walls throughout the apartments and the common areas, and covered some with blue tape. And have made no effort to fix these items.

The aoutside faucets at the front and rear of 1850 have leaked for some time. When this was brought to the attention of the Rhoades representatives in December, they came up with a resolution: "we'll just attach an additional faucet to the leaking

one, no problem." This was indeed a clumsy repair, and it simply does not work. All that was needed, and is still needed, is a new washer. In other words, their work is poorly thought out and poorly executed.

Rhoades has done nothing to repair holes in the garage, or holes in the sidelight at the front door of 1850, the latter of which has resulted in creatures entering the lobby, and warm air escaping, among other issues. What little work they have done to 1850 is subpar by any reasonable standard.

— None of the plans call for adding bathrooms. Clearly, this puts a strain on the tenants. Three bedrooms, multiple students in each bedroom. This is yet another shortsighted part of Rhoades' plan.

These are only examples of the low quality of work done by these landlords, but is typical of their "management" style.

Rhoades has owned this building for roughly six months. It is clear that they do not consider the needs of current tenants, and only seek to create more rentable space, and therefore profit.

While I have not seen the work done to apartments at 1862 Arch Street, I have no doubt that the work in that building is every bit as unprofessional as at 1850 Arch Street. Currently, there are plywood panels where there used to be doors on the south side of the building, and that work has been stopped by the City. The workers have also left an over-full trash can and half-empty paint cans on the premises for many months.

This is just a partial description of the shoddy work done to these buildings.

— Blatant disregard for the rights of their tenants

The tenants of both buildings have been subjected to major disruptions since this work has started, including noise from early morning to late afternoon, and dust and debris everywhere.

In short, the low quality of the work and the disruption indicate that, as landlords, Rhoades' ownership and employees clearly do not care for the welfare of existing tenants, and exhibit very little respect for them.

— Finally, none of the apartments, whether modified or not, will be low-income units.

These buildings are not dormitories, but residences for individuals and families, and should be treated as such.

Therefore, I respectfully request that the Board deny Rhoades' petition to make the proposed changes to these buildings.

Sincerely,

Robin O'Donnell
1850 Arch St., Apt. 6
Berkeley, CA 94709

May 26, 2020

Mr. Robin O'Donnell
1850 Arch Street, Unit 6
Berkeley, CA 94709

Dear Robin:

We are the owners of 1850 & 1862 Arch Street, and we have received the letter you sent to the Berkeley Zoning Adjustment Board Land Use Planning Division, dated April 30, 2020.

We certainly hear and appreciate the concerns you've outlined, which describe changes you've noticed that have occurred in the recent past and also the changes you have been informed of that are forthcoming. We want you to know that we really do value the impact of the residents of our building, and feel that some clarification of our plans may reduce some of your concerns.

To summarize your letter, you are requesting of the City that they deny our petition for a use permit to make the proposed changes to the building because 1) units have already been subdivided which has resulted in increased density in the building, straining amenities like laundry machines and resulting in more garbage than the bins can currently accommodate, 2) more bedrooms suggests more residents, which will impact street parking, and our workers have blocked the driveway in the past, 3) we have proven ourselves to be inattentive and negligent landlords who have engaged in disruptive and messy construction to a subpar level, 4) construction projects that had been started seem to have stalled mysteriously over the past two months with no explanation or timeframe for completion, 5) none of the proposed plans include bathroom additions, and 6) none of the units will be low-income.

I hope I have grabbed your main points, if I missed any, please do call them to my attention.

Let me address each of those issues. Before I do, Rhoades Planning Group does not own the building. It is owned by Arch Street Village, LLC., no affiliation to Rhoades Planning Group (the company or the people) in any way whatsoever.

1) *Units have already been subdivided which has resulted in increased density in the building, straining amenities like laundry machines and resulting in more garbage than the bins can currently accommodate:*

In your letter, you state that units have already been subdivided, and are now shared by "3-4 unrelated people." We have not performed any work to any units in the building whatsoever. We are aware of one unit that appears to have had a wall added within a large living room to create an additional bedroom at some point in the past, and it seems that occurred long ago (but there is no record). Any increase in use of refuse, laundry, or parking that you have observed is not the result of anyone having added bedrooms to any units in your building. At 1862 Arch Street, prior ownership did convert a 1-bed into a 2-bed, but that unit has never been occupied since that conversion and remains vacant to this day. They also tried to convert a 2-bed into a 3-bed, but we are taking it back to a 2-bed. In short, we are confident that between all 21 units of both buildings (1850 and 1862 Arch Street), no one has subdivided any currently occupied units at any point in the recent past. Further, we have only completed one new lease in either building, where two students replaced an individual who had lived alone, thus a net increase of one person across both buildings.

Having said that, if additional laundry facilities, refuse/recycling facilities, etc are already required for any reason, and/or may be required at a future date, we are very open to increase those services accordingly. Let's just have those kinds of conversations directly, as we are happy to take any reasonable requests into consideration.

2) *More people will mean that it will be harder to find street parking:*

The neighborhood has Residential Permit Parking, but parking issues exist throughout Berkeley. They are less of a problem in this neighborhood than they are in many others. Many of the tenants of the building, and especially newer tenants, are affiliated with the University as faculty or students. As such, vehicles are unnecessary due to the proximity of campus and the Downtown, and high level of nearby transit.

If anyone ever blocks the driveway, be it a tenant, a visitor, a contractor, or a neighbor, by all means please feel free to call Berkeley parking enforcement. We will be sure to emphasize to any contractors we may require that they not park in the driveway, and apologize if they have done so in the past. Thank you for bringing this to our attention.

3) *We have proven ourselves to be inattentive and negligent landlords who have caused disruptive and messy construction to a subpar level*

I hate to think that we are "inattentive and negligent landlords". We are certainly guilty of making significant improvements to the electrical system, which was 100 years old, and we accept that this project has presented an inconvenience to tenants. We have not performed any work of any kind to any other portion of your building, so we are not sure what messy construction you are referring to. At 1862 Arch we have also been renovating a vacant unit, but hope that unit renovation has not been overly disruptive to you personally since it is in the adjacent building. The new electrical system we have installed in both buildings will provide significantly more power to each unit in accordance with the needs of the typical tenant today (who needs to power computers, microwaves, etc) that were not considerations during original construction in the 1920's. It also includes a grounded line, in addition to other significant safety benefits. We are surprised that any tenant should be critical of an ownership that takes on this investment. Please note that we are also planning to perform and entirely voluntary seismic retrofit to both buildings to significantly increase their resistance to a significant seismic event. This project will take place in the basement and is not expected to be particularly disruptive, and we hope you'll appreciate the trade-off. We regret that you don't approve of the exact shape of the concrete cutout which was needed to provide clearance for the new electrical panel, nor the manner in which I addressed a leaky exterior faucet. The plywood on the walls of Unit 8 have been there because work started on that unit and then the lockdown associated with Covid-19 hit. That is not a permanent solution.

We do not agree that we have performed a very poor job of maintaining the buildings since our acquisition last fall, though certainly we have yet to perform many of the improvements we have planned simply because the electrical upgrade was the first priority for all the reasons listed above.

4) *Construction projects that had been started seem to have stalled mysteriously over the past two months with no explanation or timeframe for completion:*

As aforementioned, the only two projects that have been undertaken in either 1850 or 1862 Arch Street at the electrical upgrade and the 1862 Arch Unit 8 renovation. The Covid-19 Shelter In Place has halted all construction through early May 2020.

The holes in the plaster created in various units and some common areas was necessary for the electrical upgrade to each unit, and had to be left open in order for the City inspector to see and sign off on the work performed. The reason the openings were left open so long and have not been repaired is that Shelter In Place hit right after those improvements were made, and work was suspended by law. All units which granted us access (including yours, thank you, and the Unit 1 you referenced) did pass inspection, and as I've told you, we are very happy to send in a contractor to repair all the openings in any unit which is willing to accept that work at this time, including yours. We apologize for the delay caused by the recent global pandemic. As for your own unit, Unit 6, we apologize for the mess left by the electrician when the work was originally performed. We did not receive that feedback from any other tenants. It turns out that they had not completed their project on your unit, including clean up, when you elected to refuse them further entry, then Shelter In Place hit and clearly they could not complete the work in your unit even if you had at that point granted access. I hope you found the work performed in your unit when it was inspected recently, including the clean-up, to be acceptable; if not please let me know. Incidentally, the reason for the openings in the plaster in units and some common areas, as explained above, was also detailed in a letter I emailed to all tenants on March 21, 2020. I sent it to the email address I have on file for you, I hope it is current and that you had received that correspondence but if not, I certainly understand why you were surprised by the delay in repairs.

5) *None of the proposed plans include bathroom additions:*

You are incorrect about none of the plans adding bathrooms to existing units. Having said that, do you use other people's bathrooms? If not, I am not sure how this affects you personally.

6) *None of the units will be low-income*

The proposed building modifications do not include the addition of any new dwelling units. Rather, existing units are being made more useful in an effort which helps the City of Berkeley address its housing availability crisis in this small way. Because there are no new dwelling units proposed there is no requirement for affordability

I hope I have addressed the concerns you laid out in your letter to the City, at least at a high level, though I would be happy to further discuss any of the more detailed specifics of your letter at any time.

In summary, we are hoping to gain your trust here. We are conscientious individuals who have acquired an apartment building that we feel had been somewhat neglected over time, and who are making significant improvements to the safety, functionality, and comfort of the building to the benefit, we feel, of both existing and future residents. The units we renovate will in some cases (not all) add bedrooms as per building code, and in some cases bathrooms as well, all while being nicely modernized. We also intend to make significant cosmetic and safety improvements to the common areas of the buildings, to include new paint and carpet, improved and tasteful lighting, etc, all in keeping with the elegant and historic nature of the building. We are in no way creating a frat house here, far from it. We understand and appreciate your concerns, and are happy to discuss them further and take any request or suggestions you may have in mind to heart. Please do not hesitate to reach out to me directly with any future questions or concerns.

Best,

Riccardo Gale
riccardo@turningpointinvested.com
(415)271-2996

Rent Stabilization Board

August 5, 2020

To: Ashley James, Associate Planner, Planning & Development Department

From: Matt Brown, Acting Executive Director
By: Lief Bursell, Senior Planner
Be Tran, Associate Planner

Subject: **1850 Arch Street**

On January 29, 2020, you wrote to Mr. Bursell informing him of an application to increase the number of bedrooms within the envelope of an existing building and to remove an existing unpermitted unit through the combination of units #5 and #5A. You requested that we provide you with information related to the property's rental history and status under the Rent Stabilization and Eviction for Good Cause Ordinance ("Ordinance").

Property History

Alameda County records show that Arch Street Village, LLC purchased the property on September 18, 2019. City of Berkeley records indicate that the building was constructed in 1926 as an apartment building with nine units. Then in 1961, an additional unit was created in the basement for a total of ten units.

Rent Stabilization Board records and plans submitted with the subject application indicate that 1850 Arch currently contains 11 units. The City inspected the building in 1987 and determined the 11th unit (#5A) was created out of a portion of #6 and did not meet the minimum requirements of a dwelling unit due to its size and lack of a kitchen. In 1992 the City approved #5A for habitable use as a guest room with bathroom (not a dwelling unit).

Rental History and Rent Control Status

Rent Stabilization Board records reflect 11 units at 1850 Arch, all of which are claimed as "rented or available for rent." All 11 units are currently rented, under rent control, and fully subject to the Ordinance. All 11 units, including Unit 5A, have been registered with the Rent Stabilization Board since 1981. Our records indicate Unit 5A currently has two tenants with a starting tenancy of December 1, 2018.

Ellis Act

The building at 1850 Arch has not been removed from the rental market under the Ellis Act at any time during the preceding five (5) years.

2125 Milvia Street, Berkeley, California 94704
TEL: (510) 981-7368 TDD: (510) 981-6903 FAX: (510) 981-4910
E-MAIL: rent@ci.berkeley.ca.us INTERNET: www.ci.berkeley.ca.us/rent/

Harassment or Illegal Eviction

The Rent Stabilization Board has no record of any verified cases of harassment or threatened or actual illegal evicting occurring at 1850 Arch Street.

Project Analysis

If the project is approved and completed as proposed, the expansion or alteration of any of the 11 units may not start until the affected tenants voluntarily relocate. In addition, none of the units shall be rented to a new tenant until the work has been completed. Rent Board records indicate that unit #5A is currently being rented to tenants with both rent control and eviction protections. The owners may not use the approved permits to combine units 5 and 5A as a reason to evict any existing tenants of either unit.

If the Zoning Adjustments Board (ZAB) decides to approve the project, the Rent Stabilization Board staff recommend that ZAB include the following conditions of approval related to the existing tenants, which are consistent the proposal outlined in the applicant's project statement:

1. Prior to building permit approval for each unit, the property owner shall provide proof that any affected tenants have voluntarily vacated their unit or proof that the owner and affected tenants have come to a written agreement on a plan for temporary relocation.
2. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance.
3. At all times the units #5 and #5A shall not be rented to a new tenant household until Housing Code Enforcement determines that the conditions of the Notice of Violation have been satisfied and the Building permit to address the illegal conditions has been finaled.
4. Prior to building permit approval, the property owner shall record a declaration of deed restriction, in a form acceptable to the City of Berkeley, stating that the owner shall address the illegal conditions at 1850 Arch Street, Unit 5A, prior to renting unit #5 or #5A to a new tenant household on either a short-term or long-term basis. The deed restriction shall acknowledge that there are no grounds for eviction of any existing tenant households in the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) due to the unpermitted status of unit #5A or the work proposed in this application.

Rent Stabilization Board staff is recommending ZAB approve the removal of the unit subject to the agreed upon conditions only because it is difficult to permit Unit #5A due to its small size. If legalization of this unit was feasible, maintaining the unit would be the preferred outcome for this project. The Rent Stabilization Board believes it is in the City's best interest to encourage the legalization of unpermitted rental units in order to maintain these existing and often more affordable units as part of Berkeley's housing stock.

Please feel free to contact Mr. Bursell with any further questions regarding this matter.

CITY OF BERKELEY
Housing Code Enforcement
1947 Center Street, 3rd floor
Berkeley, CA 94704
(510) 981-5444

Case Details

Date: 6/25/2020

H2019-00471

1850 ARCH St 5A

Case Number:

Subject:

Of the original 17 violations, 16 have been cleared.
The remaining violations are:

16. Interior [Unit 5A - Guest Room with Bath - Illegal Use - Notation], *, *

This is an addendum to the original Notice of Violation & was noted on 01/06/2020. The habitable space labeled as Unit 5A has been converted as a separate unit without permits and approvals. City of Berkeley records states that Unit 5A may continue as a guest room with a bath. To correct, remove all illegal construction and restore the space to its legal use or obtain permits and zoning approvals to legalize the use as a separate unit. This notation will be referred to Zoning Code Enforcement Unit. BMC 19.28, SEC. 105 AND BMC 19.40, CHAPTER 3, SEC. 301

City of Berkeley

Planning and Community Development Department
Codes and Inspection Division

(415) 644-6504

SPECIAL INSPECTION

Property Location: 1850 Arch Street
Type of Inspection: Vertification of the number of unit

Requested by: Ken Y. Chung
Address: 11024 Piney Meeting House
Phone: Potomac, MD 20854
Inspector: David Smith

Owner ITI Properties
Address: 11024 Piney Meeting House
Phone: Potomac, MD 20854
Date of Appointment: 11-2-87

Description: Request for inspection to verify units; two residential stories over sub-grade parking garages. Description of units added since original construction.

Area: 9607 s.f. Bldg. Type: V-N Occupancy Group: R-1 Stories: 2
Roof Type: Flat, tar & gravel Year Built: 1926
Current Use: residential Proposed Use: residential Zone: R-3-H
Assessor's Parcel No. Map: 8 Block: 2182 Parcel No. 18-1
Use Permit or Variance required: Yes — No — N/A —
Inspection by other departments required: Fire No Health No Other —

A CERTIFICATE OF OCCUPANCY OR OTHER APPROVAL MAY BE ISSUED WHEN ALL OF THE CONDITIONS NOTED BELOW ARE MET.

INSPECTION RESULTS

1. At the time of inspection, there were observed to be eleven separate units. Two of these were in the basement area, to the west rear of the parking garage. Both of these "basement" apartments are shown as existing as of December 1961, and having been created through the normal permit remodeling process.

2. An eleventh unit, on the first floor, called unit no "5-A", appears to have been created out of a portion of the adjacent unit, no. 6, at some unspecified time in the past. While the City property records indicate only ten units, there is no specific evidence that unit no "5-A" was not created without permits. For example, building permit no. 43105,in 1937, lists an alteration of an apartment for $350.00. This unspecified work may very well have been for this apartment; the record is inconclusive.

   Evidence that this unit consists mainly in the fact that apartment no 6 has a door in the closet which has been plastered over from the 5-A side, indicating that they were originally joined.

3. It is recommended that 5-A be reconnected as a part of the larger unit for the following reasons:

NOVEMBER 23, 1987

(a) Apartment no. 5-A has a combined sleeping-livingroom of barely 120 square feet, which under current code is the minimum for a habitable room.

(b) The unit has no kitchen and is therefore a sleeping room -- not a dwelling unit. Inspection revealed that the tenant is cooking on a hot plate and doing dishes in the lavatory. Such illegal cooking practice is encouraged by lack of a proper kitchen.

THIS REPORT DOES NOT ABROGATE THE RESPONSIBILITY TO COMPLY WITH ALL APPLICABLE CODES AND ORDINANCES WHETHER CITED OR NOT.

DAVID SMITH
Housing Inspector

DS/sbb

City of Berkeley

Codes and Inspection Division
Planning and Community Development Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704
Telecommunications Device for the Deaf (415) 644-6915

NOTICE OF COMPLETION

February 4, 1992

Joan Wang
David Monasch
680 8th Street
San Francisco, CA 94103

Re: 1850 ARCH #5A, Berkeley, California

Dear Owner(s):

On 11/07/91, an initial inspection of the above referenced property was performed. A written notice of the inspection results was provided to you on 12/11/91.

We are pleased to advise you that an inspection performed on 01/14/92 revealed that all violations noted in the 11/07/91 inspection report have been corrected.

You are encouraged to monitor the property periodically and to perform preventive maintenance as appropriate.

If you have any questions regarding the inspector's observations, please feel free to contact the inspector who inspected the property. Inspectors are available to answer questions during weekdays, 8-9 a.m. or 4:30 to 5:00 p.m., at (510)644-8877.

Sincerely,

HARRY ATTRI
Building Official

Housing Inspector

cc: Tenant

Apt. #5A Has been Approved For Habital use and may continue as a guest Room with a Bathroom.

WF [illegible]\CORECTD.01 09/20/91

ZONING ADJUSTMENTS BOARD

NOTICE OF PUBLIC HEARING

1850 Arch Street

Use Permit #ZP2019-0212 to add 18 bedrooms to an existing 10-unit, 12 bedroom multi-family residential building, for a total of 30 bedrooms on the parcel.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on September 24, 2020 **conducted via Zoom, see the Agenda for details at:** *https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_PHN/2020-09-24_Draft_ZAB_Agenda.pdf*. The meeting starts at 7:00 p.m.

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

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning: R-3(H) – Multiple Family Residential District, Hillside Overlay

B. Zoning Permits Required:

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and is not subject to any exception noted in Section 15300.2 of the CEQA Guidelines.

D. Parties Involved:

- Applicant: Rhoades Planning Group, 46 Shattuck Square, Berkeley
- Owner: Arch Street Village, LLC, c/o Rhoades Planning Group

Further Information:
All application materials are available online at: http://www.cityofberkeley.info/zoningapplications. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: http://www.cityofberkeley.info/zoningadjustmentsboard.

Questions about the project should be directed to the project planner, Ashley James, at (510) 981-7458 or ajames@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:
Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Communications and Reports:
Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: https://www.cityofberkeley.info/zoningadjustmentboard/.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

Accessibility Information / ADA Disclaimer:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:
If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

   If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

ZONING ADJUSTMENTS BOARD

STAFF REPORT

FOR BOARD ACTION
SEPTEMBER 24, 2020

1862 Arch Street

Use Permit #ZP2019-0213 to add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building, for a total of 25 bedrooms on the parcel.

I. Background

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning: R-3(H) – Multiple Family Residential District, Hillside Overlay

B. Zoning Permits Required:

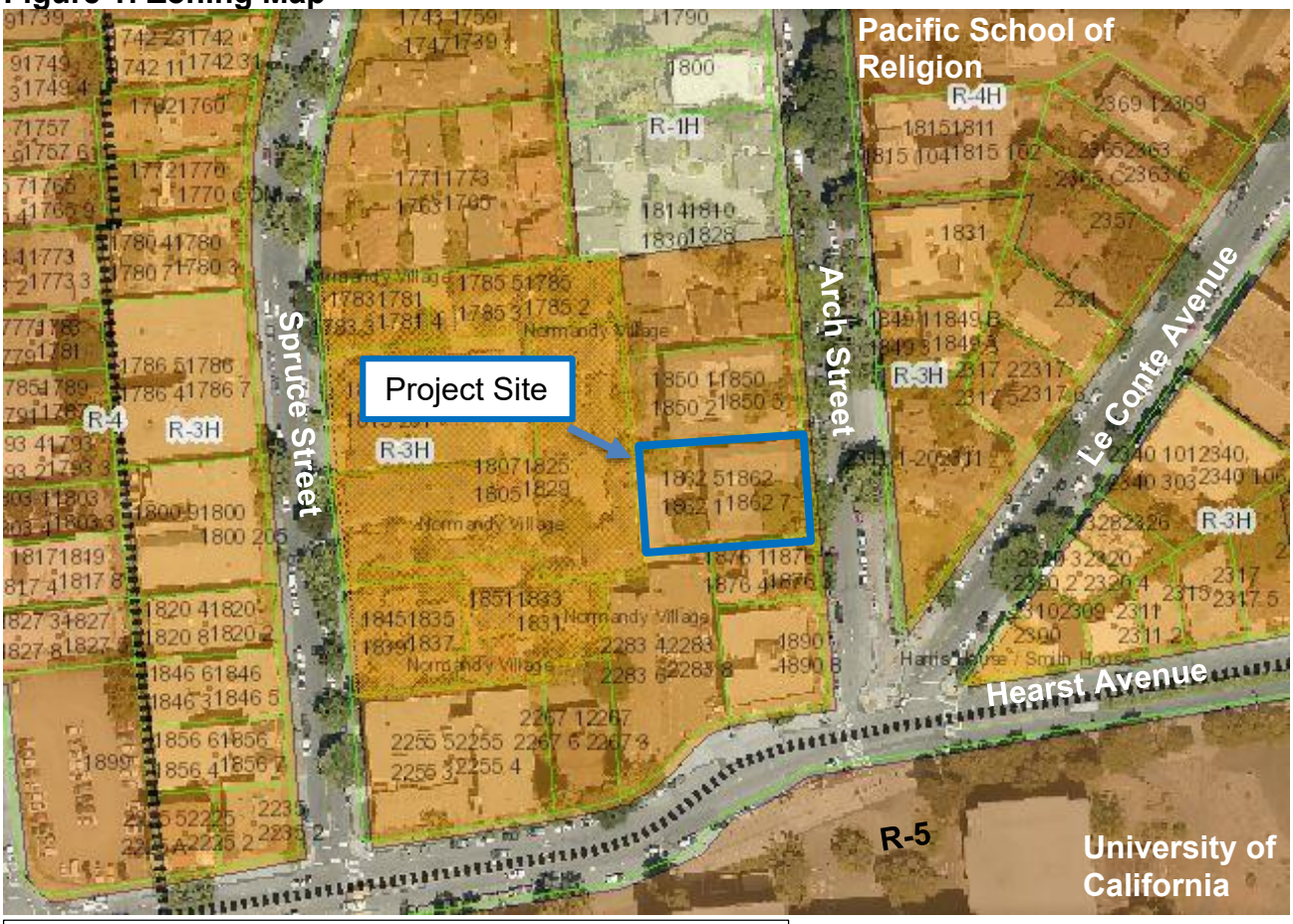
- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

C. CEQA Recommendation: It is staff's recommendation to the ZAB that the project is categorically exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and is not subject to any exception noted in Section 15300.2 of the CEQA Guidelines. The determination is made by the ZAB.

D. Parties Involved:

- Applicant: Rhoades Planning Group, 46 Shattuck Square, Berkeley
- Owner: Arch Street Village, LLC co/Rhoades Planning Group

Figure 1: Zoning Map



Zoning District
R-1(H): Single-Family Residential District, Hillside Overlay
R-3(H): Multiple-Family Residential District, Hillside Overlay
R-4: Multi-Family Residential District
R-4(H): Multi-Family Residential District, Hillside Overlay
R-5: High-Density Residential District

N

Figure 2: Site Plan

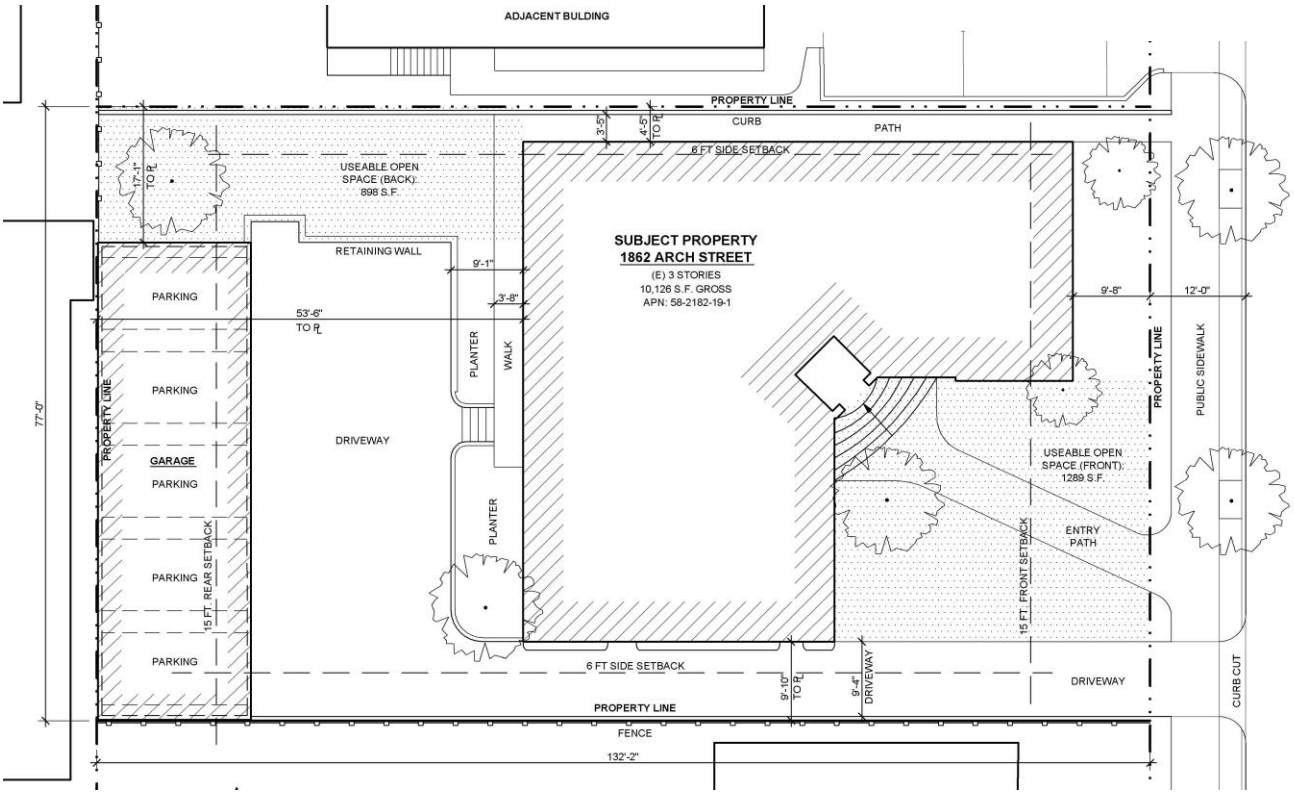


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		10-unit multi-family building	Multiple-Family Hillside Overlay (R-3H)	Medium Density Residential (MDR)
Surrounding Properties	North	10-unit multi-family building		
	East	Group Living Accommodation (Delta Zeta Sorority)		
	South	Fourplex		
	West	22-unit multi-family development (Normandy Village)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new non-residential gross floor area is proposed.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new gross floor area is proposed.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project does not include the creation of any new rental units, and therefore this requirement does not apply.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is not a “housing development project,” as no additional units would be created. The project is to expand two existing units on the site. Therefore, the HAA findings do not apply to this project.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not near a creek or within a creek buffer.
Density Bonus	No	The project is not seeking a Density Bonus.
Green Building Score	No	The project does not propose the construction of a new building.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a main building. In addition, there is no evidence to suggest the building is a historic resource.
Rent Controlled Units	Yes	According to the Rent Stabilization Board (RSB), the building contains 10 units, all of which are claimed as “rented or otherwise available to rent” and considered controlled rental units, and are therefore subject to BMC Chapter 13.76. The project must comply with RSB noticing and vacancy rules, see Conditions of Approval #11 and #31.
Residential Preferred Parking (RPP)	Yes	The project site is located in Area “F” of the Residential Preferred Parking Program.
Seismic Hazards (SHMA)	No	The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act.
Soil/Groundwater Contamination	No	The project site is not located within the City’s Environmental Management Area.
Transit and Bicycle Access	Yes	The project site is five blocks east of numerous AC transit routes on University and Shattuck Avenue. There is a bikeway on Arch Street (N-S) and Hearst Avenue (E-W). Also, the project site is approximately ½ mile from the Downtown Berkeley BART station.

Table 3: Project Chronology

Date	Action
December 20, 2019	Application submitted
January 7, 2020	Application deemed incomplete
March 16, 2020	Shelter in Place Order issued, multiple ZAB hearings cancelled
April 6, 2020	Revised application submitted
April 16, 2020	Application deemed complete
September 10, 2020	Public hearing notices mailed/posted
September 24, 2020	ZAB hearing

Table 4: Development Standards

R-3 Standards BMC Section 23D.36.070-080		**Existing**	**Proposed**	**Permitted/ Required**
Lot Area (sq. ft.)		10,300	No change	5,000 min.
Gross Floor Area (sq. ft.)		10,126	10,146[1]	n/a
Dwelling Units		10	No change	n/a
Bedrooms		10	25	n/a (≥5 w/permit)
Building Height	Average	27'-4"	No change	35' max.
	Maximum	28'-5"	No change	n/a
	Stories	3	No change	3 max.
Building Setbacks	Front	9'-8"	No change	15' min.
	Rear	50'-11"	No change	15' min.
	Left (South) Side	0'	No change	6' min.
	Right (North) Side	4'-5"	No change	6' min.
Lot Coverage (%)		32.6	No change	40 max. (For 3 stories)
Usable Open Space (sq. ft.)		2,186	No change	2,000 min. (400 per du)
Parking		5	No change	10 min. (1 per unit)

II. Project Setting

A. Neighborhood/Area Description: The subject site is located on the west side of Arch Street, in a mixed-use residential neighborhood that consists of educational uses as well as multiple-family apartment and condominium buildings that range from two to three stories in height (See Figure 1: Zoning Map). The site is located one-half block north of Hearst Avenue and the University of California – Berkeley campus. It is also

[1] On the basement level, 20 square feet of unfinished area would be converted to floor area in order to expand the existing bedroom and closet area within Unit 8 (see Table 6 below).

located two blocks west of Shattuck Avenue and downtown Berkeley (C-DMU District), and two blocks east of goods and services on Euclid Avenue.

B. Site Conditions: The subject parcel is rectangular, with a 77' front along Arch Street and 132'-2" depth, and slopes down toward the southwest. The parcel is currently developed with a three-story residential building containing ten dwelling units (two studio, two 1-bedroom, five 2-bedroom, and one 4-bedroom), which was constructed in 1923. The building is accessed on the first level through a driveway and front entry pat/stairway along Arch Street. Outdoor usable open space is provided in the rear and front yards.

The parcel is non-conforming to current zoning standards in terms of minimum building setback from the front and side property lines and parking. The property contains a total of five parking spaces where 10 is the minimum, located in a detached garage located on the rear property line. (See Figure 2: Site Plan and Table 4: Development Standards).

III. Project Description

The applicant proposes to reconfigure the building floor plan by moving and adding interior walls to accommodate an additional 15 bedrooms within the existing 10-unit building. The building would contain two studio, one 1-bedroom, one 2-bedroom, five 3-bedroom and one 5-bedroom units. On the basement level, three bedrooms would be added and 20 square feet of unfinished area would be converted to floor area in order to expand the existing bedroom and closet area within Unit 8 (see Table 6 below). A total of six bedrooms would be added to both the first and second levels (see Table 5 below). No exterior alterations are proposed.

Table 5: Bedroom Count, Floor Area, and Location

Location within Building	Floor Area	# of Bedrooms		
Floor	**Sq. Ft**	**Entitled**	**As-Built**	**Proposed**
Basement	Existing: 3,366 Proposed: 3,386	1	4	4
First	3,356	4	6	10
Second	3,404	5	8	11
Total	**10,126**	**10**	**18**	**25**

Note: City records indicate the building contained 10 bedrooms as of 1961, when the most recent building permit was finaled. As part of this Use Permit application, the applicant submitted as-built plans indicating the building contained 18 rooms that met the City's definition of a "bedroom," per BMC Section 13.42.020.B. Therefore, this Table presents the entitled, as-built, and proposed number of bedrooms. For the purpose of the Use Permit, the project description is to add 15 bedrooms to the building, which previously contained 10, as entitled.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on December 20, 2019, a pre-application poster was installed by the applicant at the project site and the project plans were reviewed at a community meeting hosted by the applicant. Four people attended the meeting, including two residents of the building and two neighbors. Concerns included timely repairs, excessive noise from residents during quiet hours, and disruptions (i.e. noise) from the proposed construction. On April 30, 2020 the City received a letter from a resident of the adjacent building at 1850 Arch expressing concerns about the proposed scope of work at both buildings regarding the impacts to trash, laundry, parking, and bathrooms that would result from the project, and complaints regarding property maintenance of the existing building. The applicant responded to those concerns in a letter dated May 26, 2020 (Attachment 3). In addition, the applicant notified all tenants of the proposed renovations as well as their rights under the Rent Stabilization Ordinance (BMC Section 13.76) and Tenant Protection Ordinance (BMC Section 13.79.060). See the discussion in section V.B for more information.

On September 10, 2020, the City mailed 505 public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in two locations. As of the writing of this staff report, Staff has not received any communications regarding the project.

B. Committee Review: This project is not subject to advisory committee review.

V. Issues and Analysis

A. Addition of Bedrooms to the Parcel: Pursuant to BMC Section 23D.32.050.A, the addition of the bedrooms 11 through 25 on the parcel requires the approval of a Use Permit. Specifically, the Board must make the required "non-detriment" findings pursuant to BMC Section 23B.32.040 related to the "health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood…or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City." "The Board shall deny an application for a Use Permit if it determines that is unable to make any of the required findings, in which case it shall state the reasons for that determination." Recently, the ZAB has considered the amount of common space (living room/dining room/kitchen) relative to the number of bedrooms, as well as the amount of usable open space on the parcel, as factors when evaluating the addition of bedrooms. While there is no adopted standard, that information is compiled below, in Table 6.

As shown in Table 6 below, the proposed project would convert common living areas to create new bedrooms in six of the ten units. On average, 43% of the existing floor area within each unit is currently dedicated to common living spaces. The project would result in a 4% reduction in the share of floor area dedicated to common living spaces, for a new average of 39%, which continues to provide a reasonable amount of common living space in each unit. According to the applicant statement, the

conversion of common living spaces to bedrooms would improve the layout of the units, for example by converting 20 square feet of unconditioned space on the basement level to floor area within Unit 8, in order to expand the bedroom and closet area. The layout of Unit 9 would be improved by moving interior walls, Unit 1 would become a more functional studio, and the layout of Unit 10 would be improved by creating a bedroom in this studio unit.

As shown in Table 4 above, the parcel has non-conforming setbacks at all yards and has five off-street parking spaces where 10 is the minimum. The proposed renovations would not change the building footprint, and thus would not exacerbate any non-conforming condition, and would maintain the existing amount of usable space on the parcel (2,186 square feet), which exceeds the minimum requirement by 186 square feet.

Table 6: Change in amount and share of common living area per unit

Unit#	Floor Area	Common (Living/Dining/Kitchen) Area			Share of Common Living Spaces to Total Floor Area			Location within Building
	Sq. Ft	As-Built	+/-	Proposed	As-Built	+/-	Proposed	Floor
Unit 1	410	105	98	203	26%	24%	50%	First
Unit 2	738	450	-210	240	61%	-28%	33%	
Unit 3	722	245	18	263	34%	2%	36%	
Unit 4	833	424	-149	275	51%	-18%	33%	
Unit 5	715	166	87	253	23%	12%	35%	Second
Unit 6	842	342	-68	274	41%	-8%	33%	
Unit 7	1,326	458	-178	280	35%	-13%	21%	
Unit 8	(E) 531/ (P) 551	238	-4	234	45%	-3%	42%	
Unit 9	414	273	-33	240	66%	-8%	58%	Basement
Unit 10	493	260	-8	252	53%	-2%	51%	
Average	**702**	**296**	**-48**	**251**	**43%**	**-4%**	**39%**	

Staff believes the proposed addition is consistent with the purposes of the R-3 District, which are to:

A. Implement Master Plan policy by encouraging the development of relatively high density residential areas;

B. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;

C. Protect adjacent properties from unreasonable obstruction of light and air; and

D. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City

requirements for this type of housing; (Ord. 7210-NS § 8 (part), Ord. 6478-NS § 4 (part), 1999).

Staff Analysis: As described in section II above, the subject residential building is a 10-unit apartment building in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. As described in Table 2 above, the subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus, consistent with purpose B. The parcel contains a reasonable amount of open space, 2,186 square feet where a minimum of 2,000 is required. As the project would not result in any exterior changes to the building, such as new window openings or extension of the building footprint, there would not be any impacts to light and air, consistent with purpose C.

Staff believes the addition of 15 bedrooms to the 10-unit residential building would support the high-density residential use on the parcel, consistent with the purposes of the R-3 District.

B. Tenant Protections: As of the writing of this staff report, all rent controlled units are occupied and currently rented to tenants whose tenancy began prior to the submittal of this Use Permit application. The applicant intends to complete the project over time as tenants move out of the building voluntarily, and has committed to not unlawfully evict or otherwise displace any current tenant in order to accommodate construction. The applicant informed the existing tenants of the development plan at a community meeting held on December 20, 2019, where at least two tenants were present, and mailed a notice to each tenant in the spring of 2020 restating the development plans and their rights under the City's Rent Stabilization Ordinance. Per the Rent Stabilization Ordinance, the existing rental units would remain as rent controlled rental units after renovation, and the property owner has committed to providing notice to any prospective new tenant of their rights under the Ordinance prior to execution of a new lease (see Condition of Approval #31). In addition, the applicant has committed to providing notice in advance of the City's noticing requirements before tenants might be relocated for construction on their units and has confirmed that all tenants would be relocated voluntarily or temporarily as provided for in Condition of Approval #11, as recommended by the Rent Stabilization Board.

C. General Non-Detriment: Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area, as no exterior changes are proposed. In addition, staff believes the project would not unreasonably obstruct sunlight, air, or views as no exterior changes are proposed. Finally, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and storm water requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property

and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

D. General Plan Consistency: Based on the foregoing project description and analysis, staff concludes that the project would comply with the following 2002 General Plan goals and policies:

1. Policy H-8–Maintain Housing: Maintain and preserve the existing supply of housing in the City.
2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

   Staff Analysis: The residential project would increase the number of bedrooms on the parcel and renovate the interior of the building, thus maintaining and preserving the existing housing supply in the city. The subject property is located in a mixed-use residential neighborhood containing a mix of multiple-family dwellings and condominiums that are two- to three-stories in height, and does not propose any changes to the exterior of the building or expand its footprint. Because the changes proposed would maintain the existing building footprint, would not increase the building height, and would maintain the amount of usable open space on the property, staff believes that the project would maintain the existing design, scale and compatibility with the neighborhood.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2019-0213 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:
1. Findings and Conditions
2. Project Plans, dated February 5, 2020
3. Correspondence, received May 26, 2020
4. Notice of Public Hearing

Staff Planner: Ashley James, ajames@cityofberkeley.info, (510) 981-7458

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 24, 2020

1862 Arch Street

Use Permit #ZP2019-0213 to add 13 bedrooms to an existing 10-unit, 10 bedroom multi-family residential building, for a total of 25 bedrooms on the parcel.

PERMITS REQUIRED

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.32.040.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   A. The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, number of stories, rear yard setback, lot coverage, and usable open space in BMC Section 23D.36.070-080 (Development Standards), as detailed in the August 27, 2020 staff report. The proposed project is non-conforming for front yard setback (9'-8" where 15' is the minimum), left yard setback (0' where 6' is the minimum), right yard setback (0' where 6' is the minimum), and parking (providing five spaces where ten are required) under the current Zoning Ordinance. The proposed development is permissible because: (1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space.

   B. The project is consistent with the purposes of the District in that it will permit the addition of bedrooms through conversion of existing floor area and conversion of 20 square feet of

existing unfinished area within the existing building footprint on a residential property, which continues the existing pattern of high residential density of the neighborhood. The project will not reduce the existing non-conforming 9'-8" front setback, the non-conforming 0' left and right side setbacks, or the non-conforming off-street parking (5 spaces where 10 is the minimum). The project will, therefore, retain the existing pattern of development that is conveniently located and provides a reasonable amount of usable open space of the District while protecting adjacent properties from unreasonable obstruction of light and air.

C. The project plans submitted on April 6, 2020 indicate the proposed addition will not unreasonably obstruct sunlight on nearby existing dwellings, impact the privacy between neighbors, unreasonably impact air and light between neighbors, or impact views. As discussed in the project staff report dated September 24, 2020, the proposed project will not create any new window openings or otherwise change the exterior of the building or the building's footprint. Therefore, the impacts are determined to be non-detrimental.

2. Pursuant to BMC Section 23D.32.050.A, the Zoning Adjustments Board finds that the proposed addition of bedrooms eleven through twenty five supports the residential use on the parcel, consistent with the purposes of the R-3 District. The project represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus. The parcel contains a reasonable amount of open space, 2,186 square feet of useable open space where a minimum of 2,000 square feet is required.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

I. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

☐ **Project Liaison** _____

Name Phone #

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

11. Unit Vacancy. Demolition and/or construction activities approved under this permit shall not commence in any unit unless the existing tenants have either voluntarily vacated the unit or have reached an agreement for temporary relocation pursuant to BMC Chapter 13.84. The applicant shall submit evidence of such to the Rent Stabilization Board (i.e. tenant's notice to vacate, relocation agreement).

12. Construction and Demolition Diversion. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

13. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine whether the following document is required and timing for its submittal:

A. Building Materials Survey:

1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

Prior to Issuance of Any Building (Construction) Permit

14. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

15. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

16. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

17. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

18. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater

pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

19. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

20. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

21. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

22. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

23. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

24. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

25. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

26. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

Prior to Final Inspection or Issuance of Occupancy Permit:

27. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

28. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated February 5, 2020 except as modified by conditions of approval.

29. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

30. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

31. Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance.

1850 Arch St., #6
Berkeley, CA 94709
April 30, 2020

Berkeley Zoning Adjustment Board
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley CA 94704

Dear Members of the Zoning Adjustment Board:

I have been a tenant at 1850 Arch Street for over 24 years, a building that was recently purchased, along with 1862 Arch Street, by Rhoades Planning Group.

Rhoades' plan is to subdivide existing one bedroom apartments into multiple bedroom apartments, adding as many as 20 new bedrooms to the two buildings.

With regard to Rhoades' plan to make modifications at 1850 and 1862 Arch Street, I have serious objections to this for the following reasons:

There are several units in both buildings that have already been divided, and are now shared by three or four unrelated people.

This has resulted in additional trash, additional use of laundry room machines, and additional parking issues, as well as a shortage of bathrooms.

— We have one dumpster, two cans for paper and cardboard, one for glass, metal and plastic, and one for compostables. Before these conversions, the containers were rarely full on pickup days. Since the conversions, the dumpster, the paper

bins and the glass, metal and plastic bin are regularly filled to overflowing.

The trash collectors will, I'm sure, verify that the dumpster has been regularly overfilled, even with twice a week pickups.

In short, even five more people in these buildings will result in more trash. The addition of twenty new bedrooms will result in quite a bit more.

— There are two washers and two dryers in the basement of 1850 Arch, shared by both buildings. Again, previously, these were sufficient for the needs of residents.

Already, these have proven to be insufficient for all the new tenants; in fact, there are regularly lines waiting to use these machines. More tenants will make this situation untenable.

— There are seven spaces and two garages available for parking cars on the premises. Currently, the garages are in use, as are five of the seven spaces. Additional tenants will mean more cars, and requests for spaces. Those tenants who are unable to secure a space will park on the street when spaces are free, which is rare, especially so during the months that University of California Berkeley is in session. In other words, more traffic in the entire neighborhood, more searching for spaces, and more parking chaos.

When workers come to make repairs, they park in the driveway and block access from the people who pay for these spaces. This has been a problem for many years, and has been especially awkward during the massive electrical "upgrade".

— Since the date when Rhoades purchased these buildings, they have proven to be inattentive and negligent landlords.

At a meeting in December, their representatives told us that “there will be no major changes” to these buildings. They “pooh-poohed” the question of whether the additional bedrooms would qualify as “major changes”.

When challenged about the “major changes” issue — it would seem that changing a one bedroom unit into a three bedroom unit is very much “major work” — they had no reasonable response.

— Within just a couple of weeks of that meeting, they had a team of electricians installing 125 amp panels in every apartment, and major panels and pipes attached to the sides of the buildings. They claimed that PG&E mandated these changes.

Aside from the daily and constant noise five days a week, and often six, workers “discovered” a need to do concrete work to accommodate people who used the walkway between buildings, where their electrical fittings were installed. The result was a very clumsy and badly positioned cutout in the existing wall of the walkway, and the new concrete work interrupted the gradual slope from the front to the back of the buildings, which, in turn, caused a pool of water to be trapped every time it rains. Right in front of the main panels. This work also created a step, making it impossible for people in wheelchairs to use the walkway.

— Rhoades has a very poor record of maintaining these buildings.

For just one example, Unit 1 at 1850 is occupied by a woman who has been a tenant for over 25 years. When the electricians worked on her apartment, they caused extensive and massive holes in her plaster (among other work), and have refused to fix them “until the electrical work is completed”. She has had to endure this mess until … when??

Also, on their website was a schematic that showed the planned work on her apartment, without asking her whether that was a problem. She is a retired person, and this is an affront to her safety. She has been anxious about this since she first discovered it, and admits to becoming more so the longer it stays on the website. (Rhoades has since removed this schematic from their website.)

In Unit 6 at 1850, the worker who did the panel install caused cracks and other damage to the walls, and plaster dust in every room. And while he casually swept up some of the mess, this only resulted in spreading more plaster dust throughout the apartment. Plus, the panel is basically just hanging rather than being fixed.

As if this weren't bad enough, the worker disconnected the phone and answering machine, which resulted in four people who tried to call but were unable to leave a message.

I occupy Unit 6. Once I noticed these items, I met with the Berkeley Rent Board and determined that I had the right to deny any further access. I then notified the electricians that they could no longer enter my apartment.

Unit 7 has also had problems with workers whose proposed route for the conduits would have routed their lines through the interior of the apartment, rather than through the hallways.

The workers left holes in walls throughout the apartments and the common areas, and covered some with blue tape. And have made no effort to fix these items.

The aoutside faucets at the front and rear of 1850 have leaked for some time. When this was brought to the attention of the Rhoades representatives in December, they came up with a resolution: "we'll just attach an additional faucet to the leaking

one, no problem." This was indeed a clumsy repair, and it simply does not work. All that was needed, and is still needed, is a new washer. In other words, their work is poorly thought out and poorly executed.

Rhoades has done nothing to repair holes in the garage, or holes in the sidelight at the front door of 1850, the latter of which has resulted in creatures entering the lobby, and warm air escaping, among other issues. What little work they have done to 1850 is subpar by any reasonable standard.

— None of the plans call for adding bathrooms. Clearly, this puts a strain on the tenants. Three bedrooms, multiple students in each bedroom. This is yet another shortsighted part of Rhoades' plan.

These are only examples of the low quality of work done by these landlords, but is typical of their "management" style.

Rhoades has owned this building for roughly six months. It is clear that they do not consider the needs of current tenants, and only seek to create more rentable space, and therefore profit.

While I have not seen the work done to apartments at 1862 Arch Street, I have no doubt that the work in that building is every bit as unprofessional as at 1850 Arch Street. Currently, there are plywood panels where there used to be doors on the south side of the building, and that work has been stopped by the City. The workers have also left an over-full trash can and half-empty paint cans on the premises for many months.

This is just a partial description of the shoddy work done to these buildings.

— Blatant disregard for the rights of their tenants

The tenants of both buildings have been subjected to major disruptions since this work has started, including noise from early morning to late afternoon, and dust and debris everywhere.

In short, the low quality of the work and the disruption indicate that, as landlords, Rhoades' ownership and employees clearly do not care for the welfare of existing tenants, and exhibit very little respect for them.

— Finally, none of the apartments, whether modified or not, will be low-income units.

These buildings are not dormitories, but residences for individuals and families, and should be treated as such.

Therefore, I respectfully request that the Board deny Rhoades' petition to make the proposed changes to these buildings.

Sincerely,

Robin O'Donnell
1850 Arch St., Apt. 6
Berkeley, CA 94709

May 26, 2020

Mr. Robin O'Donnell
1850 Arch Street, Unit 6
Berkeley, CA 94709

Dear Robin:

We are the owners of 1850 & 1862 Arch Street, and we have received the letter you sent to the Berkeley Zoning Adjustment Board Land Use Planning Division, dated April 30, 2020.

We certainly hear and appreciate the concerns you've outlined, which describe changes you've noticed that have occurred in the recent past and also the changes you have been informed of that are forthcoming. We want you to know that we really do value the impact of the residents of our building, and feel that some clarification of our plans may reduce some of your concerns.

To summarize your letter, you are requesting of the City that they deny our petition for a use permit to make the proposed changes to the building because 1) units have already been subdivided which has resulted in increased density in the building, straining amenities like laundry machines and resulting in more garbage than the bins can currently accommodate, 2) more bedrooms suggests more residents, which will impact street parking, and our workers have blocked the driveway in the past, 3) we have proven ourselves to be inattentive and negligent landlords who have engaged in disruptive and messy construction to a subpar level, 4) construction projects that had been started seem to have stalled mysteriously over the past two months with no explanation or timeframe for completion, 5) none of the proposed plans include bathroom additions, and 6) none of the units will be low-income.

I hope I have grabbed your main points, if I missed any, please do call them to my attention.

Let me address each of those issues. Before I do, Rhoades Planning Group does not own the building. It is owned by Arch Street Village, LLC., no affiliation to Rhoades Planning Group (the company or the people) in any way whatsoever.

1) *Units have already been subdivided which has resulted in increased density in the building, straining amenities like laundry machines and resulting in more garbage than the bins can currently accommodate:*

In your letter, you state that units have already been subdivided, and are now shared by "3-4 unrelated people." We have not performed any work to any units in the building whatsoever. We are aware of one unit that appears to have had a wall added within a large living room to create an additional bedroom at some point in the past, and it seems that occurred long ago (but there is no record). Any increase in use of refuse, laundry, or parking that you have observed is not the result of anyone having added bedrooms to any units in your building. At 1862 Arch Street, prior ownership did convert a 1-bed into a 2-bed, but that unit has never been occupied since that conversion and remains vacant to this day. They also tried to convert a 2-bed into a 3-bed, but we are taking it back to a 2-bed. In short, we are confident that between all 21 units of both buildings (1850 and 1862 Arch Street), no one has subdivided any currently occupied units at any point in the recent past. Further, we have only completed one new lease in either building, where two students replaced an individual who had lived alone, thus a net increase of one person across both buildings.

Having said that, if additional laundry facilities, refuse/recycling facilities, etc are already required for any reason, and/or may be required at a future date, we are very open to increase those services accordingly. Let's just have those kinds of conversations directly, as we are happy to take any reasonable requests into consideration.

2) *More people will mean that it will be harder to find street parking:*

The neighborhood has Residential Permit Parking, but parking issues exist throughout Berkeley. They are less of a problem in this neighborhood than they are in many others. Many of the tenants of the building, and especially newer tenants, are affiliated with the University as faculty or students. As such, vehicles are unnecessary due to the proximity of campus and the Downtown, and high level of nearby transit.

If anyone ever blocks the driveway, be it a tenant, a visitor, a contractor, or a neighbor, by all means please feel free to call Berkeley parking enforcement. We will be sure to emphasize to any contractors we may require that they not park in the driveway, and apologize if they have done so in the past. Thank you for bringing this to our attention.

3) *We have proven ourselves to be inattentive and negligent landlords who have caused disruptive and messy construction to a subpar level*

I hate to think that we are "inattentive and negligent landlords". We are certainly guilty of making significant improvements to the electrical system, which was 100 years old, and we accept that this project has presented an inconvenience to tenants. We have not performed any work of any kind to any other portion of your building, so we are not sure what messy construction you are referring to. At 1862 Arch we have also been renovating a vacant unit, but hope that unit renovation has not been overly disruptive to you personally since it is in the adjacent building. The new electrical system we have installed in both buildings will provide significantly more power to each unit in accordance with the needs of the typical tenant today (who needs to power computers, microwaves, etc) that were not considerations during original construction in the 1920's. It also includes a grounded line, in addition to other significant safety benefits. We are surprised that any tenant should be critical of an ownership that takes on this investment. Please note that we are also planning to perform and entirely voluntary seismic retrofit to both buildings to significantly increase their resistance to a significant seismic event. This project will take place in the basement and is not expected to be particularly disruptive, and we hope you'll appreciate the trade-off. We regret that you don't approve of the exact shape of the concrete cutout which was needed to provide clearance for the new electrical panel, nor the manner in which I addressed a leaky exterior faucet. The plywood on the walls of Unit 8 have been there because work started on that unit and then the lockdown associated with Covid-19 hit. That is not a permanent solution.

We do not agree that we have performed a very poor job of maintaining the buildings since our acquisition last fall, though certainly we have yet to perform many of the improvements we have planned simply because the electrical upgrade was the first priority for all the reasons listed above.

4) *Construction projects that had been started seem to have stalled mysteriously over the past two months with no explanation or timeframe for completion:*

As aforementioned, the only two projects that have been undertaken in either 1850 or 1862 Arch Street at the electrical upgrade and the 1862 Arch Unit 8 renovation. The Covid-19 Shelter In Place has halted all construction through early May 2020.

The holes in the plaster created in various units and some common areas was necessary for the electrical upgrade to each unit, and had to be left open in order for the City inspector to see and sign off on the work performed. The reason the openings were left open so long and have not been repaired is that Shelter In Place hit right after those improvements were made, and work was suspended by law. All units which granted us access (including yours, thank you, and the Unit 1 you referenced) did pass inspection, and as I've told you, we are very happy to send in a contractor to repair all the openings in any unit which is willing to accept that work at this time, including yours. We apologize for the delay caused by the recent global pandemic. As for your own unit, Unit 6, we apologize for the mess left by the electrician when the work was originally performed. We did not receive that feedback from any other tenants. It turns out that they had not completed their project on your unit, including clean up, when you elected to refuse them further entry, then Shelter In Place hit and clearly they could not complete the work in your unit even if you had at that point granted access. I hope you found the work performed in your unit when it was inspected recently, including the clean-up, to be acceptable; if not please let me know. Incidentally, the reason for the openings in the plaster in units and some common areas, as explained above, was also detailed in a letter I emailed to all tenants on March 21, 2020. I sent it to the email address I have on file for you, I hope it is current and that you had received that correspondence but if not, I certainly understand why you were surprised by the delay in repairs.

5) *None of the proposed plans include bathroom additions:*

You are incorrect about none of the plans adding bathrooms to existing units. Having said that, do you use other people's bathrooms? If not, I am not sure how this affects you personally.

6) *None of the units will be low-income*

The proposed building modifications do not include the addition of any new dwelling units. Rather, existing units are being made more useful in an effort which helps the City of Berkeley address its housing availability crisis in this small way. Because there are no new dwelling units proposed there is no requirement for affordability

I hope I have addressed the concerns you laid out in your letter to the City, at least at a high level, though I would be happy to further discuss any of the more detailed specifics of your letter at any time.

In summary, we are hoping to gain your trust here. We are conscientious individuals who have acquired an apartment building that we feel had been somewhat neglected over time, and who are making significant improvements to the safety, functionality, and comfort of the building to the benefit, we feel, of both existing and future residents. The units we renovate will in some cases (not all) add bedrooms as per building code, and in some cases bathrooms as well, all while being nicely modernized. We also intend to make significant cosmetic and safety improvements to the common areas of the buildings, to include new paint and carpet, improved and tasteful lighting, etc, all in keeping with the elegant and historic nature of the building. We are in no way creating a frat house here, far from it. We understand and appreciate your concerns, and are happy to discuss them further and take any request or suggestions you may have in mind to heart. Please do not hesitate to reach out to me directly with any future questions or concerns.

Best,

Riccardo Gale
riccardo@turningpointinvested.com
(415)271-2996

ZONING ADJUSTMENTS BOARD

NOTICE OF PUBLIC HEARING

1862 Arch Street

Use Permit #ZP2019-0213 to add 15 bedrooms to an existing 10-unit, 10 bedroom multi-family residential building, for a total of 25 bedrooms on the parcel, and convert 20 square feet of unfinished area to habitable space on the basement level.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on September 24, 2020 **conducted via Zoom, see the Agenda for details at:** https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_PHN/2020-09-24_Draft_ZAB_Agenda.pdf. The meeting starts at 7:00 p.m.

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

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning: R-3(H) – Multiple Family Residential District, Hillside Overlay

B. Zoning Permits Required:

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and is not subject to any exception noted in Section 15300.2 of the CEQA Guidelines.

D. Parties Involved:

- Applicant: Rhoades Planning Group, 46 Shattuck Square, Berkeley
- Owner: Arch Street Village, LLC, c/o Rhoades Planning Group

Land Use Planning Division
1947 Center Street, Second Floor, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.7474 Fax: 510.981.7420
E-mail: zab@cityofberkeley.info

Further Information:
All application materials are available online at: http://www.cityofberkeley.info/zoningapplications. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: http://www.cityofberkeley.info/zoningadjustmentsboard.

Questions about the project should be directed to the project planner, Ashley James, at (510) 981-7458 or ajames@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:
Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Communications and Reports:
Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: https://www.cityofberkeley.info/zoningadjustmentboard/.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

Accessibility Information / ADA Disclaimer:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:
If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

   If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

ROUGHLY EDITED COPY

BERKELEY ZAB MEETING
REMOTE BROADCAST CAPTIONING
THURSDAY, SEPTEMBER 24, 2020

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>> S. O'KEEFE: I DON'T THINK THERE IS A NON-LIVE. I THINK YOU'RE JUST HERE.

>> C. KAHN: WHEN WE'RE INTO THE DESIGN REVIEW, WE ACTUALLY GO LIVE OR SOMETHING.

>> S. O'KEEFE: THE MEETING IS RECORDED. AND SO THAT'S ALREADY HAPPENING.

>> ZAB SECRETARY: I HEAR WHAT YOU'RE SAYING AND I USUALLY START THE MEETING MORE LIKE. I WORRY ABOUT THE PUBLIC TRYING TO BE ON TIME AND ORGANIZED AND IF THE MEETING IS NOT RUNNING, THEN IT'S GOING TO BE -- IT'S GOING TO ADD CONFUSION.

>> S. O'KEEFE: I THINK THE PUBLIC APPRECIATES THAT. JUST LIKE YOU OPEN THE DOORS BEFORE 7:00 AND EVERYBODY COME IN AND HAVE A SEAT. I SAY TO MY STUDENTS AS THEIR LITTLE FACES ARE APPEARING, I SAY HAVE A SEAT, SIT ANYWHERE YOU LIKE. NO, NOT THERE. I HAVE TO SAY SOMETHING.

>> ZAB SECRETARY: I'M GOING TO FILL THIS TIME WITH AN ANNOUNCEMENT TO THE ZAB MEMBERS. I HAVE THE HONOR OF BEING THE SECRETARY OF LPC RECENTLY. THAT REQUIRED ME TO LOOK SOMETHING UP IN EYE COMMISSIONER'S MANUAL. I SAW A SENTENCE THAT SAID, IF A ROLL CALL VOTE IS USED, THE SECRETARY CALLS THE ROLL ALWAYS IN THE SAME ORDER. AND SO IT HAS NOT BEEN ZAB'S PRACTICE IN MY FIVE YEARS TO CALL IN THE SAME ORDER. WE SPECIFICALLY MIX THINGS UP SO DIFFERENT PEOPLE GET TO GO FIRST. I NOW SEE THAT THAT IS NOT THE WAY. SO STARTING TONIGHT, I WILL CALL IN THE SAME ORDER AND

I'LL ASK SHOSHANA, OUR CHAIR OFF LINE IF WE COULD MIX IT UP MEETING BY MEETING BUT NOT WITHIN EACH AS SORT OF A THREADING OF THE NEEDLE.

>> S. O'KEEFE: I WILL BE PREPARED TO ANSWER THAT QUESTION OFF LINE. I'LL HAVE TO LOOK AT WHAT THE HANDBOOK SAYS.

>> ZAB SECRETARY: I DIDN'T REALIZE WE WERE NOT FOLLOWING THE RULES. SO I APOLOGIZE.

>> D. PINKSTON: A LOT OF RULES, IT'S HARD TO KEEP TRACK OF THEM ALL.

>> S. O'KEEFE: RAISE YOUR HAND IF YOU'VE READ THE ENTIRE COMMISSIONER'S MANUAL FRONT TO BACK. JOHN, I DON'T BELIEVE JOHN. I BELIEVE SHANNON. I BELIEVE CARRIE. I LOOK, I HAVE NOT SAT DOWN AND FLIPPED THREW EVERY PAGE.

>> ZAB SECRETARY: AND THINGS CHANGE SO THERE IS EVERY YEAR OR TWO, THERE A NEW NUGGET IN THERE OF CLARIFICATION.

>> S. O'KEEFE: TALES 7:03, WE SHOULD GET STARTED. WE HAVE A QUORUM AND I HAVE TO READ THE THING ANY WAY SO I'M GOING TO READ THING.

>> I THINK WE'RE ALL HERE.

>> S. O'KEEFE: NINE, YOU'RE RIGHT, WE'RE ALL HERE. PURSUANT TO SECTION 3 OF EXECUTIVE ORDER N 29-20 THEM MEET WILL BE DISCUSSED THROUGH ZOOM VIDEOCONFERENCE. PURSUANT TO THE SHELTER IN PLACE ORDER AND TO ENSURE THE HEAT AND SAFETY OF THE PUBLIC BY LIMITING HUMAN CONTACT TO SPREAD THE COVID-19 VIRUS, THERE

WILL NOT BE A PHYSICAL MEETING LOCATION AVAILABLE. PERSONS ATTENDING THIS ZOOM MEETING HAVE DISPLAYED NAMES THAT ARE VISIBLE TO COMMISSIONERS AND STAFF. IF YOU WISH TO BE NONE PLUS CLICK ON RENAME TO CHANGE YOUR DISPLAY NAME. FOR COMMISSIONERS WISHING TO SPEAK, USE THE RAISED HAND ICON AT THE BOTTOM OF THE SCREEN AND WAIT TO BE CALLED UPON BY THE CHAIR. MEMBERS OF THE PUBLIC WISHING TO SPEAK SHOULD USE THE RAISED HAND ICON AT THE BOTTOM OF THE SCREEN. IF YOU ARE PARTICIPATING BY PHONE AND WISH TO COMMENT, SUPPRESS STAR 9 AND WAIT TO BE RECOGNIZED BY THE STAIR. STANDARD TIME LIMITS ON PUBLIC COMMENT APPLY. ALL RULES OF PROCEDURE AND DECORUM APPLY FOR MEETINGS CONDUCTED BY VIDEO MEETINGS AND IT IS PARTICULARLY IMPORTANT TO GIVE EACH SPEAKER A CHANCE TO COMPLETE THEIR REMARKS BEFORE THE NEXT SPEAKER STARTS. THAT LAST SENTENCE ALWAYS GIVES ME A LAP BECAUSE IT'S IMPOSSIBLE TO INTERRUPT SOMEBODY BECAUSE ONLY ONE PERSON SPEAKS AT A TIME. IT WAS MORE OF A PROBLEM WITH THE LIVE MEETINGS. CALL THIS MEETING TO ORDER. LET'S START WITH A ROLL CALL. WHAT DO WE CALL IT? ROLL CALL AND EX PARTE. BOARD MEMBER TREGUB.

>> I. TREGUB: PRESENT AND NO EX-PARTE.

>> BOARD MEMBER CLARK.

>> BOARD MEMBER CLARK.

>> PRESENT AND NO EX-PARTE.

>> BOARD MEMBER SHEAHAN.

>> PRESENT AND NO EX-PARTE.

>> SELAWSKY.

>> PRESENT NO EX-PARTE.

>> BOARD MEMBER OLSON.

>> PRESENT NO EX-PARTE.

>> BOARD MEMBER KAHN.

>> PRESENT NO EX-PARTE.

>> BOARD MEMBER KIM.

>> PRESENT NO EX-PARTE.

>> BOARD MEMBER PINKSTON.

>> PRESENT NO EX-PARTE.

>> CHAIR O'KEEFE.

>> S. O'KEEFE: PRESENT, NO EX-PARTE. NOW I WOULD LIKE TO GO TO THE PUBLIC, THE ATTENDEES HERE WITH US AND -- I SEE WHO HANDS UP. COT HANDS GO DOWN SO I KNOW WHAT IS GOING ON. RAISE YOUR HAND NOW IF YOU'RE HERE TO SEEK ON AN ITEM THAT NOT ON OUR AGENDA. THIS IS THE TIME FOR THAT. I SEE ONE, ANYONE ELSE HERE TO SPEAK ON AN ITEM NOT ON THE AGENDA? SEEING NONE, I'M GOING TO RECOGNIZE KELLY. I'M NOT A HOST, YOU GUYS. I SEE ROBIN O'DONNELL RAISING THEIR HAND. AS SOON AS I'VE BEEN GIVEN THE ABILITY, I WILL RECOGNIZE FIRST KELLY AND THEN ROBIN. KELLY, YOU HAVE THREE MINUTES.

>> THANK YOU. I SHOULD HAVE SPENT MORE TIME PREPARING MY SPEECH. I WANTED TO SAY A NUMBER OF THINGS TO THINK ABOUT. I WAS HAVING A CONVERSATION EARLIER TODAY WITH A FRIEND. WHO WAS

TELLING ME THERE HAS BEEN A 30% DROP IN FOREIGN STUDENTS NATIONWIDE AND DROP IN U.S. STUDENTS.

>> S. O'KEEFE: DO WE HAVE A TIMER? IS SOMEBODY DOING TIMER. SORRY KELLY TO INTERRUPT. IS VICKIE DOING THE TIMER TODAY? AND KELLY, YOU CAN START YOUR THREE MINUTES ONCE WE GET THE TIMER GOING. I APOLOGIZE AGAIN FOR INTERRUPTING YOU. I WANT TO GET THE PROCEDURES SET. ALL RIGHT, HERE WE GO.

>> OKAY, SO I'LL START AGAIN. SO BERKELEY REALLY IS LIKE A COMPANY TOWN. WE DEPEND ON UC BERKELEY FOR INCOME AND WE HAVE THOUSANDS OF STUDENTS AT UC BERKELEY. I HEARD THE NUMBER 45,000 STUDENTS IN TOTAL. IF WE DON'T HAVE ALL OF THOSE STUDENTS HERE, AND WE HAVE A DROP LIKE WE HAVE THIS YEAR WITH COVID, SUDDENLY WE MAY FIND THAT WE ARE NO LONGER IN A HOUSING CRISIS. I HAD A CONVERSATION WITH A FRIEND THIS MORNING THAT WE HAVE A 39% DROP IN FOREIGN STUDENTS NATIONWIDE AND 14% DROP IN COLLEGE APPLICATIONS OF U.S. STUDENTS. IF TESTIMONY HASN'T COME TO US YET, I WOULD SUGGEST THAT IT WILL. WE'RE ALSO FACING A CLIMATE MIGRATION OUT OF CALIFORNIA AND I'M INTERESTED IN FINISHING THE ARTICLE BY ABRAM LUSTGARTEN FROM SEPTEMBER 15TH. ALL OF THIS IS GOING TO IMPACT OUR NEED FOR HOUSING. AND MAY CLEAR UP OUR HOUSING SHORTAGE PROBLEM. THE OWE THING IS JUST WITH THE FIRES AND CLIMATE. WHEN WE LOOK AT BUILDINGS, I WOULD HOPE THAT ALL OF YOU REALLY LOOK AT HOW THOSE STRUCTURES ARE HARDENS ED FOR FIRE AND HOW WE'RE PAYING ATTENTION TO OUR NATIVE HABITAT AND

CREATING STRUCTURES THAT LIVE WITH OUR ENVIRONMENT. 97 YEARS AGO WAS THE 1923 FIRE THAT BURN ALMOST ALL THE WAY INTO DOWNTOWN AND OUR HISTORIANS NOT ON THIS BOARD, BUT IT WOULDN'T TAKE LONG FOR A FIRE TO GO FROM THE HILLS TO THE BAY. OUR FIRE CHIEF HAS HOLD ME WE COULD BURN TO THE GROUND IN AN HOUR FROM THE HILLS TO THE BAY IF A WIND IS COMING FROM THE EAST TO THE HILL. SO WE HAVE A LOT OF THINGS FACING US TO THINK ABOUT AND SO I WOULD LIKE TO JUST KIND OF PUT THIS INTO YOUR MIND AS YOU LOOK AT PROJECTS AND CONSIDER WHERE WE ARE BUILDING AND WHAT WE ARE BUILDING AND WHAT YOU ARE APPROVING. AND IF EACH DAY DIDN'T FEEL LIKE A MONTH, I WOULD HAVE HAD A MORE FORMAL SPEECH THAN WHAT I'M GIVING YOU. IT'S JUST THAT EVERY DAY IS SO PACKED WITH NEWS, IT'S HARD TO STAY ON TOP OF IT. I SEE ITCH ONE SECOND LEFT.

>> S. O'KEEFE: THANK YOU, KELLY. NOW ROBIN HAS PUT THEIR HAND DOWN. JOHN, DO YOU HAVE A QUESTION FOR KELLY?

>> J. SELAWSKY: I DO. CAN YOU HEAR ME?

>> S. O'KEEFE: YES.

>> J. SELAWSKY: MY AUDIO HAS BEEN [INDISCERNIBLE] LATELY. GOOD, I'M GLAD YOU CAN HEAR ME. KELLY, I HAVE A QUESTION.

>> S. O'KEEFE: I JUST DISABLED HER TALKING. WHAT IS YOUR QUESTION FOR KELLY.

>> J. SELAWSKY: IF ZAB'S AUTHORITY IS ZONING, HOW WOULD WE POSSIBLY -- I'M TRYING TO WRAP MY HEAD AROUND WHAT HER COMMENTS WERE AND HOW WE MIGHT ACTUALLY INCORPORATE THOSE.

>> S. O'KEEFE: KELLY, WOULD YOU LIKE TO ANSWER BRIEFLY IF YOU HAVE ANY CONCRETE SUGGESTIONS.

>> A COUPLE OF SUGGESTIONS. ONE IS I'D LIKE YOU NOT TO FEEL LIKE YOU ARE TOTALLY PRESSURED TO APPROVE EVERY PROJECT IN FRONT OF YOU. YOU KNOW, TO REALLY CONSIDER THE PROJECTS. TWO IS THE FIRE. YOU KNOW, WHERE ARE WE APPROVING BUILDINGS AND WHEN WE ARE APPROVING STRUCTURES IN FIRE ZONES, I THINK THE EVALUATION OF THAT SITE FROM OUR FIRE DEPARTMENT OUGHT TO COME FIRST RATHER THAN AFTER THE BUILDING IS APPROVED. AND WHEN THINGS GO TO DESIGN REVIEW, WE REALLY NEED TO LOOK AT THE DESIGN OF THOSE BUILDINGS AND WHAT THE EXTERIOR IS OF THOSE BUILDINGS TO PROTECT THE FUTURE UNIT OCCUPANTS. VINYL WAS THE CLADDING APPROVED ON A BUILDING LAST WEEK. IT SEEM LIKE THAT'S NOT THE MOST HARDENED EXTERIOR WE SHOULD HAVE IN THE CITY WHERE WE ARE IN A HIGH FIRE RISK. THAT'S MY QUICK ANSWER. I WASN'T EXPECTING QUESTIONS.

>> S. O'KEEFE: THANKS, KELLY, THAT IS HELPFUL. JOHN, YOU FEEL GOOD?

>> J. SELAWSKY: YES, THANK YOU, KELLY. NOW ROBIN PUT THEIR HAND DOWN. ROBIN, IF YOU'D LIKE TO SPEAK PUT YOUR HAND UP AND I CAN ENABLE YOUR TALKING. ROBIN, YOU HAVE THREE MINUTES. YOU'RE MUTED RIGHT NOW. THERE YOU GO. ROBIN, I DON'T KNOW IF YOU'RE TALKING BUT WE CAN'T HEAR YOU. ROBIN, I'M NOT GETTING ANYTHING. WELL, ROBIN SOMEONE ELSE HAS A HAND UP SO I'M GOING TO DISABLE YOUR TALK GOING RECOGNIZE SHANE AND MAYBE YOU'LL HAVE YOUR AUDIO

ISSUES WORKED OUT. SHANE. WOULD YOU LIKE TO SPEAK ON SOMETHING NOT ON THE AGENDA.

>> CALLER: HELLO I'M SHANE. I'M THE VICE CHAIR OF THE PUBLIC WORKS COMMISSION AND T-1 BOND MEASURE OVERSIGHT SUBCOMMITTEE. I WANT TO BRING TO YOUR ATTENTION THROUGH THE MONTH OF OCTOBER, YOU'LL BE SEEKING INPUT THROUGH INFRASTRUCTURE PROJECTS THROUGHOUT THE ENTIRE CITY OF BERKELEY. FOR DISTRICT 7 AND 8, THE MEETING IS ON OCTOBER 1ST, FIVE AND 6 IS OCTOBER 8TH, TWO AND THREE IS OCTOBER 15TH AND ONE AND FOUR IS OCTOBER 22ND AS WELL AS THE WATERFRONT AND AQUATIC PART OCTOBER 25TH. I KNOW THERE ARE IDEAS COMING FROM ALL AROUND THE CITY COVERING THINGS SUCH AS BATHROOMS AS WELL AS ALTERING TRAFFIC AREAS INTO RESTRICTIVE PEDESTRIAN ZONES. SO I WANT TO BRING THESE TO YOUR ATTENTION AND HOPEFULLY YOU CAN PROVIDE INPUT OF WHAT INFRASTRUCTURE PROJECTS YOU THINK COULD POTENTIALLY BENEFIT THE CITY MOVING FORWARD. THAT'S ALL I HAVE. THANK YOU.

>> S. O'KEEFE: IS THERE A PLACE TO FIND OUT MORE INFORMATION? IS THERE A WEBSITE?

>> YES, SO IT'S CITYOFBERKELEY.INFO/MEASURET-1.

>> S. O'KEEFE: WE'RE GOING TO GIVE ROBIN ONE MORE CHANCE. IF WE CAN'T HEAR YOU IN 20 SECONDS, WE'LL MOVE ON. ROBIN, I RECOGNIZED YOU. I CAN'T HEAR ANYTHING. I'M SORRY, ROBIN, WE'RE NOT ABLE TO HEAR YOU. WE'LL HAVE TO MOVE ON. BECAUSE THIS IS WHATEVER YOUR HERE TO SPEAK ABOUT IS NOT ON THE AGENDA, YOU'RE

WELCOME TO COME BACK ANOTHER TIME TO SAY WHAT YOU HAVE TO SAY. YOU CAN ALSO SUBMIT WRITTEN COMMENTS TO -- I SHOULD PROBABLY -- SHANNON, WHAT IS THE E-MAIL? ZAB@CITY OF BERKELEY? IT'S ON THE AGENDA ZAB@CITYOFBERKELEY.INFO. ONCE AGAIN, I'M GOING TO GO AHEAD AND MOVE ON FROM ROBIN. I'M SORRY WE DIDN'T GET TO HEAR WHAT YOU HAD TO SAY. OKAY, MOVING ON, SO NOW I'D LIKE TO TALK ABOUT THE AGENDA. WE HAVE ONE ITEM ON THE CONSENT -- WE HAVE THE MINUTES AND ONE ITEM ON THE CONSENT CALENDAR. AND THEN TWO ITEMS ON THE ACTION CALENDAR. FIRST I'M GOING TO CHECK IN WITH THE PUBLIC AND SEE IF ANYONE IS HERE TO SPEAK ABOUT 2724 MABEL STREET. SO IF YOU ARE HERE FROM THE PUBLIC AND LISTEN CAREFULLY BEFORE YOU RAISE YOUR HAND. ONCE YOU'VE HEARD MY INSTRUCTIONS IF YOU STILL WANT TO RAISE YOUR HAND, DO IT. IT'S ON CONSENT CALENDAR RIGHT NOW. IT IS RECOMMENDED TO APPROVE. I CAN'T PREDICT THE FUTURE, BUT I THINK IT'S LIKELY IF IT STAYS ON CONSENT CALENDAR IT WILL BE APPROVED WITHOUT A HEARING. IF YOU ARE OKAY WITH, DO NOT RAISE YOUR HAND. IF YOU HAVE AN OKAY TO THIS PROJECT OR HAVE SOMETHING YOU'D LIKE TO SAY THAT MAKES YOU FEEL IT DESERVES A FULL HEARING, RAISE YOUR HAND NOW AND WE CAN TAKE IT OFF THE CONSENT CALENDAR AND GIVE IT A FULL HEARING. I SEE SOMEONE FROM THE PUBLIC WOULD LIKE TO SPEAK ABOUT IT. THANK YOU, ROYA, THANK YOU FOR LETTING US KNOW YOU'RE HEAR. DOES ANYONE FROM THE BOARD HAVE A COMMENT ABOUT THAT? OR IT PROBABLY DOESN'T MATTER AT THIS POINT. THE

MABEL STREET IS COMING OFF THE CONSENT CALENDAR. CARRIE, YES. CARRIE, YOU'RE MUTED.

>> C. OLSON: I WAS GOING IT MAKE A MOTION TO PROVE THE MINUTES.

>> S. O'KEEFE: MOTION TO APPROVE THE CONSENT CALENDAR/MINUTES IS ON THE TABLE. JOHN.

>> J. SELAWSKY: SECOND.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND. FURTHER CONVERSATION ABOUT THE MINUTES. IGOR, DID YOU CATCH ANY ERRORS?

>> I. TREGUB: NO, I WASN'T LOOKING HARD ENOUGH.

>> S. O'KEEFE: OKAY SO LET'S DO A ROLL CALL VOTE ON THE CONSENT CALENDAR WHICH IS JUST THE MINUTES.

>> ZAB SECRETARY: BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER CLARKE, A NEED A VERBAL, PLEASE.

>> S. O'KEEFE: YOU'RE A MUTED, TERESA.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> YES.

>> BOARD MEMBER SELAWSKY.

>> YES.

>> ZAB SECRETARY: BOARD MEMBER OLSON.

>> YES.

>> BOARD MEMBER KAHN.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> BOARD MEMBER PINKSTON.

>> YES.

>> CHAIR O'KEEFE.

>> S. O'KEEFE: YES. OR YES, MY HUSBAND WANTS TO KNOW WHAT IS READY FOR DINNER. MINUTES ARE APPROVED. AND NOW WE'LL MOVE ON TO THE ACTION CALENDAR. THE FIRST ITEM IS MABEL STREET. IS SHE HERE?

>> ZAB SECRETARY: YES AND SHE WILL BE PROMOTED IN A SECOND.

>> SO 2724 MABEL, I WILL BRING UP MY SCREEN. SO YOU CAN SEE IS THAT SHOWING UP? 2724 MABEL STREET. THIS PROPERTY IS LOCATED AT THE SOUTHWEST CORNER OF MABEL AND WARD STREET. IT IS ACROSS THE STREET FROM SAN PABLO PARK LOCATED TO THE EAST AS SHOWN ON YOUR SCREEN. THIS IS A REQUEST TO CONSTRUCT A APPROXIMATELY 840-FOOT SECOND ADDITION TO A SINGLE-FAMILY DWELLING WITH EXISTING NONCONFORMING LOT COVERAGE. THE PROJECT INCLUDES A REQUEST TO EXTEND THE NONCONFORMING RIGHTS SIDE YARD SETBACK, THIS IS THE NORTH SIDE ALONG WARD. AND TO CONSTRUCT A DECK WHICH OVERLOOKS THE REAR YARD OF THE PROPERTY AND WOULD INCREASE THE USABLE OPEN SPACE BY 86 SQUARE FEET. ADDITIONALLY, THERE WAS A MISLABEL IN THE PLANS SO THEY'RE GOING TO BE HAVING A TOTAL OF FIVE BEDROOMS WHICH REQUIRES AN ADMINISTRATIVE USE PERMIT. THE

GROUND FLOOR PLANS INDICATE AN OFFICE OR PLAY ROOM. THIS WILL BE AN ADDITIONAL BEDROOM. IN ADDITION TO THE SECOND STOREY ADDITION THERE WILL BE A RECONFIGURATION OF THE FIRST FLOOR FOR MOSTLY OPEN FLOOR PLAN WITH TWO BEDROOMS AND A BATHROOM ON THE GROUND FLOOR AND A -- A BEDROOM AND I A BATHROOM ON THE GROUND FLOOR AS WELL AS THREE BEDROOMS ON SECOND FLOOR. THE PROJECT IS CONSISTENT WITH THE ZONING ORDINANCE IN THE GENERAL PLAN. STAFF RECOMMENDS APPROVAL. STAFF AS WELL AS THE ARCHITECT AND I BELIEVE THE RESIDENTS, OWNERS OF THE PROPERTY ARE AVAILABLE FOR QUESTIONS.

>> S. O'KEEFE: ANY QUESTIONS FOR STAFF AT THIS TIME? ALL RIGHT. SEEING NONE, ARE THE APPLICANTS HERE? CAN THEY BE PROMOTED? APPLICANTS, WE'RE GOING TO GIVE YOU THREE MINUTES -- NO, FIVE MINUTES TO SPEAK. YOU DON'T HAVE TO USE THE FULL-TIME BUT YOU CAN TO SPEAK ABOUT YOUR PROJECT AND WE'LL ASK QUESTIONS IF WE HAVE THEM AT THE END.

>> I'M A RESIDENT OF 2427 MABEL STREET. THANK YOU FOR TAKING THE TIME TO SPEAK WITH US TONIGHT OF OUR HOME. WE'VE LIVED HERE SINCE 2010 AND WE MET IN BERKELEY AND GOT MARRIED IN THE BRAZILIAN ROOM IN 2008. I'M A BERKELEY NATIVE. JESSICA IS ALSO A CALIFORNIA NATIVE AND LIVED IN THE BAY AREA SINCE 2002. SINCE HER MOTHER MOVED IN WITH US AND OUR BIRTH OF THREE SONS OUR FAMILY HAS GROWN AND WE CAN USE MORE ROOM FOR OUR FAMILY. WE LOVE OUR NEIGHBORHOOD AND CHERISH THE MEMORIES WE MADE AND HAVE

A HARD TIME PICTURING LIVING ANYWHERE ELSE. WE PLAN TO STAY IN OUR HOME FOR MANY YEARS TO COME AND HOPE TO BE A PART OF THE COMMUNITY AROUND SAN PABLO PARK.

>> S. O'KEEFE: THAT'S IT?

>> THAT'S IT.

>> S. O'KEEFE: OKAY. GREAT THANK YOU SO MUCH. ARE THERE ANY QUESTIONS FOR THE APPLICANT? I DIDN'T MEAN THAT -- IT WAS GREAT. USUALLY PEOPLE GO ON LONGER. QUESTIONS FOR THE APPLICANT. HOLD ON. SOMEBODY HAS THEIR HAND UP. NOBODY DOES. NO QUESTIONS. WELL, THANKS SO MUCH. WE MIGHT HAVE QUESTIONS FOR YOU LATER. APPLICANT ANDUS BRANDT.

>> I WANTED TO GIVE BACKGROUND. I'M THE ARCHITECT.

>> S. O'KEEFE: GO AHEAD. SURE.

>> I'M ANDUS BRANDT AND THE I AM THE ARCHITECT WORKING ON 2427 MABEL. THE APPLICANTS ARE OWNERS THAT LIVED THERE FOR 10 YEARS. AND WANT TO LIVE THERE FOR THE FORESEEABLE FUTURE. VARIOUS ITERATIONS, WE'VE COME TO THIS MODEST ADDITION INCREASING THE AREA BY 876 SQUARE FEET. JESSICA'S MOM, GIVEN OUR PRESENT-DAY REALITIES, I'M NOT GOING TO SAY THAT THEY'RE GOING CRAZY, BUT THINGS ARE KIND OF CABIN FEVERISH. THE CURRENT CONDITION IS FOUR BEDROOM -- YOU HEARD ABOUT THE DESCRIPTION. THERE IS A TINY GARAGE AND A POST REAR YARD THERE. THE PLAN IS TO INCREASE THE SIZE TO THIS FIVE BEDROOM THREE BATH HOUSE. THE SAME ARCHITECTURAL VERNACULAR WHICH IS A CRAFTSMAN BUNGALOW

STYLE. MASTER BEDROOM AND TWO KIDS WILL BE UPSTAIRS. THE OTHER KIDS' BEDROOM DOWNSTAIRS. I WOULD LIKE TO EMPHASIZE A FEW THINGS ABOUT THE DESIGN. THE ADDITION IS RELATIVELY SMALL CENTERED SO THE FRONT AND BACK ROOF AND EAVES CAN REMAIN. THE CORNER LOT LOCATION MEANS THERE WILL BE LITTLE -- ON PRIVACY. THAT'S KIND OF MY FEELING ABOUT IT. I KNOW THERE HAS BEEN SOME CONCERN FROM PARTICULARLY ONE NEIGHBOR. AND ANOTHER PERSON FURTHER AWAY, BUT THE NEIGHBOR NEXT DOOR MET HIM, DAVID, HE'S CONCERNED ABOUT HIS PRIVACY. WE'VE MITIGATED THAT PRIVACY IN A COUPLE OF WAYS AND WE CAN TALK ABOUT THAT IF IT COMES UP. THERE A ROOF DECK IN THE BACK THAT IS QUITE SMALL. WE PUT IN A TRELLIS THERE. AND THE WINDOWS OF THE BEDROOM NEXT IT THAT, WE'RE PUTTING BLINDS AND CURTAINS ON THOSE. SO I REALLY DON'T HAVE MUCH ELSE TO SAY. THANK YOU.

>> S. O'KEEFE: THANK YOU SO MUCH. I APPRECIATE IT. OKAY. SO JOHN HAS A QUESTION FOR THE APPLICANT.

>> J. SELAWSKY: TO THE APPLICANT. YES. THANK YOU SHOSHANA. I JUST WANT TO BE CLEAR, HOW MANY BEDROOMS ARE THERE?

>> THERE ARE THREE BEDROOMS --

>> J. SELAWSKY: PROPOSED BEDROOMS.

>> FIVE PROPOSED BEDROOMS. THE DESIGN THAT WE ORIGINALLY SUBMITTED, THERE WERE FOUR AND WE OPENED UP ONE OF THE BEDROOMS TO THE DINING ROOM WHICH -- WELL I'M NOT GOING IT SHARE SCREENS.

>> S. O'KEEFE: WE HAVE THE PLANS UP ON THE SCREEN NOW.

>> WHERE IT SAYS "OFFICE PLAY" DOWN NEAR DOOR NUMBER 6 WHICH IS A CLOSET DOOR NEXT TO THE DINING ROOM, THAT WAS AN OFFICE PLAY ROOM WITH THE WALL BETWEEN THE DINING ROOM OPENED UP. AND THE APPLICANT DECIDED THEY -- THE OWNER DECIDED THEY WANTED TO EACH THAT BEDROOM SO WE CLOSED IT BACK UP AND I FORGOT TO TAKE THE LABEL AND CHANGE. IT'S FIVE BEDROOMS WITH THAT ROOM.

>> J. SELAWSKY: SO I'LL ASK STAFF AND APPLICANT BOTH. IF YOU LOOK AT PAGE FIVE, IT SAYS BEDROOMS EXISTING FOUR PROPOSED NO CHANGE. SO HAS THERE BEEN A SUPPLEMENTAL STAFF REPORT THAT I'M MISSING?

>> THERE HAS BEEN A SUPPLEMENTAL PLAN SUBMITTED -- POSTED ON THE WEBSITE. BUT BY THE TIME YE NOTICED THE MISLABEL, WE WEREN'T ABLE TO REVISE THAT.

>> J. SELAWSKY: I JUST WANT TO BE REALLY CLEAR. HOW MANY BEDROOMS ARE PROPOSED?

>> STAFF: A TOTAL OF FIVE BEDROOMS ARE PROPOSED.

>> J. SELAWSKY: THAT WOULD TAKE AN AUP.

>> STAFF: CORRECT. THE FINDINGS ARE THE SAME AS THE FINDINGS FOR THE ADDITION AND THE CONDITIONS OF THE NONCONFORMING SETBACK.

>> J. SELAWSKY: THANK YOU.

>> S. O'KEEFE: ANY OTHER QUESTIONS FOR THE APPLICANT? OKAY. NOW I'M GOING TO GO TO THE PUBLIC. AND ROYA, WE'D LOVE TO HEAR WHAT YOU HAVE TO SAY. YOU HAVE TWO MINUTES.

>> I JUST WANTED TO SAY THANK YOU TO ALL OF YOU DOING SECRETARY OF STATE FOR THE COMMUNITY. DOING SERVICE TO THE COMMUNITY AND THANK YOU TO THE ARCHITECT THAT DID AN AMAZING JOB KEEPING THE BUILDING IN THE FLAVOR OF ITS ORIGINAL INTENTION. I'VE LIVED KITTY-CORNER BEHIND AT 2727 MATTHEW STREET FOR 30 SOME YEARS. MY CONCERN IS THE HEIGHT. I DON'T KNOW -- I'M NOT VERSED IN YOUR PROCESS, SO FORGIVE ME IN I'M ERRING IN WHEN AND HOW I SPEAK. BUT MY CONCERN IS NEVER REALLY UNDERSTANDING HOW HIGH THE BUILDING WILL BE AND WHETHER FROM MY UPSTAIRS WINDOW I WILL STILL HAVE ACCESS TO VIEWING THE HILLS TO THE EAST WHICH IS AN CORN PART OF MY MENTAL HEALTH. AND TO THE VALUE OF THE PROPERTY. I HAVE ONE MINUTE LEFT, THAT'S BASICALLY MY CONCERN. I DON'T HOLD IT AGAINST ANYBODY A GROWING FAMILY TO NEED AN ADDITION BUT I WOULD LIKE TO KNOW WHAT THE PROCESS IS NAVIGATING THE HEIGHT. I HAD ASKED THE OWNERS TO ASK THE ARCHITECT IF THEY'RE GOING TO PUT UP A PILLAR OR A BAMBOO POLE OR SOMETHING THAT DELINEATES WHERE THE TOP OF THE ADDITION WILL BE. I'VE SEEN THAT ON NEW CONSTRUCTION BUT I HAVE YET TO SEE ANYTHING LIKE THAT.

>> S. O'KEEFE: ONE MORE MEMBER OF THE PUBLIC WOULD LIKE TO SPEAK. AFTER THAT THE APPLICANT TEAM IS GOING TO COME BACK UP TO RESPOND HOPEFULLY THEY'LL HAVE A RESPONSE FOR YOU AT THAT TIME. FIRST, I'M GOING TO RECOGNIZE KELLY. I'M GOING TO RECOGNIZE KELLY. YOU HAVE TWO MINUTES, KELLY.

>> AM I ON?

>> S. O'KEEFE: YES.

>> I DON'T THINK I NEED TWO MINUTES. I'M HAVING TROUBLE PULLING IT UP TO GET A BETTER LOOK. BUT I HEARD THE WORD "TRELLIS" AND I THOUGHT OF PIPE VINE AND THE PIPE VINES SWALLOW TAIL. I WOULD -- SINCE THEY ARE LOOKING AT INCREASED PRIVACY, I WOULD SUGGEST AND ASK THAT THEY CONSIDER PLANTING PIPE VINE AND THEN THEY WILL HAVE THESE AMAZING LITTLE CATERPILLARS CRAWLING ON THAT PIPE VINE AND JUST THE GORGEOUS IRIDESCENT SWALLOW TAIL BUTTERFLIES. THAT WOULD BE A NICE ADDITION AND WE HAVE A SHORTAGE OF PIPE VINE WHICH IS A NATIVE PLANT. WE HAVE A SHORTAGE OF THESE PLANTS IN OUR NEIGHBORHOOD. I MISS SEEING THE CATER PILLARS AND BUTTERFLIES THIS YEAR.

>> S. O'KEEFE: THANK YOU, KELLY, I THINK I WANT TO PLANT THAT. ANYONE ELSE FROM THE PUBLIC WISH TO SPEAK ON THIS ITEM? WE'RE GOING TO BRING IT BACK TO THE APPLICANT. APPLICANT TEAM, DO YOU HAVE A RESPONSIBILITY TO EITHER OF THE COMMENTS? THEY'RE PROMOTED, RIGHT?

>> I'LL SAY SOMETHING. ACTUALLY, THIS IS A SMALL ADDITION. SUBSTANTIALLY SMALLER THAN WHAT WE ORIGINALLY STARTED WITH. I THINK THAT ROYA CONCERNS ARE OVERBLOWN. I THINK SHE'LL STILL HAVE A NICE VIEW OF THE HILLS. WE TALKED ABOUT PUTTING UP A STOREY POLE AND IT SEEMED UNNECESSARY BUT COULD BE DONE. IT'S AN EXPENSE. IF WE DON'T HAVE TO DO IT, WE WON'T DO IT. THAT'S WHY

THERE WASN'T ONE DONE. I THINK I DON'T REMEMBER THE DIFFERENCE, BUT MAYBE IT'S AN 8-FOOT CHANGE. I CAN'T REMEMBER. BUT ANYWAY, THE ADDITION ITSELF IS SMALL. I THINK THAT SHE'LL STILL SEE THE HILLS.

>> I DON'T HAVE ANYTHING ELSE TO ADD. I'M SORRY I DIDN'T BACK TO YOU, ROYA ABOUT THE HEIGHT AND STOREY POLES BUT WE DID TALK TO LAYAL ABOUT PUTTING UP STOREY POLES AFTER OUR CONVERSATION WITH YOU.

>> S. O'KEEFE: SO THAT'S AN ANSWER. IF POSSIBLE -- IS IT POSSIBLE FOR YOU PROBABLY THE ARCHITECT, TO GIVE AN EXACT ANSWER OR EVEN LAYAL AS TO WHAT IS THE TOTAL INCREASE IN HEIGHT? I THINK WE OWE IT TO THIS NEIGHBOR TO GIVE THEM AN ACCURATE ANSWER. WE SHOULD BE ABLE TO ANSWER THAT QUESTION WHAT IS THE TOTAL HEIGHT DIFFERENCE. IS IT POSSIBLE TO GET THAT RIGHT NOW?

>> STAFF: CAN YOU HEAR ME?

>> YES.

>> GREAT. SO THE CODE, THE R-1 CODE DOES REGULATE AVERAGE HEIGHT IN THE DISTRICT. THE AVERAGE HEIGHT IS INCREASING BY 8 FEET GOING FROM ABOUT 13 FEET IN HEIGHT TO 21½. AND THE MAXIMUM IS 28. IN TERMS OF MAXIMUM HEIGHT WHICH WOULD BE THE HIGHEST OF THE PITCH IS GOING FROM 14.8 TO APPROXIMATELY 23½. SO THE PITCH ITSELF IS GOING ABOUT 10 FEET IN INCREASE. THE AVERAGE INCREASE IS 8.

>> S. O'KEEFE: OKAY, THANK YOU. THAT'S A GOOD, PRECISE,

ACCURATE ANSWER. I HOPE THAT WAS HELPFUL. I CAN'T SEE SHANNON. SHANNON, WHAT DO YOU WANT TO ADD?

>> ZAB SECRETARY: THE MAXIMUM HEIGHT ALLOWABLE WITHOUT PERMIT IS 28 FEET. IT COULD BE UP TO 35 WITH A USE PERMIT AND IN TERMS OF THE NUMBER OF STOREYS, THEY WENT FROM ONE STOREY TO TWO. THIS DISTRICT DOES ALLOW THREE.

>> S. O'KEEFE: THANK YOU, SHANNON. THAT IS HELPFUL. WHEN THE SCREEN IS SHARED, I CAN ONLY SEE THREE PEOPLE. RAISE YOUR BLUE HANDS. THERE WE GO. CHARLES IS RAISING HIS BLUE LAND, DO YOU HAVE A QUESTION?

>> C. KAHN: SHANNON, IF I UNDERSTAND YOU CORRECTLY, I'M SAYING THIS FOR THE BENEFIT OF THE NEIGHBOR CONCERNED ABOUT THE HEIGHT. THE REASON WE'RE HEARING THIS TONIGHT IS NOT BECAUSE THIS BUILDING EXCEEDS ANY ALOUD LOT COVERAGE. BUT WE'RE LOOKING AT IT.

>> STAFF: I KNOW YOU DIRECTED IT TO SHANNON, BUT I'M GOING TO ANSWER. THAT'S CORRECT, CAN CHARLES, THE ISSUE IS WHEN YOU HAVE A PROPERTY THAT IS OVER LOT COVERAGE OR OVER DENSITY, THE ADDITIONS WOULD BE REVIEWED AND APPROVED BY STAFF GET TO ZAB FOR PUBLIC HEARING. IN THIS CASE THE LOT IS SLIGHTLY UNDERSIZED. THE ORIGINAL FOOTPRINT HAS RENDERED THIS PROJECT NONCONFORMING FOR LOT COVERAGE. THAT MEANS THAT YOU GUYS GET TO REVIEW IT.

>> C. KAHN: AND LAYAL, I NOTICED THAT THE SECOND STOREY ADDITION IS SIGNIFICANTLY SMALLER THAN THE FIRST FLOOR. AND THE

FIRST FLOOR IS 55% LOT COVERAGE. VISUALLY I CAN SEE THAT THE SECOND STOREY ADDITION IS 60% OF THE GROUND FLOOR AREA. IT'S PROBABLY WELL UNDER THE 40%. SO THIS SECOND STOREY THAT WE ARE BEING ASKED TO APPROVE TONIGHT IS LESS -- IF THIS BUILDING WERE BUILT WITH A 40% LOT COVERAGE, THIS SECOND STOREY ADDITION WOULD BE SITTING ON A PERMITTED BUILDING ENCROACHING INTO THE 40%. AND WE WOULDN'T BE HEARING IT TONIGHT. RIGHT?

>> STAFF: YES, IF THIS EXISTING BUILDING WAS CONFORMING FOR LOT COVERAGE, THIS ADDITION WOULD NOT REQUIRE A BOARD REVIEW. YOU KNOW, ANOTHER WAY TO THINK OF IT VISUALLY IS IF YOU WERE TO LOOK AT THE COVERAGE OF THIS SECOND FLOOR FOR THE WHOLE SITE, THAT IS LESS THAN THE MAXIMUM ALLOWED IN THE DISTRICT.

>> C. KAHN: I ASK THESE QUESTIONS FOR THE BENEFIT OF THE NEIGHBOR WHO HAD CONCERNS ABOUT VIEWS AND SO FORTH CAN. I JUST WANT TO REASSURE -- WE'LL GO TO COMMENTS LATER.

>> S. O'KEEFE: JOHN.

>> J. SELAWSKY: IT SAYS THE HOST HAS DISABLED MY VIDEO.

>> S. O'KEEFE: I DIDN'T.

>> WELL -- WHAT DOES THAT MEAN?

>> S. O'KEEFE: I DON'T KNOW. I CAN ASK YOU TO START YOUR VIDEO. THERE WE GO. YOUR VIDEO STARTED.

>> IS IT OKAY NOW?

>> WE CAN'T SEE YOUR FACE. I THINK WE CAN SEE YOUR LAB.

>> THAT'S NOT GOOD.

>> S. O'KEEFE: DO YOU WANT ME TO DISABLE YOUR VIDEO? WHILE JOHN IS STRUGGLING WITH THAT.

>> J. SELAWSKY: THAT IS WEIRD.

>> S. O'KEEFE: CAN YOU TURN AROUND, JOHN?

>> HE HAS TO PRESS THAT BUTTON.

>> J. SELAWSKY: OKAY. ALL RIGHT.

>> S. O'KEEFE: SO WHILE JOHN IS FIGURING THAT OUT, I THINK -- NO MORE QUESTION FOR THE APPLICANT? LET'S CLOSE THE HEARING AND BRING IT BACK FOR BOARD COMMENTS. BOARD COMMENTS. MOTIONS ARE FINE TOO. TERESA RAISE YOUR BLUE HAND. CARRIE RAISED HER BLUE HAND.

>> C. OLSON: I'M TRYING TO FOLLOW YOUR RULES, TEACHER. I WOULD LIKE TO MOVE APPROVAL WITH THE ADDITION OF THE FIFTH BEDROOM. I JUST WANT TO CLARIFY TO MAKE SURE THAT WE'VE GOT THAT.

>> S. O'KEEFE: WE HAVE A MOTION FOR APPROVAL. CHARLES.

>> I'D LIKE TO SECOND AND THANK YOU CARRIE FOR THE SPECIAL NOTE ON THE MOTION. I APPRECIATE THAT.

>> S. O'KEEFE: TERESA. NO. JOHN, I'M AFRAID TO CALL ON JOHN.

>> J. SELAWSKY: I'M NOT GOING TO TURN THE VIDEO ON. I DON'T KNOW WHAT IS GOING ON NOW WITH VIDEO. SORRY, ALL. CAN I CLARIFY WHAT THE MOTION WAS? ARE YOU SUGGESTING A FIFTH BEDROOM?

>> S. O'KEEFE: CARRIE, YOU WANT TO REPEAT THAT?

>> C. OLSON: THE FIFTH BEDROOM IS PART OF THE PROJECT NOW. WE WERE SHOWN THAT BY THE ARCHITECT. IT'S A CONVERSION OF SOMETHING THEY'RE CALLING OFFICE RIGHT NOW WHICH MY UNDERSTANDING IT BEING ON THE FIRST FLOOR WAS A BEDROOM -- IS A BEDROOM NOW. SO THEY'RE KEEPING IT, MAINTAINING IT AS A BEDROOM. IT'S A FIFTH BEDROOM.

>> J. SELAWSKY: I HAVE A COMMENT ABOUT THAT WHEN THE TIME IS RIGHT.

>> S. O'KEEFE: THIS IS THE TIME.

>> J. SELAWSKY: I AM PROBABLY GOING TO VOTE TO APPROVE. BUT I -- WHEN WE GET A STAFF REPORT THAT SAYS FOUR BEDROOMS AND IT COMES IN TO ZAP AND IT'S FIVE BEDROOMS, THAT TROUBLES ME A LITTLE BIT. I WOULD LIKE IT TO BE CLEAR ABOUT WHAT WE ARE APPROVING. SO WHEN I READ THE STAFF REPORT AND LOOK OVER THE PLANS, I KNOW WHAT I'M APPROVING. I DON'T WANT TO HAVE TO -- I DON'T WANT TO HAVE TO SWITCH GEARS THE NIGHT OF ZAB. OKAY? AND I THINK MOST ZAB MEMBERS WOULD PROBABLY HAVE SOME SYMPATHY FOR THAT. I'M NOT CALLING OUT STAFF IN ANY WAY. WITH COVID, IT'S A HARD TIME RIGHT NOW AND IF IT SAYS FOUR BEDROOMS, THAT'S WHAT IT SHOULD BE. SO I'M A LITTLE TROUBLED BY THAT. THAT'S ALL I'M GOING TO SAY, THANK YOU.

>> S. O'KEEFE: THANK YOU, JOHN. IGOR.

>> I. TREGUB: THANK YOU SO MUCH. I MEAN TO ERR IS HUMAN. I'M NOT FINGER POINTING. I WANT TO MAKE A SUGGESTION THAT WHEN

STAFF CATCHES ERRORS LIKE THIS OR ZAB MEMBERS CATCH ERRORS THAT BE SENT OUT TO US AS A SUPPLEMENTAL PRIOR TO THE MEETING. OR IF THAT'S NOT FEASIBLE OR IF IT'S NOT CAUGHT IN TIME FOR THAT TO HAPPEN, THAT BEFORE WE GO INTO THE PROJECT APPROVAL, BECAUSE THIS WOULD HAVE BEEN ON THE CONSENT CALENDAR HAD IT NOT BEEN PULLED. THAT STAFF JUST INFORM US ABOUT SUCH CHANGES. BUT BASED ON WHAT I'M HEARING, I MEAN, THIS SOUNDS STRAIGHTFORWARD OF AN APPROVAL BUT I REALLY WANT TO DOUBLE CLICK ON THE POINT THAT JOHN WAS MAKING AND HOPEFULLY WITH THAT SUGGESTION, IT WOULD PROVIDE MORE CLARITY FOR US AND MEMBERS OF THE PUBLIC.

>> S. O'KEEFE: THANKS IGOR. NEXT UP WE HAVE TERESA.

>> T. CLARKE: WE DID NOT SEND IT OUT AS A SUPPLEMENTAL?

>> STAFF: NO, SO THE ARCHITECT TOLD ME THAT THEY HAD SEEN A DISCREPANCY VERSUS WHAT THEY HAD DISCUSSED. BUT FRANKLY, WITH THE COMMUNICATION WE HAVE PRINTED PLANS THAT WERE TO OUR ADMIN STAFF DISTRIBUTED TO YOU AND WE TRIED TO FIGURE OUT THE ISSUE. DIDN'T GIVE ENOUGH TIME TO. BUT WE UPLOADED THE ACCURATE PLANS AND THE ARCHITECT NOTED THAT HE STILL HAD A MISLABEL ALTHOUGH --

>> IT'S A BEDROOM WHETHER IT'S LABELED OR NOT. DID YOU ALREADY HAVE THE FIVE BEDROOM IN YOUR PERMIT? IN OTHER WORDS YOU HAVE TO APPROVE THIS, RIGHT? THAT HAS TO BE PART OF THE PERMIT, THE FIFTH BEDROOM. STAFF REPORT.

>> STAFF: NO AND WITH THE PLANS FOR THE STAFF REPORT, WE DID NOT HAVE THAT. IT WAS CLARIFIED THERE WAS BACK AND FORTH

WITH THE PLANS.

>> WHAT IS IN OUR RECOMMENDED APPROVAL?

>> STAFF: IN YOUR RECOMMENDED APPROVAL IS AN OFFICE PLAYGROUND.

>> SHE SAID THE FINDINGS WERE THE SAME.

>> BECAUSE AN OFFICE PLAY ROOM CAN BE USED AS A BEDROOM.

>> CORRECT.

>> I WANTED TO MAKE SURE OF THAT. WHETHER IT'S LABELED AS A BEDROOM OR OFFICE OR A YOGA ROOM, IT'S STILL CONSIDERED A BEDROOM.

>> S. O'KEEFE: LET ME RECOGNIZE SHANNON I WANT TO SAY I HEAR WHAT YOU'RE SAYING. IF THERE ARE CHANGES LIKE THIS AT THE 11TH HOUR, WE'LL PUT TOGETHER SUPPLEMENTAL INFORMATION SO THAT YOU CAN BE PREPARED TO HAVE THE DISCUSSION THAT NEEDS TO BE HAD. IN THIS INSTANCE, THERE ARE A COUPLE OF THINGS. ONE, THERE IS A DIFFERENCE BETWEEN A PLAY ROOM AND A BEDROOM AND IT HAS TO DO WITH THE LEVEL OF ACCESS. I THINK ABOUT CAN YOU ROLL -- THERE IS A DEFINITION, IF YOU HAVE A BIG OPENING, IT'S A PLAY ROOM. IF YOU HAVE A SMALLER OPENING WHERE YOU CAN CLOSE THE DOOR, IT'S A BEDROOM. AND THAT IS SOMETHING THAT STAFF AND THE ZAB IS MINDFUL OF BUT NOT SOMETHING THAT MEMBERS OF THE PUBLIC OR ARCHITECTS OFTEN THINK OF. THEY THINK OF I CHANGED THE DOOR BY 6-INCHES AND NOW I'VE CHANGED THE DOORWAY, NOW IT'S A BEDROOM. AN APPLICANT MIGHT NOT THINK TO CALL THAT OUT AS A SUBSTANTIVE CHANGE TO

STAFF. AS WE ALL SAID, AS WE WORK REMOTELY AND THERE ARE HARD COPIES AND WE LOOK AT THINGS IF AT THE LAST MINUTE, THERE IS A CHANGE THAT WASN'T IMPORTANT TO THE APPLICANT BUT HAS RAMIFICATIONS IN THE CITY OF BERKELEY. THAT'S A LITTLE MORE BACK STORY. I APPRECIATE YOUR FLEXIBILITY BOTH WITH STAFF, BUT ALSO WITH THE APPLICANT DURING THIS TIME IN ACCOMMODATING THESE KINDS OF CHANGES THAT IT WASN'T CLEAR THAT THERE WERE RAMIFICATIONS TO.

>> S. O'KEEFE: THANK YOU, SHANNON.

>> I APPRECIATE THAT EXPLANATION.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I WANT TO SAY I APPRECIATE YOUR CONCERN ABOUT GETTING THE ACCURATE INFORMATION. THAT'S WHAT STAFF PROVIDES OVERWHELMINGLY TO EVERYBODY. WE'RE ALL HUMAN, EVERYBODY HERE MAKES MISTAKES. IN MY YEARS WITH LAYAL, SHE'S ONE OF THE MOST THOROUGH AND ACCURATE PLANNERS I'VE HAD THE PLEASURE TO KNOW. THIS IS GOING TO HAPPEN. I'M SURE IT WON'T BE THE LAST TIME IT HAPPENS WITH SHANNON OR ME OR ANYBODY ELSE HERE. THEY'LL DO THEIR BEST. I THINK IGOR'S IDEA OF GETTING A NOTICE IN ADVANCE THAT SHANNON ACKNOWLEDGED SOUNDS LIKE THE RIGHT WAY TO ADDRESS IT IN THE FUTURE. I WANT YOU TO KNOW I APPRECIATE THE GOOD WORK YOU DO LAYAL BECAUSE YOU DO A GOOD WORK.

>> S. O'KEEFE: PATRICK.

>> P. SHEAHAN: I NOTICED THAT ROOM THAT APPEARED TO BE A

BEDROOM INITIALLY. I WAS PREPARED TO EITHER ASK TO PULL THE ITEM OR FIRST OF ALL ASKING STAFF FOR CLARIFICATION. I'M GLAD TO HEAR THAT IT WAS PROVIDED. AND I THINK AS A NON-CONTROVERSIAL ITEM IT'S MORE FALLS UNDER THE CATEGORY OF COMPLETE, ACCURATE INFORMATION IS ALWAYS HELPFUL AND I FRESH. BUT THE MAGNITUDE OF THIS IS ENTIRELY UNDERSTANDABLE AS A SIMPLE MISTAKE. AND -- BUT I DID WANT TO COMMEND BOTH THE OWNERS AND THE ARCHITECT ON I THINK A REALLY NICELY EXECUTED PROJECT MODESTLY SCALED, WELL-MASSED. SYMPATHIES FOR THE OWNER THAT MAY LOSE SOME OF THE [INDISCERNIBLE] BUT I SUGGEST IF CONSOLATION YOU HAVE A PRETTY HANDSOME BUILDING. SO I JUST WANTED TO MAKE THAT COMMENT. I THINK IT'S WELL-EXECUTED PROJECT.

>> DITTO.

>> S. O'KEEFE: THANK YOU PATRICK AND CHARLES. AND TERESA. I MUTED YOU TERESA, SORRY. THERE YOU GO.

>> T. CLARKE: SO I THINK AT THE BEGINNING OF THE MEETING, THAT'S WHERE STAFF SHOULD HAVE LET US KNOW. I THINK YOU GUYS HAVE DONE THAT BEFORE, RIGHT? LET US KNOW. BECAUSE IF WE HAD APPROVED IT ON CONSENT, I JUST DON'T KNOW HOW THE FIFTH BEDROOM WOULD BE IN THERE. YOU KNOW WHAT I MEAN? ANYWAY, BUT I THINK IT'S ALWAYS OKAY EVEN IF IT'S ON CONSENT TO BRING UP LIKE SOMETIMES YOU'LL TELL US ABOUT SOME CONDITIONS OF APPROVAL THAT WILL HAS BEEN ADJUSTED SO WE CAN INCORPORATE THOSE. SO I'M A LITTLE CONFUSED WHY THAT DIDN'T HAPPEN, BUT I'M READY TO VOTE ON

THE MOTION.

>> S. O'KEEFE: LAYAL.

>> I AGREE WITH YOUR COMMENTS AND I APPRECIATE THEM. WE -- IF WE HAD NOT HAD THE CHANCE TO DISCUSS THIS DISCREPANCY THAT THE ARCHITECT BROUGHT TO MY ATTENTION, THEN THE PROJECT WOULD HAVE BEEN APPROVED WITH FOUR BEDROOMS AND A PLAY ROOM AND SUBSEQUENTLY ANY SORT OF A ADDITIONS COULD BE DISCUSSED THROUGH THE PROCESSES THAT EXIST.

>> S. O'KEEFE: THANK YOU VERY MUCH. I LIKE TERESA'S SUGGESTION TO VOTE ON THIS. SHANNON, WOULD YOU DO A ROLL CALL VOTE IN THE SAME ORDER YOU DID BEFORE.

>> BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> YES.

>> BOARD MEMBER SELAWSKY.

>> YES.

>> BOARD MEMBER OLSON.

>> YES.

>> BOARD MEMBER KAHN.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> BOARD MEMBER PINKSTON.

>> YES.

>> AND CHAIR O'KEEFE.

>> S. O'KEEFE: YES. MOTION PASSES. MABEL STREET YOU HAVE YOUR USE PERMITS APPEALABLE TO THE CITY COUNCIL. THAT'S IT FOR THIS PROJECT. THANK YOU VERY MUCH EVERYONE. WE'LL NOW MOVE ON TO -- THERE ARE TWO ARCH STREET PROJECTS, WE'RE GOING IT HEAR THEM BOTH AND I HAVE TO LOOK UP THE ORDER TO GET IT RIGHT. 1850 ARCH. SO JUST FOR MEMBERS OF THE PUBLIC WHO ARE HERE TO SPEAK ABOUT THIS, I JUST WANT TO ACKNOWLEDGE THAT THERE ARE TWO PROJECTS THAT FEEL LIKE ONE PROJECT. BUT THEY ARE TWO SEPARATE PROJECT BECAUSE THEY ARE TWO SEPARATE BUILDINGS. WHEN WE HAVE TIME FOR PUBLIC COMMENT, KEEP MOO MIND THERE WILL BE TWO OPPORTUNITIES. SO FIGURE OUT HOW YOU WANT TO MANAGE THAT IF YOU HAVE COMMENTS THAT PERTAIN TO ONE BUILDING OVER ANOTHER, YOU'LL WARRANT TO WAIT. WE'LL HAVE TWO SEPARATE HEARINGS ON THE PROJECTS SO WE'LL DO OUR BEST IT KEEP OUR CONVERSATION FOCUSED ON ONE AND THEN THE OTHER. WITH THAT SAID, CAN WE HAVE A STAFF REPORT ON 1850 ARCH, PLEASE.

>> GOOD EVENING. THIS IS USE PERMIT DP 2019-0212 AT 1850 AVERAGE WHICH IS TO ADD 18 BEDROOMS TO A MULTI-FAMILY RESIDENTIAL BUILDING FOR A TOTAL OF 30 BEDROOMS. THE LAND USE DESIGNATION IS MEDIUM DENSITY RESIDENTIAL. THE PROPOSAL REQUIRES

USE PERMIT PURSUANT TO 23 D FOR ADDITIONAL BEDROOMS. THE FIFTH ON THE PARCEL AND IT'S STAFF RECOMMENDATION THAT THE PROJECT IS EXEMPT FROM CEQA OR SECTION 15301 EXISTING FACILITIES. SO THE SITE IS LOCATED ON THE WEST SIDE OF ARCH STREET IN A MIXED USE RESIDENTIAL NEIGHBORHOOD ONE HALF BLOCK OF THE UC CAMPUS. TWO BLOCKS WEST OF DOWNTOWN BERKELEY AND SHATTUCK. THE EXISTING BUILDING IS A THREE-STOREY 10 UNIT BUILDING CONSTRUCTED IN 1926. IT CONTAINS 10 UNITS WITH SIX ONE-BEDROOM AND TWO-THREE BEDROOM UNITS AND OUTDOOR OPEN SPACE IS PROVIDED. MINIMUM SETBACK FROM THE FRONT AND RIGHT SIDE PROPERTY LINES AND LOT COVERAGE AND PARKING. THE PROJECT DOES NOT HAVE ANY EXTERIOR CHANGES. THESE ARE INTERIOR MODIFICATIONS TO ACCOMMODATE THE ADDITIONAL 18 BEDROOMS AND TWO BATHROOMS. ONCE COMPLETED, THE BUILDING WOULD CONTAIN ONE, ONE BEDROOM, 6 THREE BEDROOM AND TWO FOUR BEDROOM UNITS. THE APPLICANT HOSTED A PRE-APPLICATION MEETING AND DISCUSSED CONCERNS AND INCLUDING POTENTIAL NOISE FROM THE CONSTRUCTION AND THESE UNITS ARE CURRENTLY OCCUPIED AND SUBJECT TO RENT CONTROL. SO THE APPLICANT NOTIFIED TENANTS OF THE PROJECT AND THEIR RIGHTS UNDER THE TENANT PROTECTION ORDINANCE. THEY'RE IN YOUR SUPPLEMENTAL COMMUNICATIONS AND ATTACHMENT THREE. SO IN ORDER TO APPROVE THE USE PERMIT TO ADD BEDROOMS 13 THROUGH 18 ON THE PARCEL REQUIRES THE BOARD TO MAKE A NO DETRIMENT FINDING UNDER 23 B THERE IS NO ADOPTED STANDARD PARTICULARLY FOR THIS BEDROOM ORDINANCE AND SO TABLE 6 SHOWS

WHAT WILL ZAB HAS BEEN EVALUATING IN TERMS OF THE AMOUNT OF COMMON SPACE RELATIVE TO THE NUMBER OF BEDROOMS AND USABLE OPEN SPACE OF A PARCEL EXCEED THE MINIMUM OVER 1600 SQUARE FEET. WITH THE ADDITION OF BEDROOMS, THE COMMON SPACES WILL BE REDUCED BY 15% ON AVERAGE WHICH STAFF BELIEVES MAINTAINS A REASONABLE AMOUNT OF COMMON LIVING SPACE IN THE UNIT. IN SOME UNITS WOULD BE IMPROVED FOR THE APPLICANT STATEMENT. STAFF BELIEVES THAT THE ADDITIONAL BEDROOMS IS CONSISTENT ACCOUNT PURPOSES OF THE DISTRICT BY MAINTAINING A REASONABLE AMOUNT OF USABLE OPEN SPACE AND WITH THE LACK OF EXTERIOR CHANGES WOULD NOT RESULT IN ANY IMPACT TO LIGHT AND AIR. AND SUPPORTS THE HIGH DENSITY RESIDENTIAL USE IN THE R-3 DISTRICT. IT'S LOCATED NEAR TRANSIT AND OTHER SERVICES. IN TERMS OF TENANT PROTECTIONS, THE APPLICANT INTENDS TO COMPLETE THE PROJECT OVER TIME AS TENANTS MOVE OUT OF THE BUILDING VOLUNTARILY AND INFORMED THE TENANTS OF THE PLAN AND THE EXISTING UNITS WOULD REMAIN RENT CONTROLLED AFTER RENOVATION AND THEY WOULD BE NOTIFIED. STAFF WILL ALSO BELIEVES THAT THE PROJECT IS CONSISTENT WITH THE GENERAL PLANS, AGAIN, BY SUPPORTING AN INCREASE IN THE NUMBER OF BEDROOMS AND INCREASING THE HOUSING SUPPLY. BECAUSE OF THESE CONSISTENCIES, STAFF RECOMMENDS APPROVAL OF THE PROJECTS INCLUDING FINDINGS AND CONDITIONS.

>> S. O'KEEFE: QUESTIONS FOR STAFF? IGOR.

>> I. TREGUB: THANK YOU. THREE QUESTIONS. JUST TO CONFIRM,

OTHER THAN HALF UNIT THAT -- AFTER THE TENANT MOVES OUT WOULD BE COMBINED WITH AN EXISTING UNIT, ARE THERE ANY OTHER PROPOSALS TO ALTER ANY FLOOR PLANS OF EXISTING UNITS? OR IS IT THE WORK BASICALLY HAPPENING JUST TAKING THE GROUND FLOOR AND CARVING THAT OUT INTO UNITS OUT OF NOT ANYTHING THAT IS RESIDENTIAL RIGHT NOW?

>> STAFF: SO THE FOOTPRINT OF THE ACTUAL UNITS WOULD CHANGE FOR UNITS 5 AND THAT PORTION OF A-5S THAT CONSTRUCTED AND SEPARATED OUT OF THE PORTION OF A-5. THEY WOULD CORRECT THAT NONCONFORMING CONDITION TO BRING IT BACK TO UNIT 5-A. THE NUMBER OF UNITS WOULD NOT CHANGE FROM THE PROJECT.

>> I. TREGUB: I GUESS MY QUESTION IS OTHER THAN THE FOOTPRINT OF 5 AND 5-A ARE THERE ANY OWE PROPOSED CHANGES TO ANY OTHER FOOTPRINTS?

>> STAFF: NO, THESE ARE MOVING WALLS IN THE UNIT.

>> I. TREGUB: OKAY. AND NO WORK WOULD COMMENCE UNTIL AFTER THE EXISTING TENANTS GET RELOCATION PAYMENTS AND SO FORTH? OKAY. I JUST WANTED TO CONFIRM BECAUSE I THINK THIS IS THE FIRST TIME I'VE SEEN USE OF THE RELOCATION ORDINANCE AS PART OF THE FINDS AND CONDITIONS. I REALLY APPRECIATE STAFF INCLUDING THAT AS ONE OF THE CONDITIONS. MY OTHER TWO CONDITIONS HAVE TO DO WITH PARKING AND ONE OF THE CONCERNS BROUGHT UP BY TENANTS. PARKING FIRST, I SEE THAT PARKING IS NOT BEING INCREASED. I PERSONALLY SUPPORT AS FOLKS KNOW ON THIS BOARD NO INCREASES TO PARKING.

HOWEVER, I JUST WANTED TO CONFIRM THAT TENANTS WHO MOVE IN WOULD NOT BE ELIGIBLE FOR RPP PERMITS.

>> STAFF: THAT'S A GOOD QUESTION BECAUSE THIS IS IN THE RPP. BECAUSE IT'S NOT A NEW BUILDING, NEW BUILDINGS MAY BE NOT ELIGIBLE FOR RPPS. BECAUSE THIS IS AN EXISTING BUILDING, I BELIEVE THAT THEY WOULD STILL BE ELIGIBLE FOR THAT PROGRAM.

>> I. TREGUB: UNLESS WE PUT IN A CONDITION, CORRECT?

>> STAFF: YES.

>> I. TREGUB: OKAY. THANK YOU. ON THE WASTE MANAGEMENT PROGRAM AND THIS IS WHERE I MIGHT NEED TERESA'S KEEN EYE, I THINK IN THE PAST SOMETIMES WE HAVE REQUIRED A MANAGEMENT PROGRAM TO TAKE PLACE. BUT MOSTLY IT'S BEEN AROUND GROUP LIVING ACCOMMODATIONS. BUT I'M CURIOUS IF THIS IS -- MAYBE MY QUESTION IS A MORE GENERAL, WHAT ARE EXPECTATIONS FOR QUALIFIED FAMILY HOUSING AROUND A MANAGEMENT PROGRAM?

>> STAFF: THIS IS PUBLIC WORKS AND ZERO WASTE MANAGES TRASH COLLECTION. THAT IS A SEPARATE SECTION OF THE BMC THAT REQUIRES OWNERS TO PROVIDE THE NUMBER OF BINS AND THE CAPACITY REQUIRED BASED ON THE AMOUNT OF TRASH THAT THE BUILDING WOULD GENERATE. BERKELEY DOES HAVE REGULATIONS AND ORDINANCES REGARDING WASTE MANAGEMENT. I DON'T KNOW SPECIFICALLY THE PLAN, BUT, AGAIN, THAT WOULD BE A CONDITION OF APPROVAL IF YOU'RE INTERESTED IN THAT.

>> I. TREGUB: THANK YOU.

>> S. O'KEEFE: THAT'S IT IGOR? GO AHEAD PATRICK.

>> P. SHEAHAN: WHAT IS THE QUESTION FOR STAFF? WHAT IS THE QUESTION APPLICABILITY OF DENSITY STANDARDS UNTIL REGARDS TO THIS PROJECT?

>> STAFF: DENSITY STANDARDS. SO THE PROJECT DOES NOT -- SO THIS DISTRICT DOES NOT HAVE A DENSITY STANDARD. IN TABLE 4. UNDER DWELLING UNITS.

>> P. SHEAHAN: OKAY. IT STRIKES ME VISUALLY THAT THERE SEEMS TO BE ALREADY DENSE AS AN EXISTING AND EXTREMELY DENSE AS PROPOSED. I CAN'T HELP BUT WONDER WHY WOULD NOT DENSITY STANDARDS APPLY HERE? ED.

>> STAFF: THERE IS NO DENSITY STANDARD IN THE R-3 DISTRICT.

>> IT'S ABOVE HER PAY GRADE TO ANSWER THAT QUESTION.

>> THAT'S A PLANNING COMMISSION QUESTION.

>> S. O'KEEFE: WE TRIED TO FIX THIS, BUT IT WILL TAKE A WHILE.

>> P. SHEAHAN: THANK YOU.

>> S. O'KEEFE: JOHN, YOU HAVE A QUESTION?

>> J. SELAWSKY: TO FOLLOW UP ON PATRICK, I UNDERSTAND THERE IS NO OR LITTLE DENSITY STANDARDS HERE. BUT IF THOSE OF YOU WHO HAVE WALKED UP THAT STREET OR DRIVEN DOWN THAT STREET, IT'S A NARROW ONE-WAY STREET. I'M A LITTLE CONCERNED ABOUT ADDING THIS MANY UNITS ON A NARROW ONE-WAY STREET.

>> S. O'KEEFE: DO YOU HAVE A QUESTION FOR STAFF, JOHN?

>> J. SELAWSKY: YES. IS THERE GOING TO BE A TRAFFIC, YOU

KNOW, SOME KIND OF TRAFFIC MITIGATION STUDY? IS THERE GOING TO BE SOME KIND OF -- WHAT ARE WE LOOKING AT IN TERMS OF, AGAIN, IT'S A NARROW ONE-WAY STREET. AND ADDING HOW MANY MORE PEOPLE? SO WHAT WILL ARE BEE GOING TO LOOK AT? WHAT IS THE CITY GOING TO LOOK AT HERE?

>> STAFF: THE SITE IS POX MAT ON A BIKEWAY. A YOU'RE A HALF MILE FROM THE BART STATION AND SHATTUCK IS A SHORT WALK. PEOPLE WOULD BE INTERESTED IN BIKE GOING WALKING. THE TRAFFIC IMPACT ASSESSMENT IS REQUIRED FOR 2030 NEW UNITS. THIS PROJECT NOT CREATING ANY NEW UNIT.

>> S. O'KEEFE: SO NOTHING I THINK IS THE ANSWER TO JOHN'S QUESTION.

>> J. SELAWSKY: I GUESS THAT WAS NOTHING.

>> S. O'KEEFE: THAT'S THE ANSWER. THAT'S GREAT. ANY OTHER QUESTIONS FOR STAFF AND THEN WE CAN ASK THE APPLICANT MORE QUESTIONS TOO AFTER THEY GET IT TALK. PATRICK.

>> P. SHEAHAN: YES, KIND OF -- THIS -- IT HAS SOME SIMILARITY. ON THE BASEMENT PLAN, THERE IS A SPACE THAT BACKS UP TO THE GARAGE LABELED "NEW STUDY" BUT A DOORWAY-SIZED OPENING IS FRAMED WITHOUT A DOOR INDICATED. ALTHOUGH IT APPEARS TO BE A SPACE THAT COME VERY EASILY BE USED AS A BEDROOM. BUT IT DOESN'T HAVE EGRESS WINDOW AND IT'S PROBABLY CALLED A STUDY FOR THAT REASON.

>> STAFF: YES.

>> IS THAT LEGAL TO CREATE A SPACE THAT COULD SIMPLY BE USED AS A BEDROOM EASILY? AS OPPOSED TO -- I GUESS THERE IS NO WAY TO REGULATE THAT.

>> STAFF: THERE IS EGRESS AND VENTILATION APARTMENTS.

>> EXACTLY. THAT'S THE PROBLEM WITH THAT SPACE. THERE IS NONE. OKAY. THANK YOU.

>> S. O'KEEFE: FURTHER QUESTIONS FOR STAFF. SEEING NONE, LET'S HEAR FROM THE APPLICANT. I DON'T SEE THE APPLICANT HERE, CAN THEY GET PROMOTED? SO APPLICANT TEAM, YOU HAVE FIVE MINUTES. VICKIE, ARE YOU GOING TO DO THE TIMER? VICKIE, ARE YOU GOING TO DO THE TIMER?

>> GOOD EVENING, FOLKS. I WANT TO SHARE MY SCREEN HERE.

>> S. O'KEEFE: FINE WITH ME. DO YOU HAVE THE ABILITY TO DO THAT? LET'S TRY IT.

>> GOOD EVENING EVERYBODY AND THANK YOU FOR THE TIME TONIGHT.

>> S. O'KEEFE: I DON'T KNOW IF PEOPLE CAN SEE VICKIE, THERE IS AN ISSUE, HE'LL START YOUR TIMER IN A SECOND. IS THERE IS AN ISSUE WHEN THERE IS A SCREEN BEING SHARED, THE PUBLIC CAN'T SEE ALL THE WINDOWS, BUT THEY CAN PROBABLY SEE ME BECAUSE I'M THE HOST SO I'LL DO THE TIMER. GO AHEAD, MARK.

>> IN THE SLIDE SHOW YOU'LL SEE IS COMBINED IT FOR THE TWO SITES BECAUSE I THOUGHT THERE WAS A CHANCE YOU PUT THEM TOGETHER. I WANT TO APPRECIATE STAFF. I HAD NOT SEE THE ANALYSIS

METHODOLOGY DONE FOR THIS PROJECT -- DONE BEFORE. IT'S INTERESTING. AND ALSO KELLER HAMMARGREN'S COMMENTS. I'VE ALWAYS THOUGHT THAT THE CITY'S HOUSING SUPPLY CONVERSATION SHOULD BE DYNAMIC AND I APPRECIATE THAT TOO. TONIGHT WE'RE BRINGING YOU SOMETHING A LITTLE BIT DIFFERENT THAN WHAT WE TYPICALLY BRING YOU. WE'RE BRINGING A PROJECT THAT IN MY OPINION IS -- WE ARE ADDING CAPACITY TO EXISTING BUILDINGS WITHOUT PROPOSING TO DEMOLISH THEM, ET CETERA. THIS LOCATION THAT YOU CAN SEE HERE IS INCREDIBLY PROXIMAL TO BOTH THE CAMPUS, DOWNTOWN TRANSIT, WALKABLE GOODS AND SERVICES AND ALL THOSE THINGS. THE PROJECT AND WE'VE APPRECIATED OUR RELATIONSHIP WORKING WITH THE RENT BOARD AND STAFF AND THE ZONING ADJUSTMENTS BOARD, TRILLION THERE WILL KNOB REPLACEMENTS AND EVICTIONS RELATED TO THE CHANGES. SIGNIFICANT BUILDING SYSTEM UPGRADES TO HE GET THEM READY FOR THEIR NEXT HUNDRED YEARS. AN OPPORTUNITY TO PUT MORE PEOPLE IN RENT STABILIZATION ORDINANCE. UNIT 5-A GETS COLLAPSED INTO UNIT 5 AND WE THINK THAT'S WHERE IT STARTED IN THE FIRST PLACE. TO ANSWER BOARD MEMBER SHEAHAN'S QUESTION, THERE ARE NO NEW UNITS PROPOSED HERE. SO THE DENSITY TECHNICALLY IS NOT CHANGING EVEN THOUGH THERE ARE BEDROOMS BEING ADDED. THIS IS THE OUTSIDE OF THE BUILDING FROM A STREET PERSPECTIVE 1850 AND YOU SAW THE SITE PLAN WITH STAFF. YOU KNOW, THESE BULLET POINTS WALK THROUGH WHAT IS BEING DONE, VOLUNTARILY RETROFITS. RENOVATIONS THAT WILL OCCUR EITHER WITH A RESIDENT WHO IS MOVED OUT AND MOVED BACK IN

OR WHEN THE RESIDENT MOVES OUT WHICH IS MORE TYPICALLY GOING TO BE THE CIRCUMSTANCES. HERE IS WHAT THE UNIT 5 AND 5-A RECOMBINATION LOOKS LIKE. WE MOVED THE ENTRY DOOR OUT CLOSER TO THE ENTRY. THE NEXT ONES ARE FOR THE NEXT PROJECT. SO I'LL HOLD THOSE. WITH THAT, I'LL TRY TO ANSWER ANY QUESTIONS YOU HAVE. AND WE'RE EXCITED TO BE ABLE TO DO A PROJECT SUCH AS THIS. IT ADDS MORE PEOPLE, BUT IT'S A WALKABLE ENVIRONMENT AND THESE FOLKS ARE NOT GOING TO BE BRINGING CARS TO THE CITY, ESPECIALLY IF YOU ADD THE CONDITION OF APPROVAL FOR THE NO-PRECEDENTIAL PARKING PERMITS. I BELIEVE THE POLICY IS THAT -- IT'S NOT TRIGGERING PARKING CHANGES BECAUSE THE SQUARE FOOTAGE IS NOT CHANGING. I'M HAPPY TO TRY TO ANSWER ANY QUESTIONS YOU HAVE. THE OWNER IS ON TO TRY TO ANSWER ANY QUESTIONS RELEVANT TO THE RESIDENTS AND THE WORK THEY'VE BEEN DOING. I KNOW IT'S BEEN A LITTLE BIT TOUGH A COUPLE OF TIMES BECAUSE THIS IS A NEW OWNERSHIP GROUP, THEY'RE GETTING USED TO THE BUILDINGS AND WHAT IS GOING ON AND THEY'RE DOING THEIR BEST TO GET THE WORK GOING ON IT. THANKS VERY MUCH.

>> S. O'KEEFE: THANK YOU. QUESTIONS FOR THE APPLICANT. I SEE TWO. IGOR, YOU'RE HE A FIRST.

>> I. TREGUB: THANK YOU, MARK. I DON'T KNOW IF THIS IS FOR YOU OR THE OWNERS. BUT FOR SITTING TENANTS AFTER THEY ARE TEMPORARILY RELOCATED WISH TO COME BACK AND LIVE IN THE UNITS, BUT MAYBE CANNOT CARRY AN INCREASE IN RENT RESULTING IN AN INCREASE IN BEDROOMS FOR AMENITIES, WHAT WOULD BE THE PLAN

THERE?

>> I BELIEVE THAT THEIR INTENT IS TO PRIMARILY -- THAT WOULD ONLY BE THE EXCEPTION. IN FACT, THEY'RE GOING TO TRY TO WAIT UNTIL VACATE A UNIT BEFORE THEY START THE WORK IN THEM.

>> THAT'S CORRECT. THERE IS NO INTENTION WHATSOEVER OF RELOCATING ANY EXISTING TENANTS AT ALL. WE'RE SIMPLY GOING IT WAIT UNTIL EACH OF THE UNITS ROLLS ON THE NATURAL COURSE WHEN THE TENANTS SELECT TO RELOCATE VOLUNTARILY. ONLY THEN WILL WE PERFORM THE IMPROVEMENTS TO THOSE UNITS.

>> I. TREGUB: AS A FOLLOW-UP QUESTION, SOME OF THOSE RELOCATIONS MAY TAKE PLACE AT DIFFERENT TIMES. I ASSUME NOT EVERYONE THERE IS A STUDENT WHO IS ON A SEMESTER SYSTEM. ARE YOU PROPOSING A PHASED APPROACH TO HOW CONSTRUCTION IS GOING TO BE DONE?

>> YEAH. I MEAN THE -- EACH UNIT THAT GETS RENOVATED, AGAIN, IT HAPPENS -- IT MAY NEVER HAPPEN. SOMEONE MAY -- WE DON'T KNOW WE'LL GET TO EVERY UNIT. WHEN A UNIT TURNS AND IS VACATED, THAT POINT WE'LL RENOVATE THE UNIT AND NOT BEFORE THEN. YOU USE THE WORD "RELOCATION" BUT THERE ISN'T ANY RELOCATION. WHEN A UNIT VACATES, WE'LL RENOVATE IT LIKE ANY LANDLORD WOULD RENOVATE ANY UNIT THAT VACATES OVER TIME.

>> I THINK THE DISPLACEMENT PROVISIONS ARE IN FROM AS A BACKSTOP JUST IN CASE.

>> DISPLACEMENT NOT RELOCATION.

>> S. O'KEEFE: IGOR WAS ASKING ABOUT THE NATURE OF THE CONSTRUCTION AND IT CAN BE DONE PIECEMEAL.

>> YES.

>> S. O'KEEFE: APARTMENT BY APARTMENT.

>> THAT'S THE INTENT. THE BUILDING WILL NEVER EMPTY OUT ALL TOGETHER.

>> S. O'KEEFE: THANK YOU. JOHN, QUESTION FOR THE APPLICANT.

>> J. SELAWSKY: ACTUALLY, I APPRECIATE YOUR RESPONSES TO IGOR'S QUESTIONS AND SENSITIVITY TO TENANTS, THEIR RIGHT TO LIVE THERE BASICALLY. I WAS A LITTLE TROUBLED BY A LETTER I THINK BY A TENANT AT 1850 WHO CLAIM -- AND I'M NOT -- I DON'T KNOW IF IT'S TRUE, ACCURATE OR NOT BUT WHOSE CLAIM WAS THAT WORKERS WERE COMING IN AND WITHOUT PRIOR, YOU KNOW, APPROVAL, AND COMING IN AND DOING WORK, AND MY QUESTION IS BASICALLY DO YOU, THE APPLICANTS, DO YOU PROVIDE TENANTS WITH EXISTING BERKELEY TENANTS' RIGHTS PER BERKELEY ORDINANCES?

>> YES, I MEAN I'M NOT THE PROPERTY OWNER HERE AND I'LL LET RICCARDO ANSWER FOR HIMSELF. THERE HAS BEEN A LOT OF ADJUSTMENT BETWEEN THE NEW RESIDENTS AND NEW OWNERS AS THEY'VE BEEN TRYING TO COME IN. THE BUILDINGS WERE IN A FAIR AMOUNT OF DISREPAIR WHEN THE OWNERSHIP CHANGE OCCURRED. THERE IS A LOT OF WORK THAT NEEDS TO BE DONE. THERE ARE MISSTEPS AND MISCOMMUNICATION BUT I DON'T THINK ANY WORK HAS BEEN DOING ANY WORK INSIDE ANYBODY'S UNIT WITHOUT NOTICE. IT MAY HAVE BEEN CROSS COMMUNICATION WITH

RESPECT TO WORK ON THE PROPERTY WHERE SOMEBODY MAY HAVE NOT GOTTEN -- BUT NOT WITHIN THE UNIT WITHOUT NOTICE.

>> J. SELAWSKY: THANK YOU, I APPRECIATE THAT. THANK YOU, MARK. AGAIN, I'M GOING BACK TOKING WHAT I SAID EARLIER. IT'S A NARROW ONE-WAY STREET. WE'RE ADDING -- I'M NOT SURE HOW MANY TENANTS IN TOTAL FOR THE TWO UNIT. BUT IT'S SIGNIFICANT, RIGHT? SO WHAT ABOUT DROP-OFFS? WHAT ABOUT DELIVERIES AND UBER AND LYFT. FOOD DELIVERIES. ON A NARROW ONE-WAY STREET. HOW ARE THOSE HANDLED?

>> A COUPLE OF THINGS IN RESPONSE TO THAT BOARD MEMBER SELAWSKY. I APPRECIATE THE QUESTION. OUR STREET JUST BECAME A ONE-WAY STREET WITHIN THE LAST COUPLE OF YEARS BECAUSE OF THE RECOGNIZED, I BELIEVE, THE LOWER PORTION OF IT. BECAUSE OF HOW BAD THE PUBLIC SAFETY WAS RIGHT THERE. WITH THAT LIKE THE WAY THE TWO INTERSECTIONS FORK OFF OF EACH OTHER. THAT IMPROVED CIRCUMSTANCES HERE QUITE A BIT. YOU DON'T GET NEARLY AS MUCH TRAFFIC CROSSING THROUGH INTEREST. IT'S ONLY THE FOLKS LIVING ON THAT BLOCK FOR THE MOST PART IN MY EXPERIENCE. WE'VE LOOKED AT THAT STREET FOR A LONG TIME BECAUSE WE WERE DOING SOME OF THE WORK WITH THE SEMINARY RIGHT THERE AS WELL. SO THESE FOLKS, YOU KNOW --

>> THE SEMINARY ON THE CORNER?

>> ACROSS --

>> ON 1ST AND ARCH?

>> UP THE STREET. MANY.

>> J. SELAWSKY: OKAY.

>> I SPENT A LOT OF TIME UNTIL THIS NEIGHBORHOOD OVER THE LAST FEW YEARS. AND I THINK THAT THOSE OPERATIONS ARE GOING TO CONTINUE AS THEY HAPPEN. THERE IS A TOTAL OF 18 NEW BEDROOMS WHICH WILL BE AT LEAST 18 NEW PEOPLE. THAT IS PROBABLY GOING TO IMPLEMENT OVER THE COURSE OF SEVERAL YEARS GIVEN RESIDENTS NEEDING TO MOVE OUT BEFORE WORK CAN BE DONE. I DON'T THINK THERE IS GOING TO BE AN APPRECIABLE DIFFERENCE HERE. THIS IS A DENSE NEIGHBORHOOD ALREADY. THERE IS A MARKET NEARBY, THERE ARE GOODS AND SERVICES AND THIS IS A NEIGHBORHOOD LIKE THE SOUTH SIDE WHERE PEOPLE DON'T NEED TO OWN A CAR IN ORDER TO HAVE GREAT ACCESS TO EVERYWHERE. AND ALMOST EVERYTHING. AT LEAST FROM A BERKELEY PERSPECTIVE.

>> J. SELAWSKY: OKAY, THANK YOU, MARK.

>> S. O'KEEFE: NEXT WE HAVE A QUESTION FOR THE APPLICANT FROM CHARLES.

>> C. KAHN: OKAY. HERE WE GO. FOR SOME REASON MY VIDEO WOULDN'T START. SO FOLLOWING UP ON JOHN'S QUESTION ABOUT PICKUPS AND DELIVERIES. THIS IS SOMETHING THAT HAS BEEN QUITE A BIT OF -- WE'VE HAD QUITE A BIT OF DISCUSSION ABOUT IT ON LARGER PROJECTS. ONE OF THE THINGS THAT WE HAVE GOING FOR US HERE AND I'M ANTICIPATING THE NEXT PROJECT BECAUSE IT APPLIES TO BOTH PROJECTS. WE HAVE A DRIVEWAY THAT IS AN OPEN DRIVEWAY. AND I WAS

WONDERING IF YOU AS A REPRESENTATIVE OF THE APPLICANT -- THE OWNER WOULD BE WILLING TO ACCEPT A CONDITION FROM THIS BOARD THAT WOULD REQUIRE THE OWNERSHIP TO ADVISE -- FIRST, THAT THE OWNERSHIP WOULD SUPPORT DELIVERIES BEING MADE IN THAT DRIVEWAY. THAT WILL THEY -- IF THE GRUB HUB SHOWS UP IF THEY'RE ALLOWED TO USE THE DRIVEWAY. THAT'S MY FIRST QUESTION. IF AN UBER DRIVER COMES BAY THAT THEY'RE ALLOWED TO USE THE DRIVEWAY?

>> A CONDITION OF APPROVAL TO REQUIRE THE DRIVEWAY TO REMAIN CLEAR AND UNOBSTRUCTED, FOR SHORT TERM DELIVERIES AND UBER PICKUP SEEMS FINE. RICARDO, DO YOU HAVE A PROBLEM WITH THAT?

>> NO, I THINK THAT THE DRIVEWAY CAN BE USED PROBABLY NO DOUBT ALREADY IS USED IN THAT CAPACITY. IT'S IMPORTANT TO US THAT MEANS OF EGRESS INTO AND OUT OF THE PARKING LOT AND DRIVEWAY REMAINS OPEN AT ALL TIMES FOR THE TENANTS. IT'S TO BE TOTALLY CLEAR IS IT OKAY FOR UBER TO COME IN AND DROP SOMEONE OFF? YES, THAT IS TOTALLY FINE. IS IT OKAY FOR EVERYONE TO GET OUT OF THEIR CAR AND WALK INTO THE BUILDING? NO IT'S NOT FINE.

>> FAIR ENOUGH. IF IT'S OKAY WITH YOU, THE OTHER QUESTION WOULD BE WOULD YOU BE WILLING TO ACCEPT A CONDITION THAT YOU NOTIFY EXISTING TENANTS AND NEW TENANTS AS THEY MOVE IN THAT IT IS ACCEPTABLE TO OWNERSHIP FOR PURPOSES OF UBER, LYFT, QUICK DROP-OFF PICKUP NOT JUST FOR LEAVING A CAR THERE IN THE DRIVEWAY BECAUSE THAT'S A PROBLEM, THAT THEY BE NOTIFIED THAT THERE IS NO

OPPOSITION TO THAT FROM THE OWNERSHIP. I THINK -- I'M TRYING TO ADDRESS JOHN'S CONCERN IN A PRACTICAL WAY.

>> RICARDO, THAT WOULD BE A LINE ITEM IN YOUR LEASE PAPER WORK FOR NEW RESIDENTS.

>> IF I'M NOT MISTAKEN, THAT LANGUAGE ALREADY EXISTS IN THE NEW LEASES THAT WE SIGNED. WHICH EXPLICITLY SAYS THE DRIVEWAY MUST REMAIN OPEN AT ALL TIMES OR -- IF ONE IS IN THE DRIVEWAY, TO BE IN THE CAR AND READY TO MOVE IT IF NEED BE. YOU'RE NOT PERMITTED TO BLOCK THE DRIVEWAY. THAT'S IN THE LANGUAGE OF OUR RELEASE, BUT WE'RE MORE THAN HAPPY TO COMMIT TO EMPHASIZING THAT REQUIREMENT WITH ANY NEW TENANTS MOVING FORWARD.

>> I THINK YOU DESCRIBED THE KEY POINT. AS LONG AS SOMEONE IS OCCUPYING THE CAR, IT'S FAIR TO USE THE DRIVEWAY. AND THAT -- OKAY, I JUST WANTED TO KNOW WHERE WE HAVE SOME LATITUDE BECAUSE I'M TRYING TO -- I THINK JOHN HAS A LEGITIMATE CONCERN HERE. IF THERE STAY DESIGN SOLUTION, WOULD I LIKE YOU TO -- THANKS.

>> S. O'KEEFE: FURTHER QUESTIONS FOR THE APPLICANT. STILL WAITING TO HEAR FROM THE PUBLIC. LOOKING FORWARD TO THAT. AND AS EVERYONE KNOWS, WE'LL HAVE THE APPLICANT BACK UP AFTER PUBLIC COMMENT IF MORE QUESTIONS COME UP. THANK YOU VERY MUCH. LET'S GO TO THE PUBLIC. IF YOU ARE HERE TO SPEAK ON THIS ITEM, I WANT TO REMIND YOU THERE ARE TWO ARCH STREET ITEMS. YOU'RE WELCOME TO MAKE COMMENTS CERTAINLY ABOUT THIS ONE OR IF YOUR COMMENTS ARE

ABOUT BOTH PROJECTS, THAT'S OKAY. AS LONG AS IT RELATE TO 1850 IN SOME WAY. WHO HERE FROM THE PUBLIC WOULD LIKE TO SPEAK ON THIS ITEM? RAISE YOUR HAND OR PRESS STAR 9. I GOT TWO SO FAR. JUST SO I HAVE AN IDEA OF HOW MANY THERE ARE. I WOULD FRESH IF YOU'RE HERE TO SPEAK ON THIS ITEM IF YOU COULD RAISE YOUR HAND NOW BECAUSE IT WILL HELP ME FIGURE OUT. WE HAVE A CAPTIONER BREAK COMING UP. RIGHT NOW I ONLY SEE TWO. WE'LL GO AHEAD AND START WITH KELLY. KELLY, YOU HAVE TWO MINUTES.

>> CALLER: I DON'T THINK I NEED ALL THAT, BUT HEARING THE DISCUSSION, DOES THERE NEED TO BE A CONDITION AND I KNOW IGOR IS THE EXPERT ON TENANTS, I BELIEVE ON ZAB. BUT THERE NEED TO BE SOMETHING SPECIAL SO PEOPLE ARE NOT PUSHED OUT OF THEIR APARTMENTS. AND THERE IS NOTIFICATION IF THERE IS CONSTRUCTION IN THE BUILDING SO PEOPLE KNOW IF AN APARTMENT BELOW OR ABOVE THEM IS GOING TO HAVE CONSTRUCTION THAT THEY'VE BEEN ADEQUATELY NOTIFIED. THOSE WERE MY CONCERNS.

>> S. O'KEEFE: THANKS KELLY. WE'LL MAKE SURE WE GET AN ANSWER FOR YOU. I'M GETTING A DINNER DELIVERY. SARAH ROBERTS. YOU HAVE TWO MINUTES.

>> THIS IS PETER. THAT'S MY WIFE'S ACCOUNT. I FORMERLY LIVED AT 1850 ARCH STREET FOR MANY YEARS AND I'M THE OWNER OF THE PROPERTY ADJACENT 1862. I'VE BEEN IN CONTACT WITH THE TWO TENANTS, ROBIN O'DONNELL, BOTH OF WHICH ARE OVER 65, I BELIEVE. AND HAVE BEEN THERE MAYBE 25 YEARS. AND NEITHER OF WHOM ARE

HAPPY ABOUT DEVELOPMENTS THERE. ROBIN IS UNABLE TO GET ON TO THE ZOOM CALL. HE WAS TRYING EARLIER IN THE DAY IF YOU REMEMBER. BUT IN INCREASING THE NUMBER OF OCCUPANCY -- OF PEOPLE IS LIKE THREE TIMES. I'M NOT SURE OF THE CITY'S INTENT. IS THE CITY ACTIVELY NOT OPPOSING THIS OR ARE THEY ENCOURAGING TRANSITION OF THIS NEIGHBORHOOD TO HIGHER DENSITY? IT'S NOT CLEAR TO ME. AND AS THE OWNER OF THE BUILDING NEXT DOOR, ARE YOU SAYING YOU'RE ENCOURAGING ME TO SUBDIVIDE MY BUILDING INTO THREE TIMES AS MANY UNITS? YOU HAVE A TENSION BETWEEN LIKE ON ONE HAND, YOU HAVE A HUGE PROFIT MOTIVE BUT IT'S COUCHED IN TERMS OF LIKE SOME SOCIAL GOOD THAT IT'S INCREASING OPPORTUNITIES FOR LOWER INCOME PEOPLE TO LIVE THERE WHICH I'M NOT SURE THAT YOU HAVE THOSE TWO THINGS CAN COEXIST. IF YOU COULD START BY ADDRESSING THE ISSUE, IS THE CITY NOT OPPOSING THIS BECAUSE IT FALLS IN BETWEEN REGULATIONS BUT THERE IS NO REAL DEFINITION OF WHAT HIGH DENSITY IS. OR IS IT AN ACTIVE PLAN TO INCREASE DENSITY IN AN ALREADY CROWDED NEIGHBORHOOD?

>> S. O'KEEFE: THANK YOU. THANK YOU VERY MUCH. SORRY, I DIDN'T CATCH YOUR NAME.

>> PETER.

>> S. O'KEEFE: DOES ANYONE ELSE FROM THE PUBLIC HERE TO SPEAK? ROBIN, DO YOU WANT TO GIVE IT ANOTHER SHOT? WE HAVE YOUR LETTER. OKAY. SEEING NONE, WE'LL BRING IT BACK FOR THE APPLICANT TO RESPOND AND THEN THE BOARD MIGHT WANT TO RESPOND AS WELL.

APPLICANT, YOU WANT TO RESPOND?

>> AND I APPRECIATE THE QUESTIONS. I THINK IN THIS TIME OF THIS HOUSING CRISIS THAT WE HAVE IN CLIMATE EMERGENCY, IT IS INCUMBENT ON THE CITY AND I BELIEVE THIS IS THE R-3 HIGHER DENSITY DESIGNATION. WE NEED TO PROVIDE PLACES FOR PEOPLE TO LIVE AND SLEEP. TO DO THAT IN A RENT-CONTROLLED APARTMENT BUILDING IS FANTASTIC AND ESPECIALLY ONE THAT IS SO TRANSIT ORIENTED. THE RENT BOARD IS WELL AWARE OF THIS PROJECT AND WE'VE BEEN WORKING WITH THEM IT MAKE SURE OUR CONTACT WITH THE TENANTS IS BEST IT CAN BE. THERE WILL BE NOTICES FOR CONSTRUCTION FOR PEOPLE AS THE CONSTRUCTION PROCEEDS SO IF SOMEBODY MOVES OUT OF THE UNIT AND THE WORK IS GOING TO START THERE, YES, IT'S ALREADY A CITY REQUIREMENT THAT THE REST OF THE RESIDENT IN THE BUILDING BE NOTIFIED OF THAT. OF COURSE THE RENT BOARD IS A RES OR AVAILABLE FOR RESIDENTS IF THERE ARE OTHER PROBLEMS. WITH THAT, YOU KNOW, I JUST REALLY HOPE THAT THE ZAB CAN SEE THIS "ELEGANT" OR HIDDEN DENSITY AS THAT AND AS A RESOURCE FOR HOUSING AND RENT-PROTECTED HOUSING IN THIS PART OF THE CITY. THANKS.

>> S. O'KEEFE: THANK YOU VERY MUCH. ANY MORE QUESTIONS FROM THE BOARD FOR THE APPLICANT OR STAFF BEFORE WE CLOSE PUBLIC HEARING? CHARLES.

>> C. KAHN: I'LL WAIT UNTIL YOU CLOSE THE PUBLIC HEARING.

>> S. O'KEEFE: OKAY. ANYONE ELSE LIKE TO SPEAK BEFORE WE CLOSE PUBLIC HEARING? IGOR, NO? IT SOUNDS LIKE YOU WANT ME TO

CLOSE PUBLIC HEARING. SO I'LL DO THAT. THANK YOU, APPLICANT AND PUBLIC. PRESCRIBE YOUR TIME. LET'S SEE. I'M NOT GOING IT MESS WITH THAT. PUBLIC HEARING IS CLOSE EXAMINED I'LL RERECOGNIZE CHARLES.

>> C. KAHN: THANKS SHOSHANA, I'VE REVIEWED THE PLANS AND THINK THESE ARE WELL-DESIGNED UNITS. I DON'T THINK THE TENANTS WILL BE OVERCROWDED IN THIS BUILDING. PATRICK, I DID LOOK AT THE STUDY ISSUE THAT YOU WERE CONCERNED ABOUT. I'M SATISFIED BECAUSE IF YOU CHECK THE ORIGINAL PLANS, THE EXISTING CONDITIONS, IT'S A SIMILAR SIZED ROOM THAT COULD BE USED AS A BEDROOM BECAUSE IT HAS I DOOR ON IT. I DON'T THINK THEY'RE TRYING TO PUT ONE OVER ON US. I'M GOING TO MOVE FOR APPROVAL WITH CONDITION THAT THE LANGUAGE THAT WE UNDERSTAND FROM THE APPLICANT THAT IS CURRENTLY A PART OF THE NOTIFICATIONS TO TENANTS BE MANDATED AS PART OF THIS APPROVAL, BUT THAT FURTHER MORE, IT SOUNDS LIKE WHAT HE DESCRIBED IS SOMETHING THAT WAS SAYING YOU CAN'T OBSTRUCT THE DRIVEWAY UNLESS YOU'RE SITTING IN YOUR CAR. WHAT I WAS TALKING ABOUT IS ACTUALLY A LITTLE DIFFERENT. SO I WOULD LIKE -- HE CAN SAY WHATEVER HE WANTS TO SAY IN THAT REGARD THAT YOU CAN'T UNLESS YOU'RE SITTING IN THE CAR. BUT LYFT AND UBER DRIVERS WILL BE TOLERATED BY OWNERSHIP SHOULD THEY CHOOSE TO USE THE DRIVEWAY AS A WAY OF PICKING PEOPLE UP. THEY NEED TO KNOW THAT'S OKAY. THAT'S MY MOTION. AND I'M HAPPY TO HEAR WHAT PEOPLE THINK OF IT.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I AM PREPARED TO SECOND THE MOTION IF CHARLES IS PREPARED TO ACCEPT A COUPLE OF AMENDMENTS. THE ONE ACTUALLY -- I'D LOVE TO SEE -- I APPRECIATE THE INTENT OF YOUR AMENDMENT, CHARLES. I WOULD LOVE TO SEE SOMETHING MORE CONCRETE THAT IS ENFORCEABLE. I HAD A COUPLE MORE. I WANTED TO ADD A CONDITION ON TENANTS -- NEW TENANTS BEING PRECLUDED FROM QUALIFYING FOR THE RPP PROGRAM. AND THEN TO KELLY'S POINT AND I REVIEWED THIS, I THINK IT'S FINE AS IS. BUT SHE DOES BRING UP A GOOD POINT ABOUT WHAT SOMETIMES KNOWN AS CONSTRUCTIVE EVICTION. THAT THE RENT STABILIZATION ORDINANCE IS NOT EQUIPPED TO CATCH, BUT IT DOES HAPPEN AND IT CAN PARTICULARLY HAPPEN -- I'M NOT SAYING IT'S GOING TO HAPPEN HERE WITH THESE OWNERS. BUT THERE IS A TENDENCY TO TRY TO CONSTRUCTIVELY EVICT TENANTS SO RENOVATIONS COULD BE MADE. I WISH TO PROPOSE CONDITION 31 UNDER TENANTS NOTICING WHERE IT SAYS THEY WOULD BE NOTICED OF THEIR RIGHTS UNDER THE RENT STABILIZATION AND EVICTION UNDER GOOD CAUSED ORDINANCE AND TENANT PROTECTION ORDER MANSLAUGHTER WHICH IS ANOTHER ORDINANCE UNDER THE CITY THAT GIVES TENANTS PRIVATE RIGHT OF ACTION SHOULD ATTEMPTS TO CONSTRUCTIVELY EVICT THEM EXIST. ARE MY TWO ADDITIONS. CHARLES, IF YOU'RE FRIENDLY THOUGH THEM, ELEMENT ME KNOW AND MAYBE WE CAN MAKE YOUR IDEA MORE CONCRETE. BECAUSE I WOULD LOVE TO SUPPORT IT.

>> C. KAHN: IN TERMS OF MAKING IT MORE CONCRETE, I WOULD LIKE THE APPLICANT TO SUBMIT LANGUAGE TO THE PLANNER THAT IS

DEEMED ACCEPTABLE BY THE PLANNER THAT CLEARLY ARTICULATES TO THE TENANTS THAT THEY HAVE THE RIGHT AND FROM FACT ARE ENCOURAGED TO DIRECT UBER DRIVERS OR LYFT DRIVERS WHO ARE PICKING THEM UP TO USE THE DRIVEWAY. AND WAIT FOR THEM THERE. AND I THINK THAT THE SPECIFIC LANGUAGE APPROVED BY STAFF, WE CAN BE SURE IS THAT WE'VE GOT THE LANGUAGE. I THINK IT'S DIFFICULT TO REVIEW INDIVIDUAL LEASES, BUT IT IS PART OF THIS -- WILL BE PART OF THIS APPROVAL AND IF THE LANDLORD DOESN'T INCLUDE SUCH LANGUAGE, THEY'RE AT RISK OF VIOLATING THE APPROVAL OF THE ZONING BOARD WHICH COULD HAVE SERIOUS CONSEQUENCES. I HOPE THAT IS SUFFICIENT. ANY OTHER IDEAS YOU WOULD HAVE, I'M OPEN TO MAKE THAT TOUGHER OR STRONGER.

>> I. TREGUB: I WANTED TO CLARIFY, SO YOU'RE TALKING ABOUT TMC'S TRANSPORTATION NETWORK COMPANIES LIKE UBER AND LIFT, AND DAN, ARE YOU INCLUDING DELIVERY VEHICLES AS WELL?

>> THE PROBLEM I HAVE WITH DELIVERY VEHICLES IS WHAT THE OWNER SAID NOT WANTING PEOPLE TO LEAVE THEIR CARS. THAT'S WHY I DIDN'T SPECIFICALLY INCLUDE THAT. I THINK THAT'S FAIR. IT'S I THINK A REASONABLE DEMISING LINE. IF SOMEONE IS THEIR CAR OR NEEDS TO GET OUT, THEY CAN MOVE THEIR CAR. IF THEY'RE INSIDE MAKING A PIZZA DELIVERY, THEY HAVE TO GO INSIDE. SO WHERE THE CAR IS OCCUPIED WHILE IT'S IN THE DRIVEWAY.

>> SO TMCS AND THAT MAKES SENSE AND YOU'RE FRIENDLY TO MY OTHER TWO CHANGES?

>> YES, SO THE SECOND ONE FEELS A LITTLE UNFAIR TO ME THAT THE EXISTING TENANTS GET TO HAVE PARKING STICKERS AND THE NEWS ONE DON'T BUT I'M WILLING TO ACCEPT IT BECAUSE I THINK THE INTENT IS GOOD AND GIVEN THE PROXIMITY TO BART AND THE CAMPUS. I DON'T THINK SEE THIS BEING A PUNISHMENT TO NEW PEOPLE COMING ON BOARD. IT'S GOING TO BE GOOD FOR THE COMMUNITY. IT ADDRESSES THE CONCERNS OF THE CITIZEN WHO SPOKE. THE THIRD ITEM, SHANNON, IF THERE IS A PROBLEM WITH THAT LEGALLY.

>> ZAB SECRETARY: I'M NOT SURE HOW THE CITY WILL TRACK TENANTS COMING AND GOING. AND IF THERE IS -- WHAT IF THE PEOPLE THERE NOW DON'T HAVE CARS AND ARE NOT UTILIZING THE RPP PROGRAM. I DON'T HAVE AN IDEA OF HOW UTILIZED THE PROGRAM IS FOR THOSE BUILDINGS NOW AND HOW WOULD WE TRACK -- I DON'T HAVE TO TRACK IT.

>> I HAVE A SUGGESTION. I WOULD SUGGEST THAT IGOR'S PROPOSED AMENDMENT GO INTO EFFECT JANUARY 1ST, 2021. AND THAT THE OWNER NOTIFY TENANTS THAT THEY HAVE BETWEEN NOW AND JANUARY 1ST, 2021 TO SECURE A PERMIT. AFTER THAT, THE BUILDING WILL NOT BE ELIGIBLE FOR SUCH PERMITS. HOW DOES THAT SOUND?

>> ZAB SECRETARY: THAT SOUNDS BETTER TO ME.

>> S. O'KEEFE: THEY HAVE TO GET RENEWED EVERY YEAR. YOU COULD GET A RENEWAL BUT NOT A NEW ONE.

>> C. KAHN: YES.

>> S. O'KEEFE: I HOPE THAT'S DOABLE.

>> I. TREGUB: I'M HAPPY IF SHANNON IS HAPPY.

>> WE'LL ALL HAVE AUTONOMOUS VEHICLES WITHIN FIVE YEARS.

>> C. KAHN: AND THEN THE THIRD PROVISION IGOR -- I'M TRYING TO REMEMBER.

>> I. TREGUB: IT'S TENANT PROTECTION.

>> S. O'KEEFE: SO WE HAVE A MOTION AND A SECOND. AND MORE PEOPLE WHO WANT TO TALK. LET'S HEAR FROM CARRIE.

>> C. OLSON: MY CONCERN IS I THINK THIS IS GOING TO BE A CONSTRUCTION ZONE FOR YEARS. AND WE'RE APPROVING THAT CONSTRUCTION STARTS AT 8:00 A.M. FOR YEARS THIS COULD BE THAT PEOPLE ARE LISTENING TO CONSTRUCTION SOMEWHERE IN THIS BUILDING. AND A LOT OF THESE FOLKS WILL BE STUDENT AND THEY ARE GOING TO HAVE TO LISTEN TO IT SIX DAYS A WEEK. SO I GUESS I'M THROWING OUT THERE THAT THE HOURS OF CONSTRUCTION SHOULD BE CHANGED. AND ALONG WITH THAT, YOU GUYS ARE TALKING ABOUT UBER IN THE DRIVEWAY AND I'M THINKING, NO, THERE IS GOING TO BE CONSTRUCTION TRUCKS IN THAT DRIVEWAY ALL THE TIME. FOR YEARS. AS THEY HAVE VACANCIES. THERE IS NOT GOING TO BE AN EASY WAY FOR TENANTS TO GET IN AND OUT LET ALONE DELIVERY VEHICLES OR UBER VEHICLES. I'M THROWING IT OUT THERE SO PEOPLE CAN DISCUSS.

>> S. O'KEEFE: THANKS. TERESA.

>> T. CLARKE: YES, I MEAN I THINK THE -- I THINK THE RPP THING IS JUST A LOT OF HEADACHE. TO TRY TO SAY THE NEW TENANTS CAN'T GET IT BUT OLD TENANTS CAN WOULDN'T MAKE ANY DIFFERENCE.

IF THE BUILDING IS ELIGIBLE, LET'S KEEP IT ELIGIBLE. AGAIN, THIS IS A TRANSIT, WALKABLE, BIKEABLE NEIGHBORHOOD. A FEW TENANTS MAY REALLY NEED RPP. WHAT IF A DISABLED TENANT COMES IN AND THERE IS NO PARKING AVAILABLE AND THEY WANT TO PARK ON THE STREET? I DON'T THINK WE SHOULD WORRY ABOUT IT. THAT'S MY OPINION ON THAT. I WOULD NOT WANT TO ADD THAT CONDITION. I DEFINITE SUPPORT THE CONDITION FOR ADDING THAT TENANT PROTECTION THING. I THINK THAT MAKES IT MORE COMPLETE OF A CONDITION. THE ONE THAT YOU ADDED IGOR. AND I ALSO THINK THE UBER THING, I THINK WE SHOULD SAY THERE SHOULD BE A PLAN FOR DELIVERIES, DROP-UPS AND LET THEM FIGURE IT -- DROP-OFFS AND LET THEM FIGURE IT OUT. SAYING WHAT SHOULD BE IN SOMEONE'S LEASE IS TOO MICROMANAGING. THEY SHOULD HAVE A PLAN FOR DROP-OFFS, DELIVERIES, UBER LYFTS ET CETERA. THEY NEED A PLAN IN PLACE ENFORCEABLE AS POSSIBLE TO PREVENT TRAFFIC JAMS OR UNSAFE CONDITIONS IN THE NEIGHBORHOOD. AND SO I WOULD VOTE FOR THE MOTION IF WE MODIFIED THOSE SLIGHTLY TO BE A LITTLE MORE ADMINISTRATIVE FRIENDLY THAT ACTUALLY COULD BE ENFORCED AND THAT DON'T PREVENT TENANTS -- THERE ARE PLENTY OF TENANTS IN FROM AND YOU'RE SAYING NO ONE CAN GET A PARKING SPOT? THAT'S MY TWO CENTS. BUT I REALLY DON'T LIKE SOME OF THE WAY THE CONDITIONS HAVE BEEN WORDED. I WANT TO SAY ONE MORE THING BEFORE I SIGN OFF. I THINK THIS IS A GREAT ADDITION, MAKING THESE MORE LIVABLE AND FUNCTIONAL FOR MORE PEOPLE THERE COULD BE TWO PEOPLE LIVING IN ONE BEDROOM AS IT IS. NOW THEY'LL HAVE TWO. I THINK

THIS IS GREAT. IT ADDS EXTRA CAPACITY TO A WALKABLE NEIGHBORHOOD. I THINK THIS IS A GOOD PROJECT.

>> S. O'KEEFE: I'M GOING TO JUMP? CHARLES BEFORE I RECOGNIZE YOU AND POINT OUT THE FACT IF SOMEBODY MOVES INTO THE BUILDING AND HAD WAS DISABLED THEY WOULD NOT NEED A PERMIT TO PARK ON THE STREET. CHARLES.

>> C. KAHN: I ACTUALLY APPRECIATE TERESA'S POINT ABOUT THE MANAGEMENT PLAN DELIVERY AND PICKUP -- DELIVERY, PICKUP, DROP-OFF MANAGEMENT PLAN. I THINK IT IS BETTER TO LEAVE THAT TO SOMETHING THAT THE OWNERSHIP WORKS OUT WITH STAFF. BUT I WOULD LIKE TO HAVE IT WORKED OUT WITH STAFF. I WOULD LIKE THEM TO SUBMIT TO STAFF A PICKUP, DROP-OFF MANAGEMENT PLAN. IT ADDRESSES THE ISSUES RAISED AT THE HEARING. STAFF IS HERE AND SHARP. THEY'VE HEARD OUR CONCERNS. THERE MAY BE BETTER WAYS TO SOLVE THIS OFFERED BY OWNERSHIP THAN WHAT I'VE COME UP WITH. I PREFER THAT IF THAT IS ACCEPTABLE TONIGHT THAT AMENDMENT. I SEE PEOPLE NODDING.

>> S. O'KEEFE: LET THE RECORD SHOW IGOR NODDED.

>> C. KAHN: IN TERMS OF THE RPP, I HAD SOME MISGIVINGS ABOUT THAT MYSELF. I HAVE TREMENDOUS RESPECT FOR IGOR AND WANTED TO INCLUDE IT. I WOULD LIKE TO HEAR WHAT THE -- IF OTHERS HERE SHARE IGOR'S CONCERN OR TERESA'S CONCERNS SO WE CAN GET A GENERAL SENSE OF WHETHER TO KEEP THAT OR WITH IGOR'S PERMISSION TO DELETE IT.

>> S. O'KEEFE: NEXT UP IS IGOR.

>> I. TREGUB: I'M ON MUTE. I APPRECIATE EVERYONE'S POINTS AND I DON'T WANT TO BELABOR IT. I THINK IT WOULD BE IRONIC IF THE THING WE FOCUS ON THE MOST IS RPP PERMITS ON THIS PROJECT. I THINK TERESA'S POINTS WOULD BE WELL-PLACED MORE IF NOT FOR THE FACT THAT TO SHOSHANA'S POINT YOU ARE -- IF YOU HAVE A DISABLED PLACARD, YOU AUTOMATICALLY QUALIFY FOR A PERMIT. IF YOU DON'T ALREADY HAVE OFF-STREET PARKING, YOU WILL BE ABLE TO QUALIFY AND I THINK DENISE WANTS TO SAY ABOUT THAT. IF THIS WAS A NEW CONSTRUCTION PROJECT, WE WOULD AUTOMATICALLY DO THIS IN MOST MULTI-FAMILY BUILDINGS THAT HAVE RPP ZONES IF NOT ALL, THERE IS ALREADY A CONDITION IN PLACE THAT SAYS NEW TENANTS ARE NOT ELIGIBLE FOR THEM. TO THE GENTLEMAN'S POINT, I FORGET HIS NAME, MEMBER OF THE PUBLIC, ABOUT DENSITY. WE DON'T HAVE DENSITY STANDARDS UNTIL QUITE THE WAY THAT I THINK FOR THOSE WHO HAVE BEEN CONCERNED ABOUT IT WISH FOR US TO HAVE. IT FEELS TO ME LIKE THE PRINCIPLE CONCERN ABOUT TOO MUCH DENSITY IS THE IMPACTS OF FOR INSTANCE HAVING ENOUGH PARKING. THIS IS PROBABLY THE ONE THING WE CAN DO. TO ALSO ENCOURAGE USES OTHER THAN DRIVING, I'VE ACTUALLY BEEN AMAZED HOW LITTLE I DRIVE NOW THAT WE'RE ALL IN THE SHELTER IN PLACE MODE. I THINK THAT'S PROBABLY GOING TO BE THE THE REALITY AND EVEN MORE SORE FOR THE TYPES OF TENANTS THAT ARE LIKELY TO RENT IN THAT UNIT. THERE ARE ALREADY FIVE PARKING SPACES. IT'S A HARD PLACE TO FIND PARKING ON-STREET PARKING ON

RIGHT NOW. FOR ALL OF THOSE REASONS, I THINK WE SHOULD KEEP THAT CONDITION AS-IS. BUT I'M HAPPY TO HEAR FROM OTHERS.

>> S. O'KEEFE: THANKS IGOR. I'M GOING TO RECOGNIZE PATRICK. PATRICK, SORRY, WITH DISABLED THING I HAVE TO CORRECT PEOPLE. IT'S NOT THAT THEY WOULD QUALIFY FOR A PERMIT, THEY DON'T NEED A PERMIT. I DON'T WANT ANYONE IN THAT SITUATION MISLED. YOU DON'T HAVE TO DO ANYTHING. YOU CAN PARK WITH A PLACARD.

>> P. SHEAHAN: I WANT TO COMMENT ON THE BASEMENT APARTMENT UNIT 10 BECAUSE I LOOKED MORE CLOSELY AT THE EXISTING LOCATION OF THE BATH AND THE NEW PROPOSED LOCATION. AND IT'S OBVIOUS TO ME THAT THE BATH HAS BEEN RELOCATED WHICH IS AN EXPENSIVE THING TO DO. I THINK TO ENCOURAGE WHAT IS CALLED A STUDY A BEDROOM. IT'S A LIFE SAFETY ISSUE BECAUSE IT HAS NO EGRESS. I LOOK AT THIS PLAN AND I THINK THAT'S WHAT IS BEING ATTEMPTED HERE. AND I REALIZE THAT IT CAN'T BE REGULATED. BUT IT'S TRANSPARENT TO ME. TO CALL IT ELEGANT DENSITY I THINK IS A JOKE. THIS IS A BEAUTIFUL APARTMENT BUILDING. OF NICELY SCALED APARTMENTS OF A SIZE THAT IS DESPERATE NEED IN THIS CITY. AND IT'S A VERY MIXED POPULATION. I KNOW PEOPLE ON THIS STREET, THEY AREN'T ALL STUDENTS. THEY AREN'T ALL ONE-YEAR LEASE HOLDERS. PEOPLE LIVE THERE. THEY LIVE ON THE STREET. IN THIS NEIGHBORHOOD. AND THESE ARE THE PLACES THEY LIVE IN. AND THIS PROJECT ENCOURAGES BY VIRTUE OF THE CONSTRUCTION PROCESS FOR ONE, AND A HIGHER RATE OF TURNOVER, REALLY MAKES IT THAT MUCH LESS DESIRABLE PLACE TO LIVE

AND I THINK IS EFFECTIVELY DISCOURAGING LONG-TERM TENANTS FROM EITHER MOVING OUT OR NOT MOVING IN. I THINK IT'S A SERIOUS OVERSIGHT OF THE CITY NOT TO HAVE DENSITY STANDARDS FOR THIS ZONE. IT BOGGLES ME. AND YOU KNOW, WITH WE ARE WELL WEAR ESPECIALLY THIS YEAR OF THE ISSUES OF DENSITY AND EXTREME DENSITY. IT ALREADY IS HIGH DENSITY. THIS PROPOSAL IS EXTREME DENSITY. I THINK AS HAS BEEN POINTED OUT, THE CONSTRUCTION PROCESS, THIS PHASED CONSTRUCTION LIKELY ONE UNIT IN EACH OF THE BUILDINGS IS UNDER CONSTRUCTION ALL THE TIME. THAT MAKES IT REALLY INTOLERABLE FOR EVERYONE LIVING THERE TO HAVE NONSTOP CONSTRUCTION GOING ON. I CAN'T SUPPORT THIS. I THINK IT'S AN ILL-CONCEIVED OBVIOUS ATTEMPT TO EXTRACT THE MAXIMUM RENT OUT OF A PROPERTY BY MORE THAN DOUBLING THE NUMBER OF BEDROOMS AND IN CUTTING THE LIVING SPACE -- COMMON LIVING SPACE IN HALF OR WORSE. IT'S A DISASTER. I CAN'T VOTE FOR IT. IT'S ENCOURAGING UNSAFE AND UNHEALTHY LIVING.

>> S. O'KEEFE: ALL RIGHT. DENISE.

>> D. PINKSTON: I INTEND TO SUPPORT THE MOTION. I AGREE WITH THE WAY CHARLES DESCRIBED THIS. AND I AGREE WITH EARLIER COMMENTERS THIS EVENING THAT THE HOUSING CRISIS IS GOING TO GO AWAY ANYWHERE IN CALIFORNIA. THIS IS EXACTLY THE KIND OF NEIGHBORHOOD WE NEED TO BE BUILDING IN. PEOPLE RESIST NEW BUILDINGS, THEY RESIST CONVERSIONS OF OLD BUILDINGS AND THEY TOLERATE HOMELESS PEOPLE LIVING UNDER THE FREEWAY. WE HAVE GOT

TO HOUSE PEOPLE ESPECIALLY NEAR CAMPUS. HOMELESSNESS AFFECTS U.S. BERKELEY STUDENTS. A BUILDING LIKE THIS IS AN IDEAL FACE FOR UC FACULTY, STAFF, AND UNDER GRAD STUDENTS. THIS IS WHERE DENSITY LIKE THIS SHOULD BE GOING IN THE CITY. THIS IS ONE WAY TO GET IT. THERE ARE MANY WAYS TO GET IT. I DON'T THINK WE SHOULD BE GETTING INTO CREATING CONDITIONS THAT ARE IMPOSSIBLE TO ENFORCE. WE DON'T DIED WHO GETS IT LEASE WHAT. SAYING EXISTING TENANTS CAN HAVE RPP AND FUTURE TENANTS CAN'T WHEN THEY'RE ASSIGNED BY ADDRESS, IT SEEMS UNREALISTIC TO ME. THEY'RE NOT ASSIGNED TO A PERSON, THEY'RE ASSIGNED A CERTAIN AMOUNT TO AN ADDRESS. THAT WOULD BE SAYING I CAN ONLY GIVE A PARKING PASS TO MY ELDER DAUGHTER BECAUSE MY YOUNGER DAUGHTER IS NOT ELIGIBLE. WHILE I APPRECIATE THE OBJECTIVE, RIGHT NOW OUR RPP PROGRAM IS NOT SET UP TO BE RUN THAT WAY. AND I THINK THAT IT'S AN EXISTING BUILDING AND IT'S GOING TO GET PARKING. AND I DON'T THINK SEE THERE IS THREE WAY FOR ZONING STAFF IS TO GET INVOLVED IN HOW THE CITY RUNS THE RPP PROGRAM IN AN EFFECTIVE WAY ALTHOUGH I APPRECIATE THE INTENT. THOSE ARE MY THOUGHTS.

>> S. O'KEEFE: DENISE. JOHN.

>> J. SELAWSKY: THANK YOU. I JUST I WANT TO MAKE A COUPLE OF COMMENT HERE. DENISE, UNDER MOST CIRCUMSTANCES I THINK MOST OF THE TIME I AGREE WITH YOU OR AT LEAST I CONSIDER WHAT YOU'RE SAYING RELEVANT. AND ON POINT. I'M SORRY, BRINGING UP PEOPLE LIVING UNDER THE BRIDGES, PAYING $3,000 A MONTH FOR RENT? I'M

NOT SURE WHAT THE CONNECTION IS THERE. YOU LOST ME ON THAT ONE. THERE IS A SET OF DIFFERENT SOLUTIONS FOR THE HOMELESS. AND IT'S NOT $3,000 A MONTH RENT. MOST OF WHAT I SEE ABOUT THIS PROJECT -- THESE TWO PROJECTS, YOU'LL ACTUALLY AGREE WITH PATRICK MORE THAN I AGREE WITH ANYONE ELSE HERE. IT'S A WAY OF RECEIVING MORE PROFITS. I DON'T THINK IT SOLVES ANY HOUSING ISSUES. ESPECIALLY FOR THE CURRENT TENANTS. AND I GO BACK TO THAT. AND THEY'RE GOING TO BE LIVING WITH CONSTRUCTION FOR THE NEXT I DON'T KNOW HOW MANY MONTHS, YEARS, DECADES. I DON'T KNOW. NOBODY KNOWS. AND PUTTING TENANTS IN THAT SITUATION, I'M SORRY, IT'S -- IT TROUBLES ME. IT TROUBLES ME THE WAY THE CITY PRETENDS THAT IT'S SOLVING THE HOUSING CRISIS WITH BUILDING MORE UNITS AT HIGH RENT. WE'RE NOT SOLVING ANY HOUSING CRISIS THAT WAY. I'M SORRY. THAT'S ALL I HAVE. THANK YOU SHOSHANA.

>> S. O'KEEFE: I WANT TO SAY I THINK TERESA IS NEXT AND I DON'T SEE ANY MORE HANDS UP. BUT WE HAVE TO HAVE A CAPTIONER BREAK WITHIN THE NEXT COUPLE OF MINUTES. IF THERE WAS APPETITE FOR A VOTE, I'M NOT SURE IF THAT IS -- I SEE ONE VOTE FOR THAT, IT WOULD BE CLEAN TO HAVE A VOTE AND HAVE A CAPTIONER BREAK, BUT IF MORE DISCUSSION IS NECESSARY, THAT'S FINE.

>> T. CLARKE: I WOULD LIKE TO CALL THE QUESTION. AND I DID WANT TO SAY IN TERMS OF THE CONSTRUCTION, THE AMOUNT OF WORK DONE IF THERE, THEY'RE MOVING WALLS INTERIOR. AND SO, I DON'T KNOW IF IT'S GOING TO BE THAT DISRUPTIVE AND I DO AGREE THAT

CARRIE MAYBE -- I THINK 8:00 A.M. IS OKAY. MONDAY THROUGH FRIDAY. I WOULDN'T WANT ANY WORK TO BE GOING ON ON SATURDAY OR SUNDAY. I WOULD BE OKAY. CARRIE BROUGHT THAT UP. I THINK IT'S OKAY FOR IT TO START MONDAY THROUGH FRIDAY 8:00 A.M., BUT NOT ON THE WEEKENDS. IT JUST GETS TO BE TOO MUCH FOR PEOPLE WORKING ALL WEEK LONG. I DON'T THINK WE ADDRESSED THAT AND CARRIE BROUGHT IT UP EARLIER BUT I WOULD LIKE TO CALL THE QUESTION AND MAYBE ADD THAT WITHIN ITEM TO IT.

>> S. O'KEEFE: I 100 PERCENT AGREE WITH DENISE. I SUPPORT THE PROJECT BUT I WOULD LIKE TO SEE THE RPP THING TAKEN OUT. I'M NOT INTO MESSY LEGISLATION. MESSY RULES. I LIKE TO MAKE CLEAN RULES AND IT SEEM TOO MESSY. I'D RATHER VOTE FOR IT IF IT HAD THAT OUT. BUT I SUPPORT THE PROJECT OVERALL. IGOR HAD HIS HAND UP FIRST. IGOR.

>> I. TREGUB: JUST SPEAKING TO CARRIE'S AND TERESA'S POINT. CONSTRUCTION IS ALREADY NOT PERMITTED ON SUNDAYS. BUT I WOULD BE FRIENDLY TO TAKING OUT THE SATURDAY PORTION. I MEANT TO SAY THAT BEFORE. I'M SORRY, I FORGOT AS WE WERE DEBATING SOMETHING ELSE.

>> IT'S A TEAM EFFORT. CHARLES.

>> I THINK THAT'S A GREAT IDEA. I WOULD LIKE TO ADJUST THE MOTION TO INCLUDE A PROVISION THAT THERE WOULD BE NO WORK ALLOWED ON THE WEEKENDS. I THINK THAT IS PARTICULARLY IMPORTANT GIVEN THE TENURE OF THE WORK THAT WE'VE BEEN CONCERNED ABOUT. GIVEN THAT WE HAVE -- I ASKED IGOR FOR THE OPINIONS ABOUT THE

RPP AND ALL I GOT WAS NEGATIVE THOUGHTS ABOUT THEM. I'M GOING TO ASK IF IT'S OKAY WITH YOU TO WE LIMB THAT FROM THIS PROJECT AS SECONDER OF THE MOTION.

>> I. TREGUB: I'M NOT GOING TO DIE ON THAT HILL. THAT'S FINE. ALTHOUGH I STILL BELIEVE IT SHOULD BE THERE.

>> S. O'KEEFE: IT'S A VALUES ATTEMPT. WE APPRECIATE WHAT YOU'RE TRYING TO DO.

>> I'LL STAY WITH YOU HALF THE WAY ANYWAY. DOES EVERYBODY UNDERSTAND THE MOTION? MAYBE THE PLANNER CAN REPEAT OR SHANNON, YOU CAN REPEAT THE MOTION. BECAUSE THERE HAVE BEEN A LOT OF CHANGES ALONG THE WAY.

>> ZAB SECRETARY: I APPRECIATE THE OPPORTUNITY. I'LL MAYBE NOT GET THE LANGUAGE CORRECT, I'LL BUT THE FIRST ADDITIONAL CONDITION OF APPROVAL RELATES TO THE APPLICANT SUBMITTING A PLAN TO STAFF FOR THEIR REVIEW REGARDING DELIVERY AND ACTIONS ON THE SITE. NEXT CONDITIONAL APPROVAL IS THE EXTENSION OF THE PROTECTION COA THAT IS THERE AND MODIFICATION OF THE APPROVAL AROUND CONSTRUCTION TO SAY THERE IS NO CONSTRUCTION ACTIVITY ON SATURDAY OR SUNDAY.

>> THAT'S RIGHT, THANKS.

>> S. O'KEEFE: OKAY. LET'S TAKE A VOTE IN THE SAME ORDER.

>> ZAB SECRETARY: BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> NO.

>> BOARD MEMBER SELAWSKY.

>> NO.

>> BOARD MEMBER OLSON.

>> NO.

>> BOARD MEMBER KAHN.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> BOARD MEMBER PINKSTON.

>> YES.

>> CHAIR O'KEEFE.

>> S. O'KEEFE: YES SO THAT IS MAJORITY. YOU HAVE YOUR USE PERMIT APPEALABLE TO THE CITY COUNCIL. THANK YOU VERY MUCH. EVERYONE, WE'LL TAKE A 10-MINUTE CAPTIONER BREAK AND WHEN WE COME BACK WE'LL HEAR THE NEXT ONE. CAPTIONER, HAVE A GOOD REST, I'LL SEE YOU IN 10 MINUTES AT 9:14.

>> S. O'KEEFE: I HAVE 9:14, SO IF PEOPLE COULD COME BACK, THAT WOULD BE GREAT.

>> S. O'KEEFE: WHAT DID YOU GUYS DO ON YOUR BREAK? I ANSWERED FRANTIC STUDENT E-MAILS.

>> I HAD DESSERT.

>> I GOT MY HAAGEN-DAZS. WHAT DO YOU HAVE THERE PATRICK?

>> TARA'S ICE CREAM. IT'S A LOCAL FAVORITE.

>> S. O'KEEFE: OKAY, SO I GUESS JOHN IS BACK. JOHN IS JUST HAVING HIS CAMERA OFF.

>> J. SELAWSKY: I'M BACK.

>> S. O'KEEFE: WE'RE BACK. CAPTIONER I HOPE YOUR FINGERS ARE RESTED. 1862 ARCH. WHICH MIGHT FEEL A LITTLE FAMILIAR BUT IT IS A DIFFERENT PROJECT. WE'LL HAVE A STAFF REPORT. STAFF.

>> STAFF: I'LL KEEP IT QUICK. THIS IS 1862 ARCH STREET. WHICH IS ZP2019-0213 ADDS 15 BEDROOMS TO A BUILDING FOR A TOTAL OF 25 BEDROOMS ON THE FIRST FLOOR ALSO IN THE R 3 H ZONING DISTRICT. LET ME SHARE THIS. THIS IS ADJACENT TO THE SOUTH OF 1850 ARCH. OVERLOOKING THE NEIGHBORHOOD.

>> S. O'KEEFE: SORRY, WE CAN'T SEE ANYTHING. IT SAYS 1862 PLANS BUT THERE WAS BLACK. THAT'S WEIRD. I THOUGHT YOU MIGHT WANT TO KNOW.

>> OKAY. CAN YOU SEE IT NOW?

>> S. O'KEEFE: YES.

>> STAFF: YES. THIS BUILDING IS ALSO THREE STOREYS AND CONTAINS TWO STUDIOS, FIVE TWO BEDROOMS AND ONE FOUR BEDROOM APARTMENT CONSTRUCTED IN 1923. PARCELS IS NONCONFORMING TO CURRENT ZONING STANDARDS FOR THE MINIMUM SETBACK ON THE FRONT AND SIDE PROPERTY LINES. THE PROJECT IS ALSO ONLY INTERIOR MODIFICATIONS NO EXTERIOR CHANGES TO ACCOMMODATE AN INITIAL 15

BEDROOMS. ONE COMPLETED IT WILL CONTAIN TWO STUDIOS ONE ONE-BROOM, ONE TWO-BEDROOM, FIVE THREE-BEDROOM AND ONE FIVE-BEDROOM UNIT. AND THE APPLICANT HELD A PRE-APPLICATION MEETING IN DECEMBER AND DISCUSSED BOTH PROJECTS AND CONCERNS ARE SIMILAR TO 1850, THERE ARE NO SPECIFIC CONCERNS TO 1862 THAT ARE DIFFERENT FROM WHAT HAS BEEN DISCUSSED AND ALL UNITS ARE OCCUPIED AND SUBJECT TO THE RENT STABILIZATION ORDINANCE. AND STAFF ALSO BELIEVES THAT THE AMOUNT OF COMMON SPACE RELATIVE TO THE NUMBER OF BEDROOMS WOULD REMAIN SUFFICIENT THROUGH THIS AND WOULD NOT BE DETRIMENTAL. IN CONTRAST TO 1850 ARCH, AT THIS BUILDING THERE IS ONLY A 4% REDUCTION IN THE FLOOR AREA DEDICATED TO COMMON LIVING SPACE. FOR AN AVERAGE OF 40% OF THE UNIT FLOOR AREA AS COMMON LIVING SPACES. AND ACCORDING TO THE APPLICANT STATEMENT WOULD HELP UNITS BE MORE FUNCTIONAL AND IN TURN STUDIO UNIT TO ADD A BEDROOM. AND SO, STAFF ALSO BELIEVES 1850 THAT THIS IS CONSISTENT WITH THE PURPOSES OF THE R-3 DISTRICT CONTAINS A REASONABLE AMOUNT OF OPEN SPACE, 2,186 SQUARE FEET WHERE 20,000 IS THE MINIMUM SO IT EXCEEDS THE MINIMUM. FROM IS NO WINDOW OPENINGS OR IMPACTS TO AIR. SUPPORTS RESIDENTIAL USE ON THE PARCEL. THE SAME TENANT PRO TECHS ARE IN PLACE AS 1850. SO STAFF RECOMMENDS APPROVAL OF THIS AND SUBJECT SO FINDINGS AND CONDITIONS.

>> S. O'KEEFE: ARE THERE QUESTIONS FOR STAFF? SEEING NONE, LET'S HEAR -- IGOR HAS A QUESTION.

>> I. TREGUB: I DIDN'T GET A CHANCE TO ASK THAT ON 1850, BUT I ASSUME FOR THE BASEMENT UNITS EVEN THOUGH THEY ARE BASEMENT UNITS THAT THIS HAS BEEN OR WILL BE VETTED BY BUILDING -- THE BUILDING DEPARTMENT TO MAKE SURE THAT THEY HAVE COMPLIED WITH ALL MINIMUM REQUIREMENTS FOR VENTILATION AND LIGHT?

>> STAFF: YES AND THE CITY HAS A RENTAL HOUSING PROGRAM TOO COMPLETES INSPECTIONS TO MAKE SURE THAT RENTAL UNIT ARE MAINTAINED AND IN PROPER CONDITION.

>> S. O'KEEFE: OTHER QUESTIONS FOR STAFF. SEEING NONE, APPLICANT. WHAT DO YOU HAVE TO TELL US NEW ABOUT THIS BUILDING?

>> THANK YOU. VERY MUCH AGAIN FOR TIME. NOT MUCH. SO CAN YOU SEE MY SCREEN?

>> S. O'KEEFE: NO.

>> LET'S TRY AGAIN. YOU SHOULD BE ABLE TO SEE NOW.

>> S. O'KEEFE: NOW WE CAN.

>> THIS PROJECT IS ACTUALLY THE IMAGE THAT'S IN THE UPPER LEFT CORNER. VERY AGAIN SIMILAR CIRCUMSTANCE TO THE PROJECT YOU JUST HEARD TO ANSWER BOARD MEMBER TREGUB'S QUESTION. YES, THE BASEMENT UNITS THAT YOU CAN SEE ON THE LEFT-HAND SIDE AS THE HILL FALLS AWAY, IT REVEALS THE FULL WALL HEIGHT OF THE UNITS AS IT GOES DOWN THE DRIVEWAY AND AROUND THE CORNER WE'VE LOOKED AT THE PROXIMITIES TO CAMPUS AND THE DOWNTOWN WITH THIS. AGAIN, THIS PROJECT HAS RECEIVED A BRAND NEW HEATING SYSTEM. THE

ELECTRICAL UPGRADE HAS BEEN COMPLETE. THEY'RE GOING THROUGH SEISMIC RETROFIT IT MAKE SURE THE BUILDING LAST ANOTHER HUNDRED YEARS. THIS IS JUST ONE EXAMPLE OF HOW THE UNIT WOULD BE RECONFIGURED AND BEING SEE HOW THE SIZE OF THESE BUILDINGS AS THEY FALL DOWN THE SLOPES BOTH OF THEM HERE 1862 IS NOW ON THE RIGHT-HAND SIDE. AGAIN, WE'RE HAPPY TO ANSWER ANY QUESTIONS. THE CONDITIONS ON THE LAST PROJECT I THINK WE'D BE FINE TO HAVE THOSE APPLY HERE AS WELL. HAPPY TO ANSWER ANY QUESTIONS YOU HAVE. ANYTHING WE CAN RESPOND TO WOULD BE GREAT.

>> S. O'KEEFE: THANK YOU VERY MUCH. I FORGOT TO DO THE TIMER. SO ANY QUESTIONS FOR APPLICANT? SEEING NONE, WE'LL NOW TURN TO THE PUBLIC. PUBLIC I SEE KELLY. ANYONE ELSE HERE WOULD LIKE TO SPEAK ON THIS ITEM? WE'LL GO AHEAD AND RAISE YOUR HAND IF YOU DO. KELLY, YOU HAVE TWO MINUTES. DO I NEED TO TIME YOU? KELLY, YOU KNOW WHAT TWO MINUTES FEEL LIKE.

>> SO LOOKING AT THE BASEMENT, THE BEDROOM THAT'S NEXT TO THE LIVING ROOM HAS FLIPPED OR JUST ABOVE WHAT SAYS "PROPOSED PLANNED BASEMENT FLOOR" THAT BEDROOM THERE DOESN'T HAVE ANY EXIT INTO THE APARTMENTS. SO I'M SURE THAT'S JUST A DRAWING ERROR THAT YOU NEED TO CORRECT, BUT IT SEEMS LIKE IT OUGHT TO BE CORRECTED. SO THAT THE BEDROOM IS PART OF THE APARTMENT. AND THEN THIS UNIT UP ON THE SECOND FLOOR THAT HAS THE FIVE BEDROOM, IT FEELS UNWIELDY, MANY OF YOU ARE ARCHITECTS, YOU'VE BEEN LOOKING AT PLANS LONGER THAN I'VE BEEN. THE UNIT 7 KIND OF

DOESN'T FEEL QUITE RIGHT. PLEASE TAKE A LOOK AT THAT. AND THOSE ARE REALLY MY COMMENTS.

>> S. O'KEEFE: THANK YOU, KELLY. I SEE A HAND UP. CARRIE, DO YOU HAVE A QUESTION FOR KELLY.

>> MY QUESTION WAS FOR THE APPLICANT.

>> S. O'KEEFE: LET'S -- I'LL ASK THEM IN A MINUTE. I HAVE ANOTHER MEMBER OF THE PUBLIC THAT WOULD LIKE TO SPEAK FIRST. SO CHARLIE. HELLO CHARLIE, YOU HAVE TWO MINUTES.

>> THANKS. I PROBABLY SHOULD HAVE MENTIONED THIS DURING DISCUSSION OF 1850. I LIVE IN 1876 UNTIL APARTMENT IMMEDIATELY OPPOSITE 1862. AND I'VE HEARD THE DISCUSSION CONCERNS ABOUT CONSTRUCTION NOISE AND I THINK THEY'RE LOGICAL POINTS. FOR THE PAST SEVERAL MONTHS THEY'VE BEEN DOING WORK ON A COUPLE OF BASEMENT APARTMENTS ABUTTING 1876. BECAUSE OF THE EXCEPTION THAT THESE BUILDINGS ARE NOT SEPARATED BY MUCH. FRANKLY IT'S TAKEN FOREVER EVEN ALLOWING FOR THE FACT IT WAS DELAYED BECAUSE OF COVID. AND THERE ARE PEOPLE COMING IN AND OUT CONSTANTLY STARTING EARLY IN THE MORNING AND I DON'T THINK THESE RENOVATIONS INVOLVE MOVING ANY WALLS. I THINK SOME OF THE MEMBERS OF THE BOARD'S COMMENTS THAT WE CAN ANTICIPATE CONSTRUCTION BEING COST IS A POINT. I KNOW THERE WAS SOME DISCUSSION AND I THINK THAT'S LATE ABOUT ATTACHING A CONDITION ON WEEKDAYS AS WELL AS AT LEAST A TIME CONDITION. MAYBE IT'S TOO LATE TO GO BACK FOR 1850, BUT I WOULD THINK THAT YOU COULD

CONSIDER THAT. I JUST TO MAKE A QUICK POINT ABOUT TRAFFIC ON THE STREET. I THINK IT'S A FALLACY SO THINK WHEN PEOPLE DON'T HAVE CARS IT NECESSARILY REDUCE CAR TRAFFIC. I'VE BEEN LOOKING AT THE TRAFFIC ON THE STREET WHEN I'M STUCK AT HOME. WHEN PEOPLE DON'T HAVE CARS, THEY DO HAVE CARS BUT THEY HAVE AMAZON DELIVERY AND FOOD DELIVERY AND EVEN MULTIPLY THE AMOUNT OF TRAFFIC. THE RPP ISSUE IS ABOUT DENSITY IN THAT AREA ARE REAL AS WELL.

>> S. O'KEEFE: THANK YOU VERY MUCH. APPRECIATE YOUR COMMENTS. IS THERE ANYONE ELSE FROM THE PUBLIC WHO WOULD LIKE TO SPEAK ON THIS ITEM? ALL RIGHT, SEEING NONE, CARRIE, DO YOU MIND IF I GIVE THE APPLICANT A CHANCE TO RESPOND THEN YOU'LL HAVE A CHANCE TO ASK A QUESTION. APPLICANT. DO YOU WANT TO ADD ANYTHING?

>> I WOULD LIKE TO SAY THESE BUILDING ARE REALLY OLD. THEY LACKED PROPER REPAIR FOR A LONG TIME. THE OWNER HAS, I THINK, ACTUALLY OWNED THEM FOR JUST UNDER A YEAR MAYBE JUST OVER. WHILE THE BULLS ARE BEING RESTABILIZED AND HAVING THE SYSTEMS UPGRADED, THEY NEED A LOT OF WORK. THE INVESTMENT THAT IS BEING PUT BACK INTO THEM WILL HOPEFULLY BE PAID FOR BY THE RENTS. IT'S A LOT OF MONEY AND TIME. AND WE CAN I THINK LIVE WITH THE CONSTRUCTION CONDITION THAT WAS PLACED ON THE LAST ONE, BUT STARTING LATER IN THE MORNING JUST IS GOING TO PROLONG CONSTRUCTION. LATER IT MAKES IT MORE DIFFICULT TO GET CONTRACTORS IN BECAUSE THEY LIKE TO START EARLIER AND, AGAIN, I

THINK THE OWNERS ARE TRYING TO GET AS MUCH OF THIS DONE AS FAST AS THEY CAN. THAT'S ALL WE HAVE TO SAY. ANY OTHER QUESTIONS, WE'RE HAPPY TO TRY AND ANSWER.

>> S. O'KEEFE: THANK YOU. OKAY. CARRIE, ASK THE QUESTION.

>> C. OLSON: I WANT TO ASK ABOUT THE BASEMENT PLAN. YOU SEEM TO HAVE LOST THE TALLY FOR ONE OF YOUR UNITS. IT ISN'T ON THERE AND I GUESS I'M GOING TO HAVE STAFF PERK UP THEIR EARS A LITTLE BIT BECAUSE WE'RE LIKE GETTING READY TO APPROVE THIS PROJECT SO WE SHOULD HAVE ACCURATE PLANS. THANK YOU, KELLY FOR POINTING OUT THAT THAT ONE BEDROOM IN THE BASEMENT DOESN'T HAVE A WAY TO GET INTO THE REST OF THE UNIT. SO WHOEVER MAKES THE MOTION, CAN YOU MAKE SURE YOU UNDERSTAND HOW MANY UNITS WE ARE APPROVING AND HOW MANY BEDROOMS WE'RE APPROVING AND MAKE SURE THAT WE ASK FOR A DOOR TO BE PUT IN THE PLANS.

>> S. O'KEEFE: LET'S LET THE APPLICANT RESPOND.

>> ABSOLUTELY, THERE SHOULD BE -- I DON'T KNOW THAT IS AN PLANNING ERROR. THERE SHOULD BE A DOOR ON THE OTHER SIDE OF THAT ROOM INTO THE UNIT AND THAT SHOULD MOST LIKELY BE A WINDOW OR JUST WALL SECTION.

>> S. O'KEEFE: ALL RIGHT.

>> AND I THINK THE PROBLEM IS THAT RIGHT NOW THAT'S AN EXISTING DOOR TO THE OUTSIDE. SO THE UNIT RIGHT NOW HAS A FRONT AND BACKDOOR. THAT DOOR WOULD NEED TO BE CLOSED OFF SO THAT THERE IS JUST ONE PRIMARY DOOR IN THE UNIT. WITH THE BEDROOM

UNIT, THERE IS AN EGRESS WINDOW.

>> S. O'KEEFE: TERESA HAD HER HAND UP BUT PUT IT DOWN. NO? SO ANY OTHER QUESTIONS FOR THE APPLICANT BEFORE I CLOSE THE PUBLIC HEARING. SEEING NONE, THANK YOU SO MUCH. HAVE A SEAT. AND WE'LL BRING IT BACK TO THE BOARD FOR COMMENTS. IGOR. I'M SORRY, CARRIE. I SAW YOUR HAND UP FIRST BUT THE ORDER TELLS ME WHO DID IT. SO CARRIE.

>> C. OLSON: I WANTED TO GET MY COMMENT IN EARLY TO PLEASE HAVE THE SAME CONDITION ABOUT CONSTRUCTION NOISE AND I -- MARK TRIED TO MAKE AN ARGUMENT ABOUT NOISE THAT I DON'T QUITE BUY. I THINK THAT WE HAD IT COME UP BEFORE. SORRY, FELLOW BOARD MEMBERS, ABOUT GUYS WHO ARE ARRIVE TO DO THE CONSTRUCTION EARLY, THEY WANT TO BEAT THE TRAFFIC SO THEY COME AT 6:00 A.M. AND SIT IN THEIR TRUCK AND PLAY THEIR MUSIC. I UNDERSTAND WHY WE WOULDN'T MAKE IT A CONDITION, BUT I'M SAYING THIS SO THAT THE APPLICANT WILL UNDERSTAND THAT YOU HAVE TENANTS IN THE BUILDING AND WE WANT TO TREAT THEM NICE.

>> S. O'KEEFE: OKAY. IGOR.

>> I. TREGUB: PART OF THE JOYS OF MAKING A MOTION TO APPROVE IS TO MAKE SURE ALL THE PREVIOUS CONDITIONS ARE MOSTLY INCLUDED HERE. I WANTED TO LET CHARLIE KNOW THAT WE DID ADD A CONDITION FOR NO CONSTRUCTION ON SATURDAYS. THAT WILL BE ADDED CONDITION NUMBER ONE. AS PART OF THIS MOTION TO APPROVE. ADDITION NUMBER TWO WOULD BE THE CHANGE IN PLANS THAT KELLY

CAUGHT. THANK YOU, KELLY. NUMBER THREE WOULD BE INCLUSION OF THE BOARD'S AND TENANT PROFESSION ORDINANCE AT THE END OF CONDITION 31. AND THE FOURTH WOULD BE THE CONSTRAINT ON TMCS BEING ABLE TO USE THE DRIVEWAY AS LONG AS THE VEHICLE IS OCCUPIED. WHATEVER THE CONDITION WAS IN THE LAST PROJECT. DID I MISS ANYTHING?

>> S. O'KEEFE: I DON'T THINK SO. COOL, ALL RIGHT. SO CHARLES.

>> C. KAHN: I WOULD LIKE TO SECOND IGOR'S MOTION.

>> S. O'KEEFE: ALL RIGHT. PREDICTABLE. OKAY SO WE HAVE A MOTION AND A SECOND. IS THERE FURTHER DISCUSSION ON THE MOTION? OH, WELL, I GUESS WE'RE GOING TO VOTE ON THE MOTION. PATRICK. PATRICK, YOU'RE MUTED.

>> P. SHEAHAN: YES AND I -- I'M STILL KIND OF PUZZLING OVER WHAT THIS REALLY IS. AND WHAT THE NUMBERS REALLY ARE. ONE THING I WOULD LIKE TO COMMENT ON IS BOTH TO APPLICANT AND STAFF AND I KNOW THERE ARE STANDARDS FOR SUBMITTALS BUT THIS CHANGE OF SCALE MAKES IT REALLY DIFFICULT TO SORT THROUGH THESE AND FIGURE OUT WHAT IS BEING PROPOSED. I'M A PROFESSIONAL. IT'S HARD FOR ME. AND KELLY, NICE JOB SPOTTING SOME OF THE ISSUES BECAUSE IT'S SORT OF LIKE SEARCHING FOR WALDO. IN THE PLACEMENT, I NOTED THE DOOR TO THE EXTERIOR, BUT IT WAS OBVIOUSLY THOUGHT ABOUT BECAUSE THERE IS A NOTE THAT SAYS FLIP DOOR. IT WAS SORT OF THOUGHT ABOUT BUT NOT REALLY THOUGHT THROUGH. THE THING THAT DISTURBS ME MORE ABOUT THIS PLAN, THIS UNIT PLAN IS THAT THE LIVING ROOM IS

CONFIGURED AS A BEDROOM. IT'S KIND OF ALL WITH A DOOR. SEPARATING IT FROM THE KITCHEN RATHER THAN MOST OF THE OTHER UNIT PLANS HAVE A KITCHEN AND LIVING ROOM AS WITHIN SPACE. SO I THINK THIS IS ANOTHER CASE OF PROVIDING A PLAN THAT IS LEGAL IN THE STRICT SENSE BUT HAS A BEDROOM THAT DOESN'T GET COUNTED AS A BEDROOM, IT'S A LIVING ROOM. KNOWING HOW THESE PLACES TEND TO GET OCCUPIED, THAT'S GOING TO BE USED AS A BEDROOM. I RAISE THE ISSUE OF DENSITY STANDARDS. AND WHAT I KEPT THINKING OF AS I WAS LOOKING AT THIS IS MINI DORMS. THIS IS LIKE TAKING AN APARTMENT BUILDING AND MAKING A BUNCH OF MINI DORMS OUT OF IT. MINI DORMS HAVE BECOME REGULATED. IN THE ABSENCE OF REGULATION, THAT APPLIES TO THIS KIND OF THING. THAT IS EXTREMELY DENSE, VERY LITTLE LIVING SPACE IN PROPORTION TO BEDROOMS. AND THERE IS DETRIMENT TO THAT. THERE IS SUCH A THING AS TO DETRIMENT TO LIGHT, AIR, SUN. EXCESSIVE DENSITY COMPROMISES. FOR THE CAUSES. AND I'M GOING TO VOTE NO ON THIS ALSO BECAUSE I THINK THIS IS NOT THE KIND OF -- THIS IS HOUSING GEARED TOWARDS SHORT TERM TENANTS AND A TURNOVER BECAUSE IT ALLOWS RENT INCREASE. OR MAXIMIZES POTENTIAL RENT INCREASE. THAT'S WHAT THIS PROJECT IS TRYING TO DO. AND I'LL VOTE NO AGAIN. IT'S NOT RIGHT.

>> S. O'KEEFE: PATRICK. OKAY. NO MORE COMMENTS. I JUST WANT TO SAY BRIEFLY I DIDN'T MAKE MUCH OF A COMMENT LAST TIME. IN TERMS OF DENSITY, THIS IS PRETTY DENSE. HOWEVER, IT IS SO CLOSE TO CAMPUS. I REALLY ACTUALLY THINK THIS IS A VERY APPROPRIATE

PLACE FOR THIS TYPE OF HOUSING. EVEN THOUGH I THINK IT WOULD BE EXTREME AND PROBABLY ILL-ADVISED IN OTHER PARTS OF THE CITY, I AM COMFORTABLE WITH IT IN THIS LOCATION. I JUST WANTED TO SAY THAT. A PLUG FOR DENSITY. WITH NO FURTHER COMMENT, WE CAN TAKE A ROLL CALL VOTE, SHANNON.

>> ZAB SECRETARY: BOARD MEMBER TREGUB.

>> YES.

>> BOARD MEMBER CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> NO.

>> BOARD MEMBER SELAWSKY.

>> NO.

>> BOARD MEMBER OLSON.

>> NO.

>> BOARD MEMBER KAHN.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> BOARD MEMBER PINKSTON.

>> YES.

>> CHAIR O'KEEFE.

>> S. O'KEEFE: YES, MOTION PASSES. 1862 ARCH STREET, YOU HAVE YOUR USE PERMITS APPEALABLE TO THE CITY COUNCIL AS ALWAYS.

THANK YOU VERY MUCH. THANK YOU TO THE PUBLIC AND THANK YOU APPLICANT. THANK YOU STAFF. SO, THAT IS THE END OF OUR HEARINGS. THE LAST THING ON THE AGENDA IS A DRC REPORT. DO WE HAVE ONE?

>> NOTHING TO REPORT. WE ARE -- I DID -- ACTUALLY THERE IS ONE THING TO REPORT. TERESA, DO YOU WANT TO TALK ABOUT SOME OF THE MOVEMENT ON THE DOWNTOWN DESIGN STANDARDS? YOU ATTENDED THE MEETING.

>> T. CLARKE: WE TRIED TO GET TO THE TOPIC LAST TIME, BUT WE RAN OVER. SO WE WROTE UP SOME NOTES FROM A TOUR AND WE COULD SEND THOSE TO THE ZONING BOARD. I HAVE SOME PHOTOS SO WE'LL ASK STAFF TO SEND THOSE OUT AS A SUPPLEMENTAL. OR HOW DO WE DO THAT? WE'LL ASK ANN TO SEND THEM TO SHANNON AND SHANNON CAN PUT THEM UNDER OUR DRC PACKET OR WHATEVER. IT'S JUST WE KIND OF REVIEWED WHAT KIND OF LANDSCAPING AND HARDSCAPING IN PLANTERS WOULD BE GOOD TO REPEAT. BECAUSE RIGHT NOW WE DON'T REALLY HAVE ANY COHESIVE SET OF GUIDELINES FOR THE DOWNTOWN. RIGHT NOW THERE IS NO LANDSCAPE ARCHITECT OR OTHER PLANNER-TYPE PERSON WHO IS WORKING ON A COHESIVE PLAN FOR THE STREETSCAPE FURNITURE, HARDSCAPE, AND ALSO PLANTERS. SO, YEAH, I ENCOURAGE EVERYBODY TO GIVE INPUT BECAUSE -- AND I ALSO AFTER WALKING THAT DOWNTOWN, IT BECAME CLEAR WE NEED TO I THINK JUST AS CITIZENS WHO CARE ABOUT OUR DOWNTOWN IS TO ADVOCATE FOR THE CITY TO CREATE A DESIGN STANDARDS FOR THE DOWNTOWN. SO IT'S MORE COHESIVE BECAUSE IT'S PRETTY MISHMASH. HE'LL JUST KEEP YOU GUYED INFORMED OF WHAT I'M

DOING BECAUSE I THINK EVERYBODY HERE WOULD SUPPORT A MORE BEAUTIFUL DOWNTOWN. AND AS MORE PROJECTS GET DEVELOPED IN DOWNTOWN, WE'D LIKE TO SEE -- WITH THE MONEYS WE HAVE. THE IMPROVEMENT.

>> C. KAHN: TERESA INVESTIGATION TO DATE HAS NOT REVEALED ANY DESIGN STANDARDS FOR THE CITY OF BERKELEY FOR OUR DOWNTOWN FOR THE PUBLIC SPACES WHICH IS ASTONISHING. TO ME. AND WE NEED TO RECTIFY THAT HOW THAT IS RECTIFIED WILL BE A MATTER OF COUNCIL BUT WE'RE TRYING TO COLLECT GOOD INFORMATION SO COUNCIL WILL MAKE A DETERMINATION ON HOW TO FIX IT. TERESA FIGURED THIS OUT. THE DRC, WE HAVE STANDARDS IN THE CITY. WHEN PEOPLE BUILD LARGE PROJECTS THEY HAVE TO REPLACE THE SIDEWALK FREQUENTLY. THEY HAVE TO PUT IN LANDSCAPING IMPROVEMENTS AND THEY DON'T KNOW WHAT TO DO. WE AT DRC -- WE DO OUR BEST, BUT WE DON'T HAVE STANDARDS TO WORK FROM. TERESA REALLY BROUGHT IT TO THE ATTENTION OF DRC AND IS ACTIVELY PURSUING IMPROVEMENTS TO OUR DOWNTOWN AND GETTING STANDARDS THAT WE CAN AS YOUR SUBCOMMITTEE, YOU KNOW, IN FORCE WHEN PEOPLE COME WITH NEIGHBORHOOD PROJECTS AND PAY MAJOR MONEY INTO THE PUBLIC RIGHT-OF-WAY WITHOUT ANY IDEA OF WHAT THEY ACTUALLY OUGHT TO BE DOING. SO THANK YOU TERESA.

>> S. O'KEEFE: CAN I -- BEFORE I CALL ON ALL FOUR OF YOU, SHANNON THAT IS NOT A PROBLEM TO GET THE NOTES? SEND IT TO ME AND I'LL PUSH IT OUT TO THE ZAB NOTES. WE'LL GET IT IN OUR

E-MAIL?

>> ZAB SECRETARY: IF THIS IS SOMETHING THAT THERE IS A LOT OF DIFFERENT WAYS. I CAN PUSH IT OUT VIA E-MAIL, IT COULD BE AN ATTACHMENT TO THE NEXT ZAB PACKET IF THAT IS SOMETHING YOU WANT TO DISCUSS MORE OR WANT TO MAKE SURE THAT THE PUBLIC HAS ACCESS THE SAME WAY THAT THE ZAB DOES. WE COULD DO AWFUL THE ABOVE. I COULD PUSH OUT THE E-MAIL SOONER AND ATTACH IT TO A PACKET IN TWO WEEKS.

>> S. O'KEEFE: TERESA, WOULD IT BE HELPFUL TO HAVE A ZAB DISCUSSION ON IT?

>> NOT YET. I THINK WE'LL TRY TO GET IT ON TO THE DRC. MAYBE WE CAN DO IT AS PART OF THE DRC REPORT.

>> S. O'KEEFE: THAT MAKES SENSE. IF WE EVER NEED TO HAVE A ZAB DISCUSSION, WE CAN PUT THAT ON AGENDA. ALL RIGHT. I WANT TO GET TO THE PEOPLE WITH THEIR HANDS UP. THAT SOUNDS COOL. WHO WAS FIRST, IGOR.

>> I. TREGUB: KUDOS TO MEMBERS OF THE DRC. THIS IS A GREAT EXAMPLE OF SOMETHING THAT WE MENTIONED AT ZAB I THINK AT ONE OF THE MEETING AND IT WENT TO THE DRC FOR FURTHER DISCUSSION. WHICH REMINDS ME THAT THERE HAVE BEEN SEVERAL THINGS THAT ZAB HAS BEEN ASKING FOR. AND I WANTED TO SEE IF ON THE NEXT AGENDA WE COULD INCLUDE A STAFF UPDATE ON SOME OF THOSE THINGS. I CAN'T EVEN REMEMBER WHAT THEY ALL ARE RIGHT NOW. I NEED TO WORK WITH SHANNON. BUT I DISTINCTLY REMEMBER THAT A COUPLE OF MONTHS AGO,

WE HAD A RUNNING LIST OF ISSUES THAT KEPT COMING UP AT ZAB OVER AND OVER AND OVER AND WE WANTED TO CONSOLIDATE THEM AND SEE HOW WE CAN ASK THE COUNCIL TO ADDRESS THEM.

>> I CAN ANSWER ONE AND YOU'RE GOING TO GET ME IN TROUBLE, IGOR. ONE OF THE ON GOING QUESTIONS OR CONCERNS THAT CAME UP AT ZAB IS THE WAY THE AFFORDABLE MITIGATION FEE IS CALCULATED. THAT ITEM GOES TO DISCUSSION AT I BELIEVE THE OCTOBER 13TH PLANNING COMMISSION MEETING. BUT WHAT THE CITY CLERK ASKED ME TO DO IS NOT TELL YOU ALL ABOUT THAT UNTIL AFTER THE MEETING. SO THAT WE DON'T RUN INTO A BROWN ACT PROBLEM OF ALL THE ZAB MEMBERS BEING THERE. MAYBE IF YOU COULD ALL AGREE THAT ONLY IGOR WILL WATCH IT IN REALTIME AND THE REST OF YOU WILL WATCH IT ON THE 14TH.

>> S. O'KEEFE: THEY SAID LIKE WE CAN'T BE GROWN UPS.

>> ZAB SECRETARY: IT'S 9:45. I CAN'T REMEMBER THE LANGUAGE.

>> S. O'KEEFE: JUST MAKE SURE THERE IS NO BROWN ACT VIOLATION. IF WE'RE AT A PUBLIC MEET --

>> ZAB SECRETARY: TRUST ME. THE CLERK SAID IT COULD BE PROBLEMATIC AND A SLIPPERY SLOPE. PLEASE DON'T ALL ATTEND ON THE 13TH. WATCH IT ON THE 14TH.

>> I. TREGUB: THE REST WILL WATCH IT ON FACEBOOK LIVE.

>> S. O'KEEFE: CARRIE.

>> FOR YEARS WE ARE DEALT DOWNTOWN STREETSCAPE AND WE CERTAINLY TALKED ABOUT IT WITH THE WORK TO CREATE A HISTORIC DISTRICT. I DON'T KNOW IF YOU ALL KNOW, BUT WE ACTUALLY DID THAT

WORK. WE HAD CONSULTANTS AND WE PAID A LOT OF MONEY FOR IT. BUT IT'S NOT GOING IT HAPPEN BECAUSE YOU HAVE TO HAVE PROPERTY OWNERS BUY OFF ON HISTORIC DISTRICTS. IT'S STILL IS THERE AND THE WORK WAS -- I MEAN THERE ARE ABOUT A HUNDRED HISTORIC PROPERTIES DOWNTOWN. I'M JUST THROWING IT OUT THERE, TERESA, I APPRECIATE THE WORK YOU'RE DOING BUT WE HAVE DONE SOME WORK ON THAT.

>> T. CLARKE: IF YOU HAVE ANYTHING ON STREET FURNITURE, LANDSCAPE AND THE HARD CAPE, THOSE ARE THE THREE ITEMS WE'RE TRYING TO DEAL WITH ABOUT US THAT'S THE AREA THAT PUBLIC WORKS IS IN CHARGE OF AND THEY DON'T HAVE ANYTHING AND NOBODY THERE GIVES A HOOT.

>> S. O'KEEFE: OKAY. DENISE.

>> D. PINKSTON: I JUST WANTED TO SAY THANK YOU TO THE DESIGN REVIEW COMMITTEE FOR TAKING THAT ON. THINK THAT'S GREAT ABOVE AND BEYOND THE CALL OF DUTY. THANKS.

>> S. O'KEEFE: PATRICK, YOU PUT YOUR HAND DOWN.

>> IT'S BEEN COVERED BUT I WANT TO THANK CHARLES AND TERESA FOR THEIR WORK. IT'S SORELY NEEDED.

>> S. O'KEEFE: AS IGOR SAYS [INDISCERNIBLE]

>> IT'S MORE FUN THAN SOME OF THE OTHER STUFF WE DO. MAKE SOMETHING PRETTY. ON THE STREET. THAT WE WALK EVERY DAY.

>> S. O'KEEFE: ABSOLUTELY. OKAY, NO MORE HANDS UP. NO FURTHER DISCUSSION? SHALL WE ADJOURN? WE ARE ADJOURNED MY

FRIEND. I'LL SEE YOU IN TWO WEEKS.

>> THANKS SHOSHANA.

>> S. O'KEEFE: THANKS, EVERYONE.

>> THANK YOU SO MUCH.

>> THANK YOU CHAIR. THANKS EVERYBODY.

>> S. O'KEEFE: THANKS VICKIE. BUY, LADIES.

>> ZAB SECRETARY: GOOD NIGHT VICKIE.

ZONING ADJUSTMENTS BOARD

STAFF REPORT

REVISED DECEMBER 8, 2020

FOR BOARD ACTION
SEPTEMBER 24, 2020

1850 Arch Street

Use Permit #ZP2019-0212 to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building, for a total of 30 bedrooms on the parcel.

I. Background

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning: R-3(H) – Multiple Family Residential District, Hillside Overlay

B. Zoning Permits Required:

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

C. CEQA Recommendation: It is staff's recommendation to the ZAB that the project is Categorically exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and is not subject to any exception noted in Section 15300.2 of the CEQA Guidelines. The determination is made by the ZAB.

D. Parties Involved:

- Applicant: Rhoades Planning Group, 46 Shattuck Square, Berkeley
- Owner: Arch Street Village, LLC, c/o Rhoades Planning Group

Figure 1: Zoning Map



Zoning District
R-1(H): Single-Family Residential District, Hillside Overlay
R-3(H): Multiple-Family Residential District, Hillside Overlay
R-4: Multi-Family Residential District
R-4(H): Multi-Family Residential District, Hillside Overlay
R-5: High-Density Residential District

N

Figure 2: Site Plan

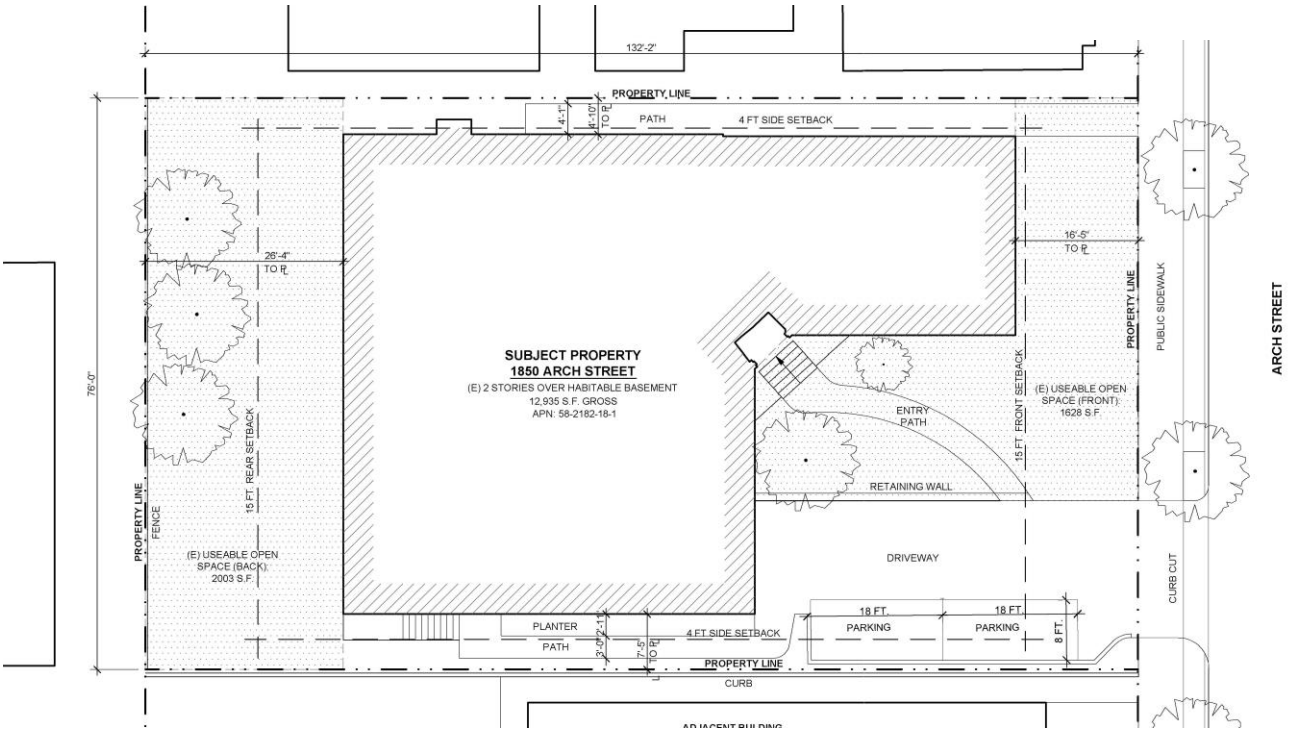


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		10-unit multi-family building	Multiple-Family Hillside Overlay (R-3H)	Medium Density Residential (MDR)
Surrounding Properties	North	Multi-family building		
	East	Triplex		
	South	11-unit multi-family building		
	West	22-unit multi-family development (Normandy Village)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new non-residential gross floor area is proposed.
Affordable Housing Fee for qualifying non-residential	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have

projects (Per Resolution 66,617-N.S.)		been substantially vacant of all uses for at least 3 years. No new gross floor area is proposed.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project does not include the creation of any new rental units, and therefore this requirement does not apply.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is not a "housing development project," as no additional units would be created. The project is to expand two existing units on the site. Therefore, the HAA findings do not apply to this project.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not near a creek or within a creek buffer.
Density Bonus	No	The project is not seeking a Density Bonus.
Green Building Score	No	The project does not propose the construction of a new building.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a main building. In addition, there is no evidence to suggest the building is a historic resource.
Rent Controlled Units	Yes	According to the Rent Stabilization Board (RSB), the building contains 11 units, all of which are claimed as "rented or available to rent" and considered controlled rental units, and are therefore subject to BMC Chapter 13.76; the project must comply with RSB noticing and vacancy rules (See Attachment 4 and section V.B below).
Residential Preferred Parking (RPP)	Yes	The project site is located in Area "F" of the Residential Preferred Parking Program.
Seismic Hazards (SHMA)	No	The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act.
Soil/Groundwater Contamination	No	The project site is not located within the City's Environmental Management Area.
Transit and Bicycle Access	Yes	The project site is five blocks east of numerous AC transit routes on University and Shattuck Avenue. There is a bikeway on Arch Street (N-S) and Hearst Avenue (E-W). Also, the project site is approximately ½ mile from the Downtown Berkeley BART station.

Table 3: Project Chronology

Date	Action
December 20, 2019	Application submitted
January 7, 2020	Application deemed incomplete
March 16, 2020	Shelter in Place Order issued, multiple ZAB hearings cancelled
April 6, 2020	Revised application submitted

April 16, 2020	Application deemed complete
September 10, 2020	Public hearing notices mailed/posted
September 24, 2020	ZAB hearing

Table 4: Development Standards

R-3 Standards BMC Section 23D.36.070-080		**Existing**	**Proposed**	**Permitted/ Required**
Lot Area (sq. ft.)		9,930	no change	5,000 min.
Gross Floor Area (sq. ft.)		12,935	no change	n/a
Dwelling Units		10	no change	n/a
Bedrooms		12	30	n/a (≥5 w/permit)
Building Height	Average	32'-6"	no change	35' max.
	Maximum	36'	no change	n/a
	Stories	3	no change	3 max.
Building Setbacks	Front	13'-9"	no change	15' min.
	Rear	28'-11"	no change	15' min.
	Left (South) Side	7'-5"	no change	6' min.
	Right (North) Side	4'-1"	no change	6' min.
Lot Coverage (%)		44.6	no change	40 max. (For 3 stories)
Usable Open Space (sq. ft.)		3,631	no change	2,000 min. (~~400~~ 200 per du)
Parking		5	no change	~~10~~ 13 min. (1 per ~~unit~~ 1,000 sq. ft. of gross floor area)

II. Project Setting

A. Neighborhood/Area Description: The subject site is located on the west side of Arch Street, in a mixed-use residential neighborhood that consists of educational uses as well as multiple-family apartment and condominium buildings that range from two to three stories in height (See Figure 1: Zoning Map). The site is located one-half block north of Hearst Avenue and the University of California – Berkeley campus. It is also located two blocks west of Shattuck Avenue and downtown Berkeley (C-DMU District), and two blocks east of the goods and services on Euclid Avenue.

B. Site Conditions: The subject parcel is rectangular, with a 76' front along Arch Street and 132'-2" depth, and slopes down toward the southwest. The parcel is currently developed with a three-story residential building constructed in 1926. It was originally constructed with nine dwelling units, and in 1961, an additional unit was created in the basement for a total of ten dwelling units (six 1-bedroom, two 2-bedroom, and two 3-

bedroom). Also added in 1961 was a laundry room, storage areas and garage on the basement level. The building is accessed on the first level through a driveway and front entry pat/stairway along Arch Street. Outdoor usable open space is provided in the rear and front yards.

The parcel is non-conforming to current zoning standards in terms of maximum height, minimum building setback from the front (east) and right (north) side property lines, lot coverage, and parking. (See Figure 2: Site Plan and Table 4: Development Standards). The property contains a total of five parking spaces where 1~~0~~3 is the minimum, including three spaces in the garage and two spaces adjacent to the driveway.

In addition to the 10 existing units within this residential building, there is one non-conforming space labeled Unit 5A by the applicant, shown in the Existing Second Floor Plan (Attachment 2, Sheet A2). According to a Special Inspection conducted by the City Building Division on November 2, 1987, this space appears to have been created out of a portion of the adjacent unit (Unit 6) by plastering over a door in the bedroom closet and adding a door to the hallway. While City records indicate 10 units, there is no evidence that Unit 5A was created with permits. In 1987, the City recommended that Unit 5A be reconnected as part of the larger unit for the following reasons:

1) Unit 5A has a combined sleeping/living room of barely 120 sq. ft., which is the minimum required floor area for a habitable room under existing code.

2) Unit 5A does not have a kitchen and is therefore a sleeping room- not a dwelling unit. Inspection revealed that the tenant was conducting illegal cooking practices on a hot plate and doing dishes in the bathroom due to lack of proper kitchen facilities.

On February 4, 1992, the Building Division approved Unit 5A for habitable use as a guest room with a bathroom. More recently, on January 6, 2020. the Rental Housing Code Enforcement Division inspected the building and issued a Notice of Violation (NOV) under the City's rental housing safety program. The NOV included violations within Unit 5A. On June 25, 2020 the Rental Housing Code Enforcement Division issued an addendum to the NOV, stating that Unit 5A had been converted as a separate unit without permits and approvals. To correct the violation, the owner must remove all illegal construction and either restore the space to its legal use or obtain permits and zoning approvals to legalize as a separate unit, and was referred to Zoning Code Enforcement. (See Attachment 5). As part of this zoning permit application process, Staff recommended that Unit 5A could be brought into compliance with the Zoning Code through 1) combination with an existing legal unit, 2) renovation to meet minimum building code requirements for a dwelling or efficiency unit, or 3) conversion to non-habitable space. The project proposes to combine Unit 5A with Unit 5, providing an additional bedroom and bathroom (See Attachment 2, Sheet A5) once both units are voluntarily vacated or a temporary relocation plan has been implemented, which will correct this violation (see Condition of Approval #11, #12, #32, and #33, as well as Attachment 5).

III. Project Description

The applicant proposes to reconfigure the building floor plan by moving and adding interior walls to accommodate an additional 18 bedrooms and two bathrooms within the existing 10-unit building. The building would contain one 1-bedroom, one 2-bedroom, six 3-bedroom and two 4-bedroom units. A total of one bedroom would be added to the basement level, eight bedrooms and one bathroom would be added to the first level, and nine bedrooms and one bathroom would be added to the second level (see Table 5 below). No exterior alterations are proposed.

Table 5: Bedroom and Bathroom Count, Floor Area, and Location

Location within Building	Floor Area	Number of Bedrooms			Number of Bathrooms		
Floor	**Sq. Ft.**	**Entitled**	**As-Built**	**Proposed**	**Entitled**	**As-Built**	**Proposed**
Basement	4,037	2	2	3	2	2	2
First	4,424	5	9	13	4	4	5
Second	4,474	5	6	14	4	4	5
Total	**12,935**	**12**	**17**	**30**	**10**	**10**	**12**

Note: City records indicate the building contained 12 bedrooms and 10 bathrooms as of 1961, when the most recent building permit was finaled. As part of this Use Permit application, the applicant submitted as-built plans indicating the building contained 17 rooms that met the City's definition of a "bedroom," per BMC Section 13.42.020.B. Therefore, this Table presents the entitled, as-built, and proposed number of bedrooms and bathrooms. For the purpose of this Use Permit, the project description is to add 18 bedrooms to the building, which previously contained 12, as entitled.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on December 20, 2019, a pre-application poster was installed by the applicant at the project site and the project plans were reviewed at a community meeting hosted by the applicant. Four people attended the meeting, including two residents of the building and two neighbors. Concerns included timely repairs, excessive noise from both the door buzzer and residents during quiet hours, and disruptions (i.e. noise) from the proposed construction. On March 30, 2020, the applicant notified all tenants of the proposed renovations as well as their rights under the Rent Stabilization Ordinance (BMC Section 13.76) and Tenant Protection Ordinance (BMC Section 13.79.060). On April 30, 2020 the City received a letter from a resident of the building expressing concerns regarding the impacts to trash, laundry, parking, and bathrooms that would result from the project, and complaints regarding property maintenance of the existing building. The applicant responded to those concerns in a letter dated May 26, 2020 (Attachment 3). See the discussion in section V.B for more information.

On September 10, 2020, the City mailed 505 public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in two locations.

As of the writing of this staff report, Staff has not received any communications regarding the project.

B. Committee Review: This project is not subject to advisory committee review.

V. Issues and Analysis

A. Addition of Bedrooms to the Parcel: Pursuant to BMC Section 23D.32.050.A, the addition of bedrooms 13 through 18 on the parcel requires the approval of a Use Permit. Specifically, the Board must make the required "non-detriment" findings pursuant to BMC Section 23B.32.040 related to the "health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood…or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City." "The Board shall deny an application for a Use Permit if it determines that is unable to make any of the required findings, in which case it shall state the reasons for that determination." Recently, the ZAB has considered the amount of common space (living room/dining room/kitchen) relative to the number of bedrooms, as well as the amount of usable open space on the parcel, as factors when evaluating the addition of bedrooms. While there is no adopted standard, that information is compiled below, in Table 6.

As shown in Table 6 below, the proposed project would convert common living areas to create new bedrooms in eight of the ten units, and new bathrooms in two units. On average, 50% of the existing floor area within each unit is currently dedicated to common living spaces. The project would result in a 16% reduction in the share of floor area dedicated to common living spaces, for a new average of 34%, which continues to provide a reasonable amount of common living space in each unit. According to the applicant statement, the conversion of common living spaces to bedrooms and bathrooms would improve the layout of the units, for example by relocating the kitchen to create a more natural great room in Unit 3, and relocating the kitchen to create an open floor plan and private bedroom in Unit 10.

As shown in Table 4 above, the parcel has a non-conforming front and right (north) side yard setbacks, exceeds the maximum lot coverage by 4.6%, and has five off-street parking spaces where 10 is the minimum. The proposed renovations would not change the building footprint, and thus would not exacerbate any non-conforming condition, and would maintain the existing amount of usable space on the parcel (3,631 square feet), which exceeds the minimum requirement by 1,631 square feet.

Table 6: Change in amount and share of common living area per unit

Unit#	Floor Area	Common (Living/Dining/Kitchen) Area			Share of Common Living Spaces to Total Floor Area			Location within Building
	Sq. Ft	As-Built	+/-	Proposed	As-Built	+/-	Proposed	Floor
Unit 1	741	404	-178	226	54	-24	30	First
Unit 2	696	152	+132	284	22	+19	41	
Unit 3	720	165	+67	232	23	+9	32	
Unit 4	1,270	515	-181	334	41	-14	26	
Unit 5	741	435	-214	221	59	-29	30	Second
Unit 6	706	396	-106	290	56	-15	41	
Unit 7	721	430	-170	260	60	-24	36	
Unit 8	1,270	705	-349	356	56	-27	28	
Unit 9	711	405	-190	215	57	-27	30	Basement
Unit 10	629	470	-215	255	75	-34	41	
Average	**820**	**407**	**-140**	**267**	**50%**	**-16%**	**34%**	

Staff believes the proposed addition is consistent with the purposes of the R-3 District, which are to:

A. Implement Master Plan policy by encouraging the development of relatively high-density residential areas;

B. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;

C. Protect adjacent properties from unreasonable obstruction of light and air; and

D. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City requirements for this type of housing; (Ord. 7210-NS § 8 (part), Ord. 6478-NS § 4 (part), 1999).

Staff Analysis: As described in section II above, the subject residential building is a 10-unit apartment building in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. As described in Table 2 above, the subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus, consistent with purpose B. The parcel contains a reasonable amount of open space, 3,631 square feet of useable open space where a minimum of 2,000 square feet is required. As the project would not result in any exterior changes to the building, such as new window openings or extension of the building footprint, there would not be any impacts to light and air, consistent with purpose C.

Staff believes the addition of 18 bedrooms to the 10-unit residential building would support the high-density residential use on the parcel, consistent with the purposes of the R-3 District.

Staff believes the proposed addition of bedrooms is consistent with the purposes of the Hillside Overlay District (BMC Section 23E.96.2020), which are to:

A. Implement the Master Plan's policies regarding Hillside Development
B. Protect the character of Berkeley's hill Districts and their immediate environs
C. Give reasonable protection to views yet allow appropriate development of all property
D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area.

Staff Analysis: The subject building is a 10-unit multi-family building in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, are one-half mile from the Downtown Berkeley BART station, and are located on a bikeway. In addition, the projects are one-half block north of the University of California-Berkeley campus; no exterior changes are proposed, consistent with purpose B. The project would not result in any exterior changes to the building, such as any new window openings or an extension of the building footprint; there would not be any impacts to views, consistent with purpose C. Although the existing building is non-conforming in terms of minimum setbacks, no exterior changes are proposed, consistent with purpose D.

B. Tenant Protections: As of the writing of this staff report, all rent controlled units are occupied and currently rented to tenants whose tenancy began prior to the submittal of this Use Permit application. The applicant intends to complete the project over time as tenants move out of the building voluntarily, and has committed to not unlawfully evict or otherwise displace any current tenant in order to accommodate construction. The applicant informed the existing tenants of the development plan at a community meeting held on December 20, 2019, where at least two tenants were present, and mailed a notice to each tenant on March 30, 2020 restating the development plans and their rights under the City's Rent Stabilization Ordinance. Per the Rent Stabilization Ordinance, the existing rental units would remain as rent controlled rental units after renovation, and the property owner has committed to providing notice to any prospective new tenant of their rights under the Ordinance prior to execution of a new lease (see Condition of Approval #32). In addition, the applicant has committed to providing notice in advance of the City's noticing requirements before tenants might be relocated for construction on their units and has confirmed that all tenants would be relocated voluntarily or temporarily as provided for in Condition of Approval #12, as recommended by the Rent Stabilization Board (see RSB Memorandum in Attachment 4).

C. General Non-Detriment: Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in

the area because it would be consistent with the development pattern in the area, as no exterior changes are proposed. In addition, staff believes the project would not unreasonably obstruct sunlight, air, or views as no exterior changes are proposed. Finally, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and storm water requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

D. General Plan Consistency: Based on the foregoing project description and analysis, staff concludes that the project would comply with the following 2002 General Plan goals and policies:

1. Policy H-8–Maintain Housing: Maintain and preserve the existing supply of housing in the City.
2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The residential project would increase the number of bedrooms on the parcel and renovate the interior of the building, thus maintaining and preserving the existing housing supply in the city. The subject property is located in a mixed-use residential neighborhood containing a mix of multiple-family dwellings and condominiums that are two- to three-stories in height, and does not propose any changes to the exterior of the building or expand its footprint. Because the changes proposed would maintain the existing building footprint, would not increase the building height, and would maintain the amount of usable open space on the property, staff believes that the project would maintain the existing design, scale and compatibility with the neighborhood.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2019-0212 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:
1. Findings and Conditions
2. Project Plans, dated March 18, 2020
3. Correspondence, received May 26, 2020
4. Rent Stabilization Board memo, prepared on August 5, 2020
5. Notice of Violation, Unit 5A, dated June 25 ,2020

6. Notice of Public Hearing

Staff Planner: Ashley James, ajames@cityofberkeley.info, (510) 981-7458

ATTACHMENT 1

FINDINGS AND CONDITIONS

APPROVED BY ZAB ON SEPTEMBER 24, 2020
REVISED DECEMBER 8, 2020

1850 Arch Street

Use Permit #ZP2019-0212 to add 18 bedrooms to an existing 10-unit, 12 bedroom multi-family residential building, for a total of 30 bedrooms on the parcel.

PERMITS REQUIRED

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.32.040.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   A. The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, number of stories, rear and left side yard setbacks, and usable open space in BMC Section 23D.36.070-080 (Development Standards), as detailed in the August 27, 2020 staff report. The proposed project is non-conforming for front yard setback (13'-9" where 15' is the minimum), lot coverage (44.6 percent where 40 percent in the maximum) and parking (providing five spaces where ~~ten~~ thirteen are required) under the current Zoning Ordinance. The proposed development is permissible because: (1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space.

B. The project is consistent with the purposes of the District in that it will permit the addition of bedrooms through conversion of floor area within the existing building footprint on a residential property, which continues the existing pattern of high residential density of the neighborhood. The project will not reduce the existing non-conforming 13'-9" front setback, the non-conforming 4'-1" right side setback, the non-conforming 44.6% lot coverage, or the non-conforming off-street parking (5 spaces where ~~10~~ 13 is the minimum). The project will, therefore, retain the existing pattern of development that is conveniently located and provides a reasonable amount of usable open space of the District while protecting adjacent properties from unreasonable obstruction of light and air.

C. The project is consistent with the purposes of the Hillside Overlay (H) District, as the subject building is a residential, 10-unit multi-family building in a mixed-use residential neighborhood. The project does not result in any exterior changes, and therefore would not result in any impacts to views or exacerbate any existing non-conforming condition.

D. The project plans dated March 18, 2020 indicate the proposed addition will not unreasonably obstruct sunlight on nearby existing dwellings, impact the privacy between neighbors, unreasonably impact air and light between neighbors, or impact views. As discussed in the project staff report dated September 24, 2020, the proposed project will not create any new window openings or otherwise change the exterior of the building or the building's footprint. Therefore, the impacts are determined to be non-detrimental.

2. Pursuant to BMC Section 23D.32.050.A, the Zoning Adjustments Board finds that the proposed addition of bedrooms thirteen through eighteen supports the residential use on the parcel, consistent with the purposes of the R-3 District. The project represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus. The parcel contains a reasonable amount of open space, 3,631 square feet of useable open space where a minimum of 2,000 square feet is required.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

I. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Transportation Network Company (TNC) Plan. The applicant shall submit a TNC management plan to Land Use Planning staff for review and approval. The management plan shall clearly articulate the allowable uses of the driveway for deliveries and passenger pick-up and drop-offs; this plan shall be distributed to all residents of the building.

11. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

☐ **Project Liaison** _____

Name Phone #

12. Notice of Violation - Unit 5A. All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that: 1) per Housing Code Enforcement Case H2019-00471, Unit 5A may not be rented on either a short- or long-term basis , and Unit 5A shall be combined with Unit 5 in accordance with the approved plans dated February 5, 2020; 2) once Unit 5A and Unit 5 have both been voluntarily vacated by the sitting tenant, or the tenant and owner have come to an agreement for temporary relocation pursuant to BMC Chapter 13.84, the units shall be combined per the project plans dated February 5, 2020; and 3) there are no grounds for eviction of any existing tenant households in the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) due to the unpermitted status of Unit #5A or the work proposed in this application. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

13. Unit Vacancy. Demolition and/or construction activities approved under this permit shall not commence in any unit unless the existing tenants have either voluntarily vacated the unit or have reached an agreement for temporary relocation pursuant to BMC Chapter 13.84. The applicant shall submit evidence of such to the Rent Stabilization Board (i.e. tenant's notice to vacate, relocation agreement).

14. Construction and Demolition. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

15. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine whether the following document is required and timing for its submittal:
A. Building Materials Survey:

1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

Prior to Issuance of Any Building (Construction) Permit

16. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

17. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

18. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday. No construction-related activity shall occur on Saturday, Sunday or any Federal Holiday.

19. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying

dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

20. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.

E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the

sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

21. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer‘s specifications. All equipment shall be checked by a certified visible emissions evaluator.
H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District‘s phone number shall also be visible to ensure compliance with applicable regulations.

22. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

23. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

24. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

25. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The

applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

26. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

27. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

28. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

Prior to Final Inspection or Issuance of Occupancy Permit:

29. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

30. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 18, 2020 except as modified by conditions of approval.

31. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

32. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

33. Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) and the Tenant Protection Ordinance (BMC Section 13.79.060).

34. Units 5 and 5A. Units 5 and 5A shall not be rented to a new tenant household until Housing and Zoning Enforcement determine that the conditions of the Notice of Violation (H2019-00471) have been satisfied and the Building permit to combine these two units has been finaled.

ZONING ADJUSTMENTS BOARD

STAFF REPORT

REVISED DECEMBER 8, 2020

FOR BOARD ACTION
SEPTEMBER 24, 2020

1862 Arch Street

Use Permit #ZP2019-0213 to add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building, for a total of 25 bedrooms on the parcel.

I. Background

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning: R-3(H) – Multiple Family Residential District, Hillside Overlay

B. Zoning Permits Required:

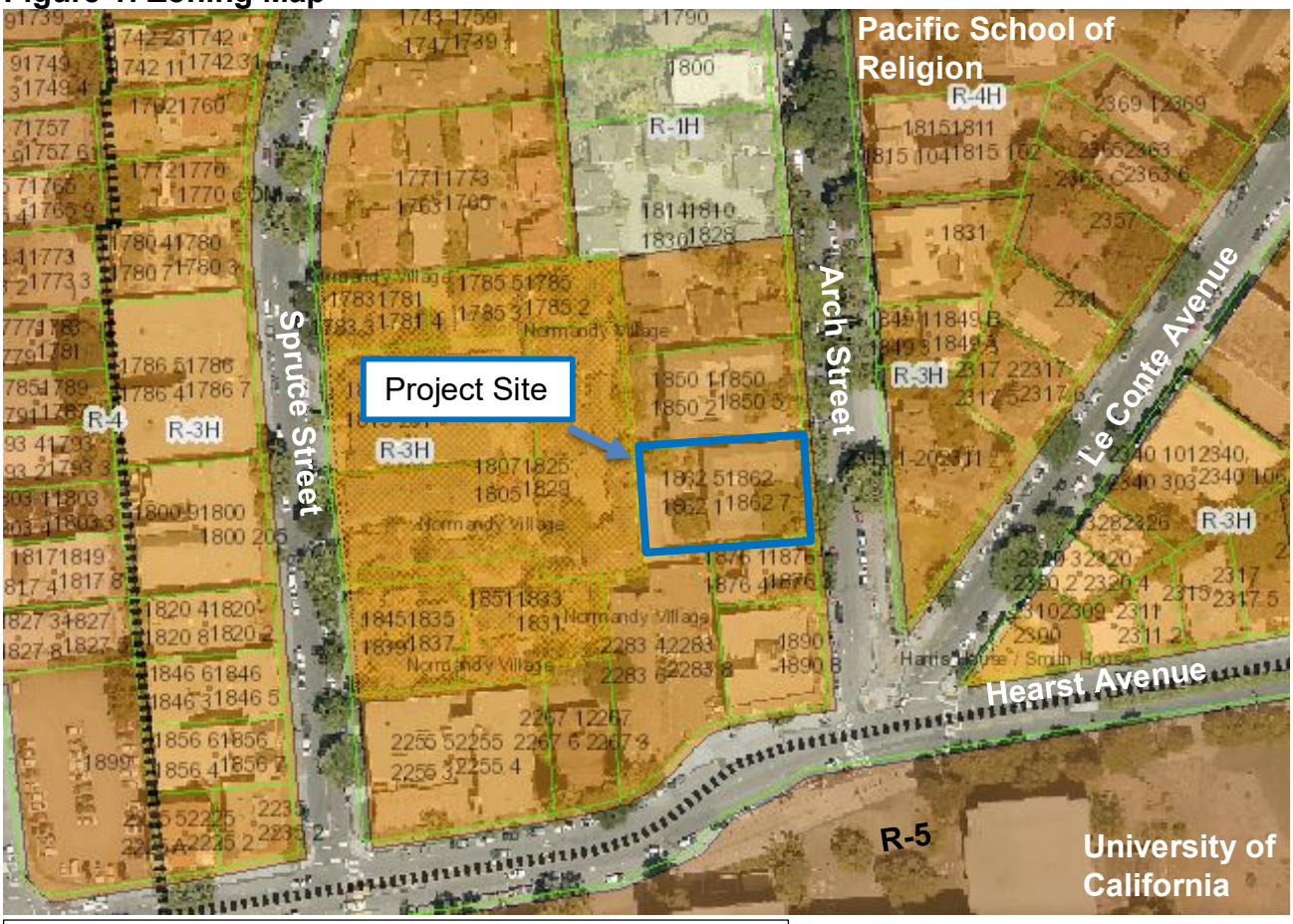
- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

C. CEQA Recommendation: It is staff's recommendation to the ZAB that the project is categorically exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines and is not subject to any exception noted in Section 15300.2 of the CEQA Guidelines. The determination is made by the ZAB.

D. Parties Involved:

- Applicant: Rhoades Planning Group, 46 Shattuck Square, Berkeley
- Owner: Arch Street Village, LLC co/Rhoades Planning Group

Figure 1: Zoning Map



Zoning District
R-1(H): Single-Family Residential District, Hillside Overlay
R-3(H): Multiple-Family Residential District, Hillside Overlay
R-4: Multi-Family Residential District
R-4(H): Multi-Family Residential District, Hillside Overlay
R-5: High-Density Residential District

N

Figure 2: Site Plan

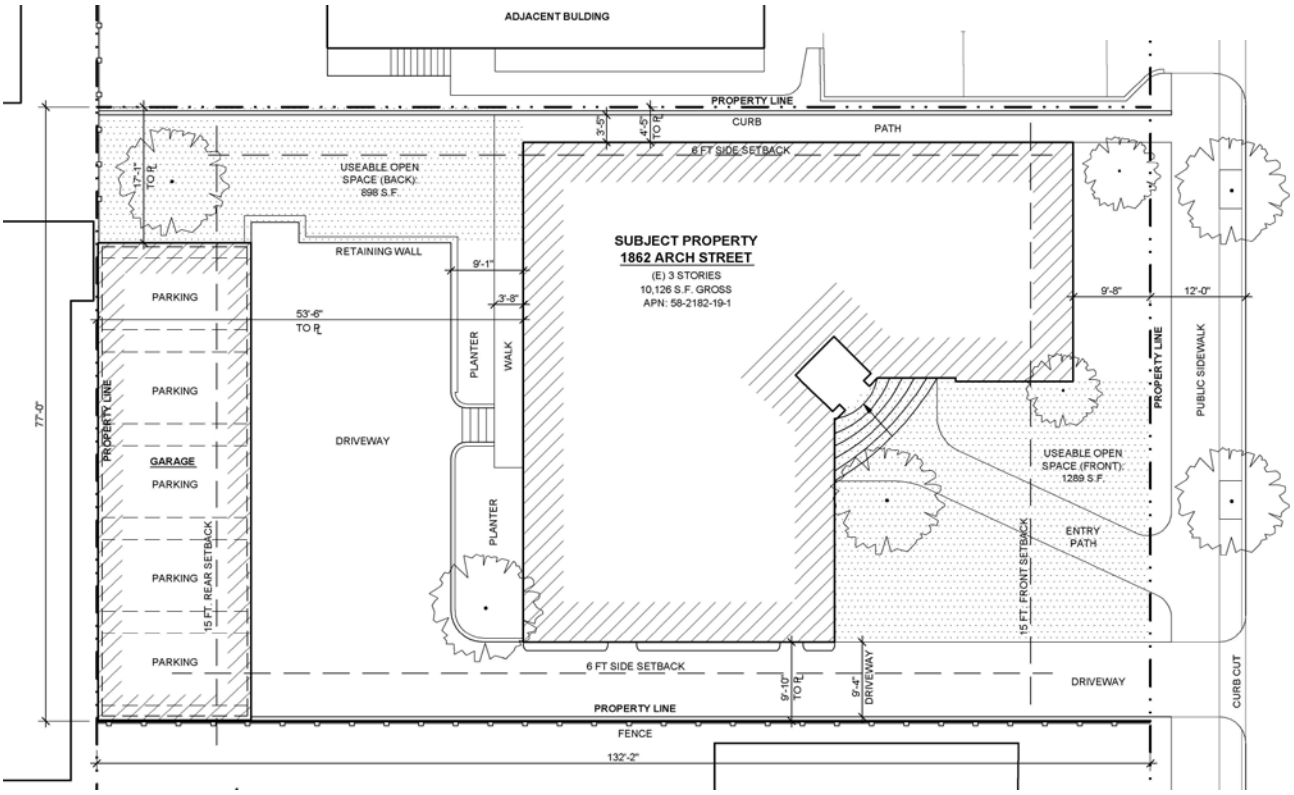


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		10-unit multi-family building	Multiple-Family Hillside Overlay (R-3H)	Medium Density Residential (MDR)
Surrounding Properties	North	10-unit multi-family building		
	East	Group Living Accommodation (Delta Zeta Sorority)		
	South	Fourplex		
	West	22-unit multi-family development (Normandy Village)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new non-residential gross floor area is proposed.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with new non-residential gross floor area, including projects that alter buildings that have been substantially vacant of all uses for at least 3 years. No new gross floor area is proposed.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project does not include the creation of any new rental units, and therefore this requirement does not apply.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is not a "housing development project," as no additional units would be created. The project is to expand two existing units on the site. Therefore, the HAA findings do not apply to this project.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not near a creek or within a creek buffer.
Density Bonus	No	The project is not seeking a Density Bonus.
Green Building Score	No	The project does not propose the construction of a new building.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a main building. In addition, there is no evidence to suggest the building is a historic resource.
Rent Controlled Units	Yes	According to the Rent Stabilization Board (RSB), the building contains 10 units, all of which are claimed as "rented or otherwise available to rent" and considered controlled rental units, and are therefore subject to BMC Chapter 13.76. The project must comply with RSB noticing and vacancy rules, see Conditions of Approval #11 and #31.
Residential Preferred Parking (RPP)	Yes	The project site is located in Area "F" of the Residential Preferred Parking Program.
Seismic Hazards (SHMA)	No	The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act.
Soil/Groundwater Contamination	No	The project site is not located within the City's Environmental Management Area.
Transit and Bicycle Access	Yes	The project site is five blocks east of numerous AC transit routes on University and Shattuck Avenue. There is a bikeway on Arch Street (N-S) and Hearst Avenue (E-W).

		Also, the project site is approximately ½ mile from the Downtown Berkeley BART station.

Table 3: Project Chronology

Date	Action
December 20, 2019	Application submitted
January 7, 2020	Application deemed incomplete
March 16, 2020	Shelter in Place Order issued, multiple ZAB hearings cancelled
April 6, 2020	Revised application submitted
April 16, 2020	Application deemed complete
September 10, 2020	Public hearing notices mailed/posted
September 24, 2020	ZAB hearing

Table 4: Development Standards

R-3 Standards BMC Section 23D.36.070-080		**Existing**	**Proposed**	**Permitted/ Required**
Lot Area (sq. ft.)		10,300	No change	5,000 min.
Gross Floor Area (sq. ft.)		10,126	10,146[1]	n/a
Dwelling Units		10	No change	n/a
Bedrooms		10	25	n/a (≥5 w/permit)
Building Height	Average	27'-4"	No change	35' max.
	Maximum	28'-5"	No change	n/a
	Stories	3	No change	3 max.
Building Setbacks	Front	9'-8"	No change	15' min.
	Rear	50'-11"	No change	15' min.
	Left (South) Side	0'	No change	6' min.
	Right (North) Side	4'-5"	No change	6' min.
Lot Coverage (%)		32.6	No change	40 max. (For 3 stories)
Usable Open Space (sq. ft.)		2,186	No change	2,000 min. (~~400~~ 200 per du)
Parking		5	No change	10 min. (1 per ~~unit~~ 1,000 sq. ft. of gross floor area)

II. Project Setting

[1] On the basement level, 20 square feet of unfinished area would be converted to floor area in order to expand the existing bedroom and closet area within Unit 8 (see Table 6 below).

A. Neighborhood/Area Description: The subject site is located on the west side of Arch Street, in a mixed-use residential neighborhood that consists of educational uses as well as multiple-family apartment and condominium buildings that range from two to three stories in height (See Figure 1: Zoning Map). The site is located one-half block north of Hearst Avenue and the University of California – Berkeley campus. It is also located two blocks west of Shattuck Avenue and downtown Berkeley (C-DMU District), and two blocks east of goods and services on Euclid Avenue.

B. Site Conditions: The subject parcel is rectangular, with a 77' front along Arch Street and 132'-2" depth, and slopes down toward the southwest. The parcel is currently developed with a three-story residential building containing ten dwelling units (two studio, two 1-bedroom, five 2-bedroom, and one 4-bedroom), which was constructed in 1923. The building is accessed on the first level through a driveway and front entry pat/stairway along Arch Street. Outdoor usable open space is provided in the rear and front yards.

The parcel is non-conforming to current zoning standards in terms of minimum building setback from the front and side property lines and parking. The property contains a total of five parking spaces where 10 is the minimum, located in a detached garage located on the rear property line. (See Figure 2: Site Plan and Table 4: Development Standards).

III. Project Description

The applicant proposes to reconfigure the building floor plan by moving and adding interior walls to accommodate an additional 15 bedrooms within the existing 10-unit building. The building would contain two studio, one 1-bedroom, one 2-bedroom, five 3-bedroom and one 5-bedroom units. On the basement level, three bedrooms would be added and 20 square feet of unfinished area would be converted to floor area in order to expand the existing bedroom and closet area within Unit 8 (see Table 6 below). A total of six bedrooms would be added to both the first and second levels (see Table 5 below). No exterior alterations are proposed.

Table 5: Bedroom Count, Floor Area, and Location

Location within Building	Floor Area	# of Bedrooms		
Floor	**Sq. Ft**	**Entitled**	**As-Built**	**Proposed**
Basement	Existing: 3,366 Proposed: 3,386	1	4	4
First	3,356	4	6	10
Second	3,404	5	8	11
Total	**10,126**	**10**	**18**	**25**

Note: City records indicate the building contained 10 bedrooms as of 1961, when the most recent building permit was finaled. As part of this Use Permit application, the applicant submitted as-built plans indicating the building contained 18 rooms that met the City's definition of a "bedroom," per BMC Section 13.42.020.B. Therefore, this Table presents the entitled, as-built, and proposed number of bedrooms. For the purpose of the

Use Permit, the project description is to add 15 bedrooms to the building, which previously contained 10, as entitled.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on December 20, 2019, a pre-application poster was installed by the applicant at the project site and the project plans were reviewed at a community meeting hosted by the applicant. Four people attended the meeting, including two residents of the building and two neighbors. Concerns included timely repairs, excessive noise from residents during quiet hours, and disruptions (i.e. noise) from the proposed construction. On April 30, 2020 the City received a letter from a resident of the adjacent building at 1850 Arch expressing concerns about the proposed scope of work at both buildings regarding the impacts to trash, laundry, parking, and bathrooms that would result from the project, and complaints regarding property maintenance of the existing building. The applicant responded to those concerns in a letter dated May 26, 2020 (Attachment 3). In addition, the applicant notified all tenants of the proposed renovations as well as their rights under the Rent Stabilization Ordinance (BMC Section 13.76) and Tenant Protection Ordinance (BMC Section 13.79.060). See the discussion in section V.B for more information.

On September 10, 2020, the City mailed 505 public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in two locations. As of the writing of this staff report, Staff has not received any communications regarding the project.

B. Committee Review: This project is not subject to advisory committee review.

V. Issues and Analysis

A. Addition of Bedrooms to the Parcel: Pursuant to BMC Section 23D.32.050.A, the addition of the bedrooms 11 through 25 on the parcel requires the approval of a Use Permit. Specifically, the Board must make the required "non-detriment" findings pursuant to BMC Section 23B.32.040 related to the "health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood…or be detrimental or injurious to property or improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City." "The Board shall deny an application for a Use Permit if it determines that is unable to make any of the required findings, in which case it shall state the reasons for that determination." Recently, the ZAB has considered the amount of common space (living room/dining room/kitchen) relative to the number of bedrooms, as well as the amount of usable open space on the parcel, as factors when evaluating the

addition of bedrooms. While there is no adopted standard, that information is compiled below, in Table 6.

As shown in Table 6 below, the proposed project would convert common living areas to create new bedrooms in six of the ten units. On average, 43% of the existing floor area within each unit is currently dedicated to common living spaces. The project would result in a 4% reduction in the share of floor area dedicated to common living spaces, for a new average of 39%, which continues to provide a reasonable amount of common living space in each unit. According to the applicant statement, the conversion of common living spaces to bedrooms would improve the layout of the units, for example by converting 20 square feet of unconditioned space on the basement level to floor area within Unit 8, in order to expand the bedroom and closet area. The layout of Unit 9 would be improved by moving interior walls, Unit 1 would become a more functional studio, and the layout of Unit 10 would be improved by creating a bedroom in this studio unit.

As shown in Table 4 above, the parcel has non-conforming setbacks at all yards and has five off-street parking spaces where 10 is the minimum. The proposed renovations would not change the building footprint, and thus would not exacerbate any non-conforming condition, and would maintain the existing amount of usable space on the parcel (2,186 square feet), which exceeds the minimum requirement by 186 square feet.

Table 6: Change in amount and share of common living area per unit

Unit#	Floor Area	Common (Living/Dining/Kitchen) Area			Share of Common Living Spaces to Total Floor Area			Location within Building
	Sq. Ft	As-Built	+/-	Proposed	As-Built	+/-	Proposed	Floor
Unit 1	410	105	98	203	26%	24%	50%	First
Unit 2	738	450	-210	240	61%	-28%	33%	
Unit 3	722	245	18	263	34%	2%	36%	
Unit 4	833	424	-149	275	51%	-18%	33%	
Unit 5	715	166	87	253	23%	12%	35%	Second
Unit 6	842	342	-68	274	41%	-8%	33%	
Unit 7	1,326	458	-178	280	35%	-13%	21%	
Unit 8	(E) 531/ (P) 551	238	-4	234	45%	-3%	42%	
Unit 9	414	273	-33	240	66%	-8%	58%	Basement
Unit 10	493	260	-8	252	53%	-2%	51%	
Average	**702**	**296**	**-48**	**251**	**43%**	**-4%**	**39%**	

Staff believes the proposed addition is consistent with the purposes of the R-3 District, which are to:

A. Implement Master Plan policy by encouraging the development of relatively high density residential areas;

B. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;

C. Protect adjacent properties from unreasonable obstruction of light and air; and

D. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City requirements for this type of housing; (Ord. 7210-NS § 8 (part), Ord. 6478-NS § 4 (part), 1999).

Staff Analysis: As described in section II above, the subject residential building is a 10-unit apartment building in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. As described in Table 2 above, the subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus, consistent with purpose B. The parcel contains a reasonable amount of open space, 2,186 square feet where a minimum of 2,000 is required. As the project would not result in any exterior changes to the building, such as new window openings or extension of the building footprint, there would not be any impacts to light and air, consistent with purpose C.

Staff believes the addition of 15 bedrooms to the 10-unit residential building would support the high-density residential use on the parcel, consistent with the purposes of the R-3 District.

Staff believes the proposed addition of bedrooms is consistent with the purposes of the Hillside Overlay District (BMC Section 23E.96.2020), which are to:

A. Implement the Master Plan's policies regarding Hillside Development
B. Protect the character of Berkeley's hill Districts and their immediate environs
C. Give reasonable protection to views yet allow appropriate development of all property
D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area.

Staff Analysis: The subject building is a 10-unit multi-family building in a mixed-use residential neighborhood that consists of a mixture of multiple-family apartment and condominium buildings, consistent with purpose A. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, are one-half mile from the Downtown Berkeley BART station, and are located on a bikeway. In addition, the projects are one-half block north of the University of California-Berkeley campus; no exterior changes are proposed, consistent with purpose B. The project would not result in any exterior changes to the building, such

as any new window openings or an extension of the building footprint; there would not be any impacts to views, consistent with purpose C. Although the existing building is non-conforming in terms of minimum setbacks, no exterior changes are proposed, consistent with purpose D.

B. Tenant Protections: As of the writing of this staff report, all rent controlled units are occupied and currently rented to tenants whose tenancy began prior to the submittal of this Use Permit application. The applicant intends to complete the project over time as tenants move out of the building voluntarily, and has committed to not unlawfully evict or otherwise displace any current tenant in order to accommodate construction. The applicant informed the existing tenants of the development plan at a community meeting held on December 20, 2019, where at least two tenants were present, and mailed a notice to each tenant in the spring of 2020 restating the development plans and their rights under the City's Rent Stabilization Ordinance. Per the Rent Stabilization Ordinance, the existing rental units would remain as rent controlled rental units after renovation, and the property owner has committed to providing notice to any prospective new tenant of their rights under the Ordinance prior to execution of a new lease (see Condition of Approval #31). In addition, the applicant has committed to providing notice in advance of the City's noticing requirements before tenants might be relocated for construction on their units and has confirmed that all tenants would be relocated voluntarily or temporarily as provided for in Condition of Approval #11, as recommended by the Rent Stabilization Board.

C. General Non-Detriment: Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area, as no exterior changes are proposed. In addition, staff believes the project would not unreasonably obstruct sunlight, air, or views as no exterior changes are proposed. Finally, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and storm water requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

D. General Plan Consistency: Based on the foregoing project description and analysis, staff concludes that the project would comply with the following 2002 General Plan goals and policies:

1. Policy H-8–Maintain Housing: Maintain and preserve the existing supply of housing in the City.
2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

   Staff Analysis: The residential project would increase the number of bedrooms on the parcel and renovate the interior of the building, thus maintaining and preserving the existing housing supply in the city. The subject property is located in a mixed-use residential neighborhood containing a mix of multiple-family dwellings and condominiums that are two- to three-stories in height, and does not propose any changes to the exterior of the building or expand its footprint. Because the changes proposed would maintain the existing building footprint, would not increase the building height, and would maintain the amount of usable open space on the property, staff believes that the project would maintain the existing design, scale and compatibility with the neighborhood.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2019-0213 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:
1. Findings and Conditions
2. Project Plans, dated February 5, 2020
3. Correspondence, received May 26, 2020
4. Notice of Public Hearing

Staff Planner: Ashley James, ajames@cityofberkeley.info, (510) 981-7458

ATTACHMENT 1

FINDINGS AND CONDITIONS

APPROVED BY ZAB ON SEPTEMBER 24, 2020
REVISED DECEMBER 8, 2020

1862 Arch Street

Use Permit #ZP2019-0213 to add 13 bedrooms to an existing 10-unit, 10 bedroom multi-family residential building, for a total of 25 bedrooms on the parcel.

PERMITS REQUIRED

- Use Permit pursuant to BMC Section 23D.36.060, for the addition of bedrooms beyond the fifth bedroom on the parcel.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23B.32.040.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   A. The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, number of stories, rear yard setback, lot coverage, and usable open space in BMC Section 23D.36.070-080 (Development Standards), as detailed in the August 27, 2020 staff report. The proposed project is non-conforming for front yard setback (9'-8" where 15' is the minimum), left yard setback (0' where 6' is the minimum), right yard setback (0' where 6' is the minimum), and parking (providing five spaces where ten are required) under the current Zoning Ordinance. The proposed development is permissible because: (1) the proposed interior renovations do not worsen any non-conforming condition; (2) the proposed development recognizes and adheres to an existing pattern of development; (3) protects adjacent neighbors from unreasonable obstructions of sunlight and air; and (4) represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space.

B. The project is consistent with the purposes of the District in that it will permit the addition of bedrooms through conversion of existing floor area and conversion of 20 square feet of existing unfinished area within the existing building footprint on a residential property, which continues the existing pattern of high residential density of the neighborhood. The project will not reduce the existing non-conforming 9'-8" front setback, the non-conforming 0' left and right side setbacks, or the non-conforming off-street parking (5 spaces where 10 is the minimum). The project will, therefore, retain the existing pattern of development that is conveniently located and provides a reasonable amount of usable open space of the District while protecting adjacent properties from unreasonable obstruction of light and air.

C. The project is consistent with the purposes of the Hillside Overlay (H) District, as the subject building is a residential, 10-unit multi-family building in a mixed-use residential neighborhood. The project does not result in any exterior changes, and therefore would not result in any impacts to views or exacerbate any existing non-conforming condition.

D. The project plans submitted on April 6, 2020 indicate the proposed addition will not unreasonably obstruct sunlight on nearby existing dwellings, impact the privacy between neighbors, unreasonably impact air and light between neighbors, or impact views. As discussed in the project staff report dated September 24, 2020, the proposed project will not create any new window openings or otherwise change the exterior of the building or the building's footprint. Therefore, the impacts are determined to be non-detrimental.

2. Pursuant to BMC Section 23D.32.050.A, the Zoning Adjustments Board finds that the proposed addition of bedrooms eleven through twenty five supports the residential use on the parcel, consistent with the purposes of the R-3 District. The project represents the District's intended encouragement of the development of relatively high density residential areas characterized by convenience of location and a reasonable amount of Usable Open Space. The subject property is five blocks east of numerous AC Transit routes on University and Shattuck Avenues, is one-half mile from the Downtown Berkeley BART station, and is located on a bikeway. In addition, the project is one-half block north of the University of California-Berkeley campus. The parcel contains a reasonable amount of open space, 2,186 square feet of useable open space where a minimum of 2,000 square feet is required.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

I. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Transportation Network Company (TNC) Plan. The applicant shall submit a TNC management plan to Land Use Planning staff for review and approval. The management plan shall clearly articulate the allowable uses of the driveway for deliveries and passenger pick-up and drop-offs; this plan shall be distributed to all residents of the building.

11. Plan Corrections. The applicant shall submit a revised planset to Land Use Planning staff for review and approval. The planset shall provide a floor plan and exiting plan within Unit 8 that is properly labeled and compliant with the California Building Code (CBC) 2019.

12. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

☐ **Project Liaison** _____

Name Phone #

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

13. Unit Vacancy. Demolition and/or construction activities approved under this permit shall not commence in any unit unless the existing tenants have either voluntarily vacated the unit or have reached an agreement for temporary relocation pursuant to BMC Chapter 13.84. The applicant shall submit evidence of such to the Rent Stabilization Board (i.e. tenant's notice to vacate, relocation agreement).

14. Construction and Demolition Diversion. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

15. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine whether the following document is required and timing for its submittal:

A. Building Materials Survey:

1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30

days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

Prior to Issuance of Any Building (Construction) Permit

16. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

17. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

18. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday. No construction-related activity shall occur on Saturday, Sunday or any Federal Holiday.

19. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

20. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

21. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer‘s specifications. All equipment shall be checked by a certified visible emissions evaluator.
H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District‘s phone number shall also be visible to ensure compliance with applicable regulations.

22. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

23. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

24. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

25. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

26. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

27. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

28. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using Green Halo

and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original Construction Waste Management Plan and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

Prior to Final Inspection or Issuance of Occupancy Permit:

29. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

30. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated February 5, 2020 except as modified by conditions of approval.

31. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

32. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

33. Tenant Noticing. Prior to the execution of a new lease with prospective tenants, the property owner shall provide notice of the proposed project and notice of their rights under the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) and the Tenant Protection Ordinance (BMC Section 13.79.060).

Administrative Record
ZAB Appeal:
1850 Arch Street

This attachment is on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
http://www.cityofberkeley.info/citycouncil/

Administrative Record
ZAB Appeal:
1862 Arch Street

This attachment is on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
http://www.cityofberkeley.info/citycouncil/

ATTACHMENT 9

NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY

ZAB APPEAL: USE PERMITS #ZP 2019-0212, 1850 ARCH STREET AND ZP2019-0213, 1862 ARCH STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY FEBRUARY 23, 2021** at **6:00 P.M.** a public hearing will be conducted to consider two appeals of the decisions by the Zoning Adjustments Board to approve Use Permits #2019-0212 and -0213, to reconfigure the interiors of the existing buildings to add 18 bedrooms to an existing 10-unit, 12-bedroom multi-family residential building at 1850 Arch, to add 15 bedrooms to an existing 10-unit, 10-bedroom multi-family residential building at 1862 Arch.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **FEBRUARY 11, 2021. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Ashley James, Project Planner at (510) 981-7458. Written comments should be mailed to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704 or email 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.

_____
Mark Numainville, City Clerk

Mailed: by February 9, 2021

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

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

Lori Droste
Vice Mayor, District 8

CONSENT CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Lori Droste, Councilmember Terry Taplin, Councilmember Ben Bartlett, and Councilmember Rigel Robinson

Subject: Resolution to End Exclusionary Zoning in Berkeley

Recommendation

Adopt a resolution to state Berkeley City Council's intent to end exclusionary zoning in Berkeley by December of 2022.

Current Problem and Its Effects

Single family residential zoning has its roots in racist exclusionary zoning policy and leads to racial and economic segregation.

Background

History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley's City Attorney Frank V. Cornish wrote "Apartment houses are the bane of the owner of the single family dwelling" while the consultant who penned Berkeley's zoning ordinance stated, "[The] great principle of protecting the home

against the intrusion of the less desirable and floating renter class."[1] Subsequently, the Mason McDuffie Company's use of Berkeley's zoning laws and racially-restrictive property deeds and covenants prevented Black, Indigenous, and People of Color from purchasing or leasing property in east Berkeley.[2]

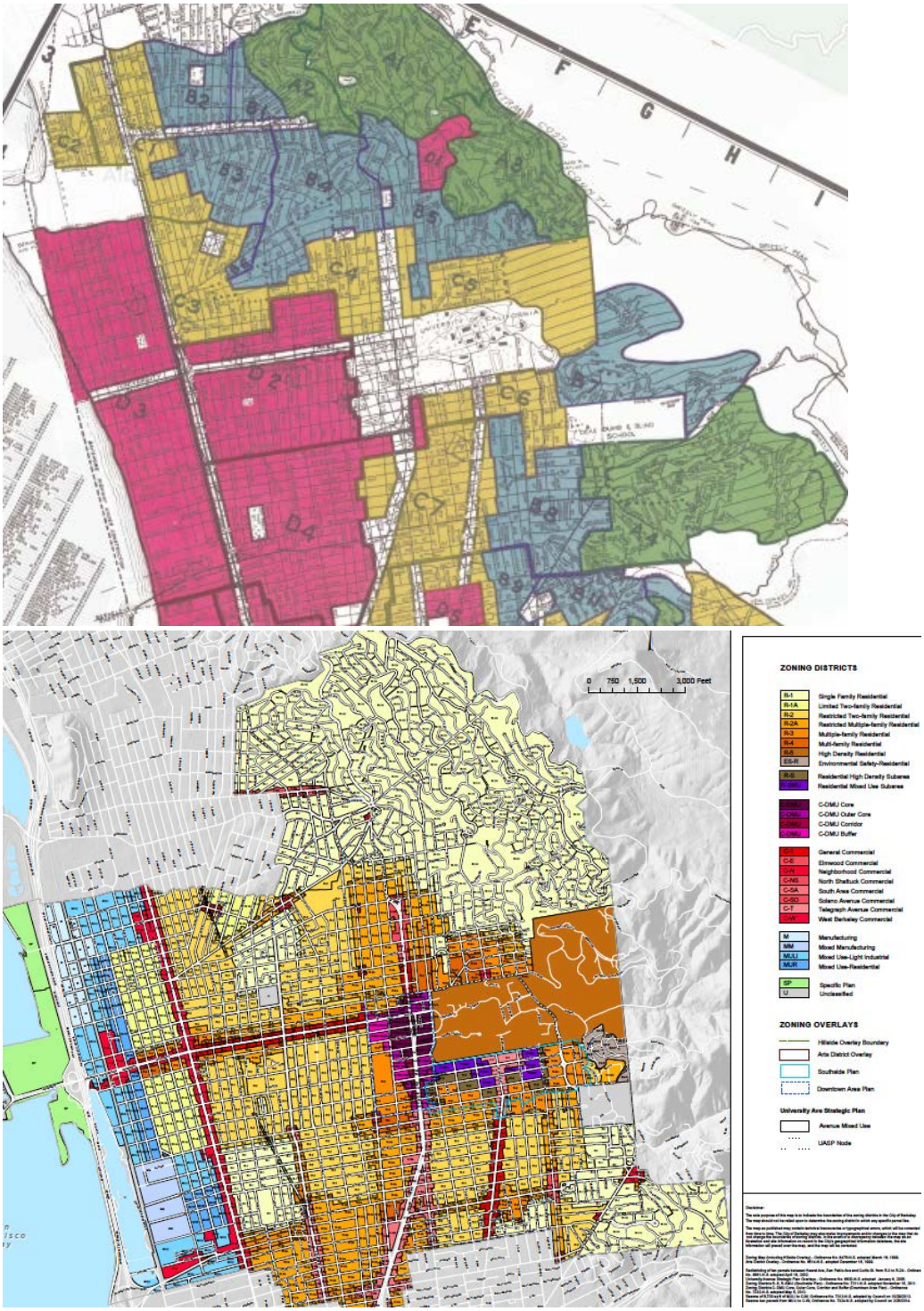
Mason-McDuffie race-restrictive covenants stated, "if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void…"[3] In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the "disastrous effects of uncontrolled development"[4] and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.[5]

After Buchanan v Wareley in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.[6] These maps extensively referenced single-family zoning as on par with racial covenants in appreciating property values, unaffordability and excluding people of color. For example, when describing the Berkeley Hills: "Zoned first residential, single family, deed restrictions prohibit Asiatics and Negroes."

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[1] Frank V. Cornish. "The Legal Status of Zone Ordinances" and Charles Cheney. "The Necessity for a Zone Ordinance in Berkeley." Berkeley Civic Bulletin, May 18, 1915.
[2] Wollenberg, *Berkeley, A City in History,* 2008.
[3] Claremont Park Company Indenture, 1910
[4] Lory, Maya Tulip. "A History of Racial Segregation, 1878–1960." *The Concord Review*, 2013. http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf
[5] Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. Berkeley Planning Journal, 3(1). Retrieved from https://escholarship.org/uc/item/26b8d8zh
[6] NCRC Opening Doors to Economic Opportunity, " HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf



The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as "best" in green on the HOLC-era map typically remain zoned as single family residential areas today. Red 'hazardous' neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.[7]

[7] Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," American Panorama, ed. Robert K. Nelson and Edward L. Ayers, https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing --duplexes, triplexes, and other smaller multi-unit building typologies-- was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which outlawed multi-unit housing in certain parts of Berkeley. As Councilmember Ben Bartlett and Yelda Bartlett wrote in their 2017 *Berkeleyside* op-ed, the neighborhood preservation ordinance "[the Neighborhood Preservation Ordinance] did not mention race, but instead tried to preserve 'neighborhood character.' As a result, from 1970 to 2000, fewer than 600 dwelling units were built in Berkeley. Areas zoned for single family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2) are now some of the most expensive parts of our city—especially on a per-unit basis."[8]

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

The UC Othering and Belonging Institute recently released a study on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes.[9] The authors found that the ramifications of such zoning practices leads to a greater percentage of white residents, as recounted in KQED's "The Racist History of Single Family Zoning."[10] By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density, "desirable" places in Berkeley, the current zoning map dictates that only wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley. Today, with the median home sale price at $1.3 million[11] and the typical White family having eight times the wealth of the typical Black family,[12] this de-facto form of segregation is even more pronounced.

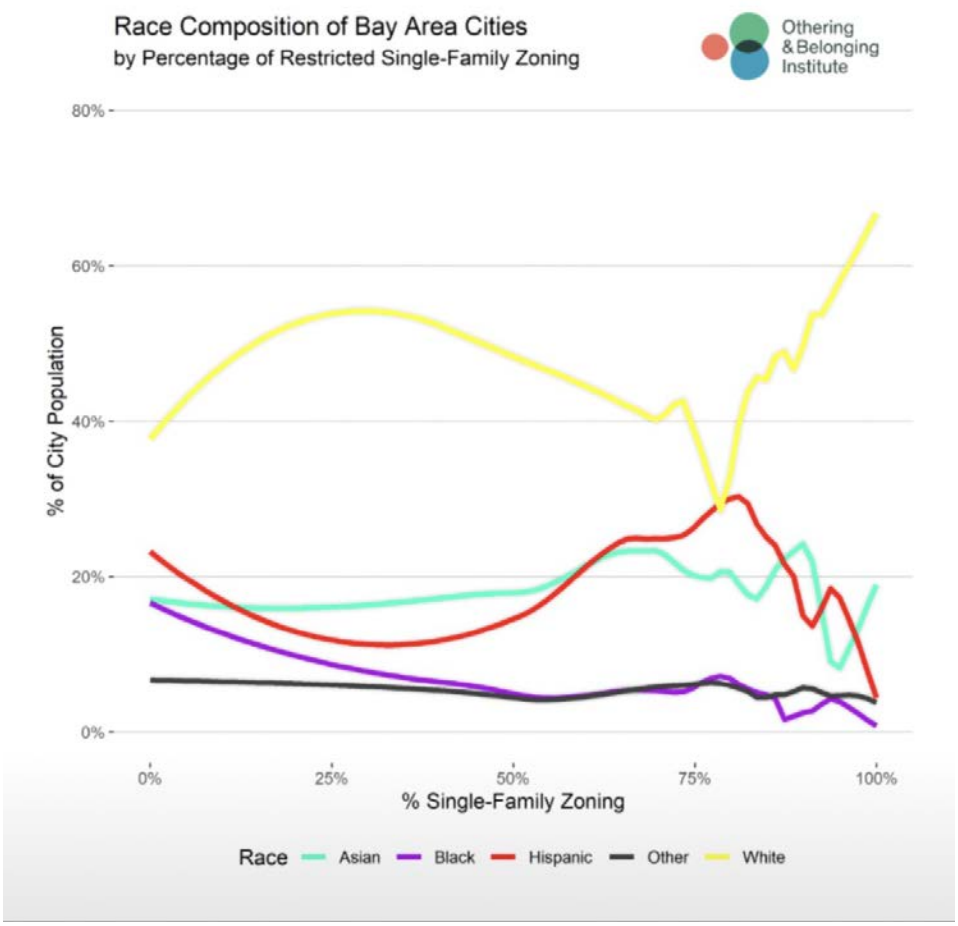
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[8]Ben Bartlett, Yelda Bartlett. "Berkeley's zoning laws wall off communities of color, seniors, low-income people and others." Berkeleyside, 13 June 2017. Op-ed. https://www.berkeleyside.com/2017/06/13/opinion-berkeleys-zoning-laws-wall-off-communities-color-seniors-low-income-people-others

[9]Racial Segregation in the San Francisco Bay Area (2020) UC Othering and Belonging Institute. https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5

[10] Baldassari, Erin and Molly Solomon (2020). "The Racist History of Single Family Zoning." https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning

[11] Berkeley, CA Real Estate Market (2021). https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview



According to the data mapped by UC Berkeley's Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as 'at-risk of exclusion', currently feature 'ongoing exclusion', or are at stages of 'advanced exclusion'. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a 'hot housing market,' and migration patterns. The Urban Displacement Project's findings indicate that exclusion is more prevalent than gentrification in the Bay Area.[13] While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that "the Urban Displacement

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[12] Survey of Consumer Finances (2020). Federal Reserve. https://www.federalreserve.gov/econres/scfindex.htm

[13] Zuk, M., & Chapple, K. (2015). Urban Displacement Project. http://www.urbandisplacement.org/map/sf

Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay…Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today."[14] Not surprisingly, Chapple has indicated that zoning reform "has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today."[15]

Historic Redlining

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence "redlining." The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that

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[14] Karen Chapple's February 25, 2019 letter to Berkeley City Council in support of this proposal. https://www.berkeleyside.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf

[15] Ibid.

other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units.

Current Discourse on Exclusionary Zoning Regulations

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and address exclusionary practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902, which allowed for missing middle housing in transit-oriented or jobs-rich areas.[16]

Exclusionary zoning laws also became a prevalent national topic during the 2020 Presidential campaign under the guise of “protect[ing] America’s suburbs.”[17] Celebrity Apprentice host and former President Donald Trump and his Housing and Urban Development Secretary Ben Carson expressed a concern that removing exclusionary zoning laws would prevent single family home ownership and “destroy suburbs” despite the fact that these reforms don’t bar single family home construction but allow the creation of duplexes, triplexes, and other multi-unit properties. Furthermore, exclusionary zoning practices were amplified with the termination of the 2015 Obama-era Fair Housing rule which outlawed discrimination in housing. In doing so, Trump stated that Democrats wanted to “eliminate single-family zoning, bringing who knows into your suburbs, so your communities will be unsafe and your housing values will go

[16] https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-28_Annotated_Agenda_pdf.aspx

[17] Trump, Donald J and Ben Carson. “We’ll Protect America’s Suburbs.” Wall Street Journal. https://www.wsj.com/articles/well-protect-americas-suburbs-11597608133

down."[18] On the other hand, Democratic Presidential candidates embraced zoning reform, most notably Elizabeth Warren and Cory Booker. President Biden has also indicated that he plans to invest $300 million in local housing policy grants to give communities the planning support they need to eliminate exclusionary zoning.[19]

In January 2021, the Association of Bay Area Governments voted to approve the implementation of Senate Bill 828 which was designed to address the extreme housing shortage across California. As a result, Bay Area cities will have to zone for 441,000 new homes. Berkeley will see a 19% increase — approximately 8,900 — in the number of homes for which it must zone.

According to the U.S. Census American Community Survey, newly built missing middle housing like duplexes and quadplexes more often houses middle and lower income families in Berkeley, while single-family homes, no matter what year built, are exclusively higher income.

Median household income, Berkeley & Albany, by building age & type					
	Pre-1950	1950-1969	1970-1989	1990-2004	2005-
Single-family detached	148,590	139,295	107,081	131,004	148,835
Single-family attached	84,903	126,930	96,233	167,025	134,460
2-4 units	79,012	63,973	53,335	45,403	48,691
5-19 units	46,037	41,104	39,811	42,243	27,950
20+ units	25,628	42,319	41,387	23,585	40,518

Source: American Community Survey, 2014-18, Public Use Microdata Set, US Census.

ALTERNATIVE ACTIONS CONSIDERED

Berkeley City Council previously authorized a study on missing middle housing. Due to the impending rezoning mandated by new Regional Housing Needs Allocations, Council wanted to ensure that there was a willingness on Council to address and acknowledge the implications of single family zoning on affordability and racial and economic segregation.

FINANCIAL IMPLICATIONS

There are no financial implications in approving a resolution of intent.

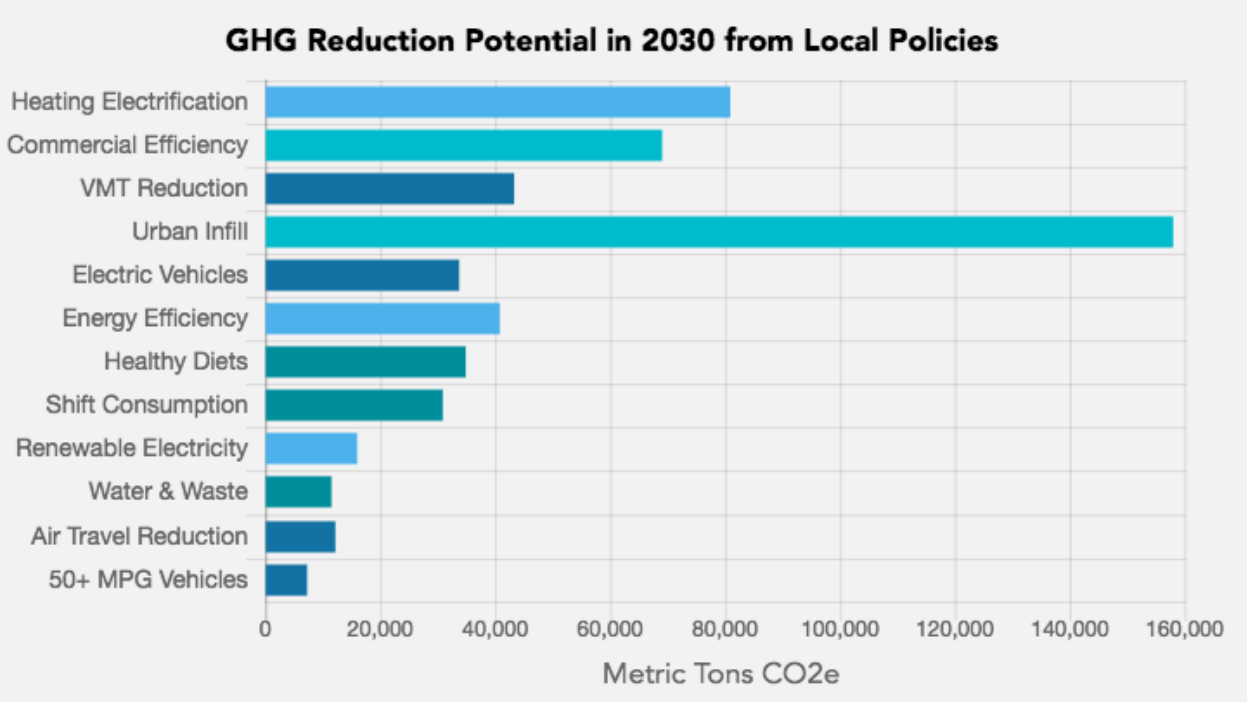
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[18] "Seeking Suburban Votes, Trump to Repeal Rule Combating Racial Bias in Housing." (2020). NPR https://www.npr.org/2020/07/21/893471887/seeking-suburban-votes-trump-targets-rule-to-combat-racial-bias-in-housing

[19] "The Biden Plan for Investing in Our Communities Through Housing." (2020) https://joebiden.com/housing/

ENVIRONMENTAL SUSTAINABILITY

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a "comprehensive consumption-based perspective."[20] The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.[21]



CONTACT PERSON(S):

Lori Droste, 510-981-7180

[20] "Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities." Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen.Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf

[21] "Why Housing Policy Is Climate Policy." Scott Wiener and Daniel Kammen. New York Times. March 25, 2019. https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html

RESOLUTION NO. XX

WHEREAS the City of Berkeley was the first city in the country to implement single-family zoning in 1916; and

WHEREAS the City of Berkeley's current zoning is still greatly influenced by maps developed by the federal government's Home Owners Loan Corporation which sought to maintain racial segregation through discriminatory lending practices; and

WHEREAS with the passage of the Neighborhood Preservation Ordinance in 1973, the City of Berkeley restricted the creation of multifamily units in residential zones;

WHEREAS the prohibition of apartments and multi-family homes in the City of Berkeley coincide with the most unaffordable neighborhoods and the origins of the City's affordability crisis starting in the late 1970s;[22]

WHEREAS there is deeply racist history to zoning practices all over the country, particularly as a proxy for overt racial restrictions, and inequities still exist today as a result of redlining; and

WHEREAS exclusionary zoning creates a system of de facto rather than de jure racial and economic segregation, which creates strong adverse effects in life outcomes for residents; and

WHEREAS zoning reform does not ban single family homes but allows for a greater mix of home types and home affordability levels in more Berkeley neighborhoods; and

WHEREAS zoning reform can reduce real housing cost-burdens for low- and middle-income households; and

WHEREAS the League of California Cities called for cities to allow up to fourplexes in single family zones in their *Blueprint for More Housing 2020*;

BE IT FURTHER RESOLVED that the City of Berkeley registers its intent to allow for more multifamily housing throughout Berkeley; and

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[22] https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Berkeley_Rent_Control_1978-1994_1998_Planning_Dept_report.pdf

BE IT FURTHER RESOLVED that City Council will pursue zoning reform that takes into account the public safety in all parts of Berkeley, including areas within CalFire's Very High Hazard Severity Zones; and

BE IT FURTHER RESOLVED that in neighborhood interiors that already contain a mix of housing types from single family homes to apartments, allow new housing within that existing range; and

BE IT FURTHER RESOLVED that the City of Berkeley encourage inclusion of homes that can accommodate families in new and rehabilitated multifamily housing developments; and

BE IT FURTHER RESOLVED that the City of Berkeley will no longer ban multi-family housing, and by extension, affordable housing in certain parts of Berkeley.

Office of the City Manager

INFORMATION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Teresa Berkeley-Simmons, Budget Manager

Subject: FY 2022 Budget Development

INTRODUCTION

This report provides background on the staff recommendation to the Budget and Finance Policy Committee to implement a one-year Budget for FY 2022 and a two year Budget for Fiscal Years 2023 & 2024. The Budget & Finance Policy Committee approved the recommendation at their meeting on January 28, 2021.

BACKGROUND

The City Council has adopted Fiscal Policies that provide the framework for the City's budget development. Amongst the Fiscal Policies adopted by City Council is the following:

"Focusing on the long-term fiscal health of the City by adopting a two-year budget and conducting multi-year planning."

Due to a number of factors outlined below, for the FY 2022 budget, city staff recommends that a one-year budget be prepared, with the intention of developing a two-year budget for City Council for Fiscal Year's 2023 and 2024.

The following provides the basis for staff's recommendation:

- As part of the City's deployment of a new Enterprise Resource Planning system, city staff have been working to deploy a new budget module that aligns with the launch of the new payroll system. Budget staff that are overseeing the implementation of the new budget module have identified some issues regarding the quality of the vast amount of data both converted and hand entered into the system that need time to be validated. By implementing a one year budget for FY 2022 instead of a two year budget, staff will be able to use existing systems to meet the deadline of providing a budget to Council in the beginning of May 2021 and will have the time that is needed to deploy the new budget module and ensure that it meets specifications.

- City staff have recently deployed a new payroll system. Given that personnel costs are a significant part of the City's budget, city staff need time to ensure that any

system or data issues identified through the launch process are corrected. To date, there have been no major issues to resolve. Deploying the new budget module at the same time that any potential implementation issues associated with the launch of the new payroll system are being addressed may not only undermine the accuracy of the budget but could result in further delays.

- Other reasons to implement a one-year budget for FY 2022 rather than a two-year budget includes:

    - Provides staff more time to evaluate the impacts of COVID-19 on the local economy and finances to be able to better project the revenues and expenses in a post vaccine environment.

    - Provides an opportunity to align our systems realignment discussions with the Fiscal Years 2023 & 2024 Biennial Budget.

    - Provides staff with an opportunity to better plan and integrate initiatives into the budget such as Public Safety Re-Imagining that includes the development a new Department of Transportation and Specialized Care Unit. Additional items that should be considered that were recently approved by residents are Measure FF and the Charter Amendment that established a Director of Police Accountability and Police Accountability Board.

Budget staff is still in the process of evaluating whether or not the Operating and Capital Budgets will be summarized in a detailed staff report or a formal budget book. This will be determined over the next couple of months.

Despite the recommendation to implement a one-year budget for FY 2022, the Office of Budget and Fiscal Management continues to look long-term. As the FY 2022 budget is developed, the Office of Budget and Fiscal Management will be asking city staff to develop projections over the next three (3) fiscal years since work will begin on the FY 2023 and FY 2024 Biennial Budget as soon as the FY 2022 budget is adopted.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the act of adopting the budget/appropriations ordinance/amendments.

POSSIBLE FUTURE ACTION
None

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

Office of the City Manager

INFORMATION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: City Council Short Term Referral Process – Quarterly Update

INTRODUCTION

This report is a quarterly update on the status of short term (90-day) and other date-certain Council referrals.

CURRENT SITUATION AND ITS EFFECTS

In this context, tracking refers to a manually updated chart (Attachment 1). The May 15, 2018 Council referral establishing the monthly update includes both “short term” and “date-certain” referrals. Short term referrals are referrals that staff determines they will be able to complete in approximately three months. Date-certain referrals are those which contain a specified date of completion at the time they are approved by the City Council. Currently, the City only tracks short term referrals in an Excel spreadsheet.

The January 21, 2020 Council consent item changed the reporting frequency from monthly to quarterly. Providing a quarterly update on all short term and date-certain referrals will allow Council and the public to see the status of these referrals and any circumstances which lead to delays.

BACKGROUND

In 2016, the City Council adopted a system of Re-Weighted Range Voting (RRV) to prioritize the outstanding City Council referrals to staff. The RRV system enables City Council to provide direction to staff on which referrals are highest priority to the City Council. However, that process does not provide information on the status of short term or date-certain referrals. While many short term or date-certain referrals were “updated” through being completed and presented to Council as consent or information items, there was no comprehensive overview of this subset of referrals.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION
The City Council may wish to direct staff to evaluate this process after it has been in place six months.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
No direct fiscal impact. Greater efficiencies in staff resources due to prioritization of work and alignment with budget and strategic plan goals.

CONTACT PERSON
Mark Numainville, City Clerk, 981-6900

Attachments:
1: Short Term Referrals
2: Completed Short Term Referrals

Pending Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-01-28	12	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	2) analyze the impacts of artificial flavorings/additives and advise if any further regulations are necessary	Councilmembers				2020-07-20 17:00:00	Health, Housing and Community Services	Pending	2020-07-20 17:00:00		
2020-02-11	2	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	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.	Councilmembers				2020-07-20 17:00:00	Health, Housing and Community Services	Pending	2020-07-20 17:00:00		
2020-03-10	26	Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street	Refer the item to the City Manager to explore City uses of the property for housing and homelessness services and needs, or other uses, and review the remediation needs of the property.	Councilmembers				2020-07-20 17:00:00	HEALTH, HSG & COMMUNITY SVC	Pending	2020-07-20 17:00:00		

Pending Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-06-16	0	Urgency Item: Safety for All: The George Floyd Community Safety Act - City Attorney and Manager Analysis of Contractual and Legal Barriers to Public Safety Reform	Direct the City Manager and City Attorney to analyze contractual and legal barriers to public safety reform including police union contracts, vendor contracts, state and federal laws, to determine barriers to accountability and substantive reform. In addition, direct the City Manager and City Attorney to evaluate elements in the proposed police review commission charter amendment, that can be implemented by the City Council.	Councilmembers		Ben Bartlett, Jesse Arreguin, Kate Harrison		2020-06-24 17:00:00	CITY MANAGER'S OFFICE	On Hold	2020-06-24 17:00:00		2021-01-12 15:42:28 - Melissa McDonough (Additional comments) On hold, pending Reimagining Police

Pending Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	48	Request for Information Regarding Current Status and Progress on Traffic Mitigations at Dwight Way and California Street	Refer to the City Manager a request for information regarding the current status and progress on traffic mitigations and pedestrian safety improvements at the intersection of Dwight Way and California Street.	Council member		Ben Bartlett		2019-09-16 17:00:00	Public Works	Not Started	2019-09-16 17:00:00		2020-10-05 09:33:42 - Nancy Melendez (Additional comments) Received approval to fill Associate Traffic Engineer vacancy to do the work. initiating hiring process. 2020-03-19 10:31:47 - Nancy Melendez (Additional comments) Engineering Design work is commencing now, construction expected in Spring 2021 2019-11-26 14:16:26 - Melissa McDonough (Additional comments) Off agenda memo pending
2020-01-28	12	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	1) determine if the City can require businesses to post notices on their website	Councilmembers				2020-01-30 17:00:00	City Attorney	Not Started	2020-01-30 17:00:00		
2020-02-11	2	Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F	1) determine if the City can require businesses to post notices on their website	Councilmembers				2020-02-17 17:00:00	City Attorney	Not Started	2020-02-17 17:00:00		

Pending Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-01	28	Referral: Commission Low-Income Stipend Reform	Refer to the City Manager to develop and return to Council with a plan to improve equity, accessibility, and representation in City of Berkeley commissions by modernizing the low-income stipend program, and in doing so consider: 1. Increasing the annual household income cap for stipend eligibility from $20,000 to align with the 50% Area Median Income (AMI) guidelines for Alameda County and reflect household size, and updating it annually with the latest HUD data. 2. Increasing the low-income stipend from $40 to $78 per	Councilmembers		Rigel Robinson		2020-12-04 17:00:00	City Clerk	Not Started	2020-12-04 17:00:00		
2020-12-15	25	Prohibition on the Resale of Used Combustion Vehicles in 2040	On November 18, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to refer to the City Manager for review of the attached ordinance prohibiting the resale of used, existing combustion-powered vehicles beginning in 2040, to the extent legally possible.	Commission			Community Environmental Advisory Commission	2020-12-25 17:00:00	City Attorney	Not Started	2020-12-25 17:00:00		

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2021-01-26	11	Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code	Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards for ADUs in all districts with expedited consideration to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1 to the report). Recommendations to	Councilmembers		Susan Wengraf, Sophie Hahn		2021-01-28 17:00:00	PLANNING & DEVELOPMENT	Not Started	2021-01-28 17:00:00		

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-07-10	20	Refer to City Manager to look into adopting an ordinance requiring a permit process for scooter sharing companies to operate on public streets	Refer to the City manager to look into adopting an ordinance establishing a pilot Powered Scooter Share Permit Program for 24 months, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, providing a procedure for the assessment and collection of administrative penalties for permit violations or parking or leaving standing an unpermitted powered scooter subject to the pilot Powered Scooter	Council member		Kriss Worthington, Sophie Hahn	Transportation Commission	2018-11-27 17:00:00	Public Works	Work in Progress	2018-11-27 17:00:00		2019-11-26 14:11:56 - Melissa McDonough (Additional comments) Continuing to monitor status of outstanding lawsuits against other cities re: scooters. 2019-08-07 11:03:01 - Nancy Melendez (Additional comments) City issued an RFP for Franchise applications due back by 1/25/19. A panel consisting of staff reps from Public Works, Police, 311, Economic Development and UC Berkeley scored the applications. A draft Council report was prepared to recommend the top 3 scorers when staff learned that the City of San Diego was being sued by Disability Rights California over accessibility impacts of
2018-04-03	18	Supplemental Paid Family Leave	2) refer to the City Manager to draft an ordinance regarding retaliation against employees using state family leave, including a private right of action provision.	Commission				2019-01-31 17:00:00	City Attorney	Work in Progress	2019-01-31 17:00:00		2019-12-16 10:27:45 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources. 2019-09-17 11:24:26 - Christopher Jensen (Additional comments) City Attorney's Office to coordinate with Human Resources

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	53	Voluntary Time Off on Statewide Election Days for City Employees	Refer to the City Manager to designate Statewide Election Days as VTO days, and refer to the 2x2 Committee to discuss coordinating City and District policy on holidays, in particular Election Day.	Council member		Rigel Robinson, Cheryl Davila, Sophie Hahn, Lori Droste		2019-09-16 17:00:00	Human Resources	Work in Progress	2019-09-16 17:00:00		2020-10-21 11:01:23 - Melissa McDonough (Additional comments) Pending draft Administrative Regulation to institute as regular practice and memo to Council to close out referral. Implemented VTO day as Election Day (Nov 3) for 2020. 2020-04-28 09:58:54 - Melissa McDonough (Additional comments) item went to council and approved. Delayed due to COVID-19 2019-11-06 15:47:09 - Wilhelmina Parker (Additional comments) Referred to the budget committee to provide analysis on the cost. It is also slated to be a part of labor negotiations in

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-05-28	29	Referral to the Public Works Department and the City Manager: Finishing the installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St.	Refer to the City Manager a request to finish the installation of sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer to the Public Works Department for its installation.	Councilmembers		Ben Bartlett, Kate Harrison, Cheryl Davila, Jesse Arreguin		2019-06-13 17:00:00	Public Works	Work in Progress	2019-10-01 17:00:00		2020-06-30 15:29:22 - Nancy Melendez (Additional comments) PW waiting for a response from Berkeley Electric to confirm project and when they can start. 2019-11-26 14:28:34 - Melissa McDonough (Additional comments) Project is out to bid and completion is expected by end of fiscal year. 2019-11-26 14:19:08 - Melissa McDonough (Additional comments) Alternatives identified, final selection and implementation pending.
2019-09-24	36	Companion Report: Health Study to be Conducted by the Public Health Division to Gather Data on Health Conditions, Health Disparities and Mortality Rates of Berkeley's homeless	Send a letter to Alameda County requesting data on deaths of identified homeless individuals. Contact Alameda County request that they explore the feasibility of recording homelessness as a data point in death records and/or making investments to begin tracking this information locally.	Councilmembers				2019-10-31 17:00:00	Health, Housing and Community Services	Work in Progress	2019-11-29 17:00:00		2019-12-02 14:10:47 - Melissa McDonough (Additional comments) Disregard previous comment. Mistake. 2019-12-02 14:06:36 - Melissa McDonough (Additional comments) RFP issued, due date for responses 12/12/19

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-03-26	15	Dynamex Decision Impact and Compliance on Minimum Wage Ordinance and Paid Sick Leave Ordinance	That the City Council refers to the City Manager and the Labor Commission to ensure the Berkeley Minimum Wage Ordinance (MWO) and Paid Sick Leave Ordinance are interpreted and enforced in a manner consistent with the holdings in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903.	Councilmembers		Ben Bartlett		2019-11-29 17:00:00	City Attorney	Work in Progress	2020-01-31 17:00:00		2019-12-16 10:28:22 - Christopher Jensen (Additional comments) City Attorney's Office is coordinating with Human Resources. 2019-09-17 10:59:00 - Christopher Jensen (Additional comments) A draft opinion is under review in the City Attorney's office. 2019-06-18 08:04:27 - Melissa McDonough (Additional comments) The City Attorney's Office is drafting a City Attorney opinion analyzing the holding in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4Cal.5th 903 with respect to the City's MWO and PSLO. The completed memo will be referred to the

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-02-11	15	Recommendations Related to Code Enforcement and Receivership Actions	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	Councilmembers				2020-02-17 17:00:00	CITY MANAGER'S OFFICE	Work in Progress	2020-02-17 17:00:00		2020-10-21 11:12:01 - Melissa McDonough (Additional comments) The staff assigned to conduct this work has been tasked with civil enforcement of the face coverings urgency ordinance. 2020-07-20 10:49:42 - Melissa McDonough (Additional comments) Work on this project was delayed by the onset of the COVID pandemic. With the onboarding of a new Code Enforcement Supervisor, City staff has begun to compile this information.

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-07-16	9	Referral to the City Manager to Consider Amending the Language of the City's Wireless Telecommunications Ordinance and Aesthetic Guidelines	Request that the City Manager consider amending the language of the City's Wireless Telecommunications Ordinance (BMC 23C.17) and Aesthetic Guidelines (BMC 16.10 & Aesthetic Guidelines for PROW permits) and return to City Council for adoption as soon as possible.	Councilmembers		Susan Wengraf, Jesse Arreguin, Ben Bartlett, Kate Harrison		2019-07-22 17:00:00	City Attorney	Work in Progress	2020-02-28 17:00:00		2019-11-27 10:54:30 - Melissa McDonough (Additional comments) The City Attorney's Office, the City Manager's Office, Public Works, and Land Use Planning are in the process of revising an internal draft of administrative guidelines for implementing BMC 16.10 with respect to small cell wireless facilities. 2019-09-17 11:03:27 - Christopher Jensen (Additional comments) The City Manager's Office and City Attorney's Office are coordinating with other departments to update guidelines and procedures for wireless application submittals.
2020-09-22	16	Healthy Checkout Ordinance	2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.	Councilmembers		Kate Harrison, Sophie Hahn		2020-10-15 17:00:00	HEALTH, HSG & COMMUNITY SVC	Work in Progress	2020-10-15 17:00:00		

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-07-28	30	Providing our Unhoused Community in the City of Berkeley with Menstrual Products	3. Direct the City Manager to use existing homeless services funding to develop and deploy a program to provide a broad spectrum of menstrual products, including but not limited to, feminine hygiene, pads, tampons, underwear, and other related products, both through the City's outreach direct services, as well as through the community based homeless services providers. Additionally, require some elements of this program be deployed immediately, with a full program deployment within six months.	Councilmembers		Cheryl Davila, Ben Bartlett, Lori Droste		2020-10-15 17:00:00	HEALTH, HSG & COMMUNITY SVC	Work in Progress	2020-10-15 17:00:00		

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	12	Authorize Installation of Security Cameras at the Marina and Request an Environmental Safety Assessment	Adopt the following recommendations in order to address the recent dramatic uptick in reported crime incidents at the Berkeley marina: - Request that the City Manager install security cameras and signage as expeditiously as possible as a long-term safety measure; - Refer to the City Manager to perform an environmental safety assessment of the Berkeley marina with particular attention to the berther parking areas. Cameras will not use facial recognition or biometric software.	Councilmembers		Rashi Kesarwani, Susan Wengraf		2020-10-22 17:00:00	Parks Recreation & Waterfront	Work in Progress	2020-10-22 17:00:00		

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	18	Enforce Bi-Weekly (Once Every Two Weeks) Residential Cleaning Measures to Address Encampments and Promote Clean Streets in Berkeley	Refer to the City Manager to promote equitable street cleaning practices and require biweekly (once every two weeks), cleanings of populated encampment sites in Berkeley and adjacent residential neighborhoods. In order to determine where City Staff should prioritize residential cleaning services, the City Manager should establish a radius around the campsites. When encampments are on non-City owned property, such as Caltrans, the City should bill the appropriate agency for the cost of staff and materials.			Ben Bartlett, Sophie Hahn, Kate Harrison, Cheryl Davila		2020-10-22 17:00:00	CITY MANAGER'S OFFICE	Work in Progress	2020-10-22 17:00:00		

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-11-10	5	Referral Response: Including Climate Impacts in City Council Reports	Request that the City Manager update the templates and associated training materials to add "Climate Impacts" in the "Environmental Sustainability" section of reports to the City Council, and codify the changes in Appendix B in the next update to the Berkeley City Council Rules of Procedure. This recommendation is a partial response to a January 21, 2020 referral, sponsored by Councilmembers Davila and Bartlett, to require that all City Council items and staff reports include "climate impacts" in addition to environmental sustainability.	Councilmembers				2020-11-18 17:00:00	City Clerk	Work in Progress	2020-11-18 17:00:00		
2020-11-10	11	Four Way Stop Signs on Eighth Street at Carleton Street and Pardee Street	Refer to the City Manager a proposal to install stop signs at the intersections of Eighth Street and Carleton Street and Eighth Street and Pardee Street.	Councilmembers		Jesse Arreguin		2020-11-18 17:00:00	Public Works	Work in Progress	2020-11-18 17:00:00		2021-01-14 17:44:32 - Nancy Melendez (Additional comments) Data collection needed for Stop Warrants is being scheduled

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-01	25	Personal Liability Protection for Small Businesses	1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic. 2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that	Councilmembers		Sophie Hahn, Susan Wengraf		2020-12-04 17:00:00	City Attorney	Work in Progress	2020-12-04 17:00:00		

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-12-15	39	Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration	On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee made a positive recommendation to send the item to the City Council with the recommendation language as amended by the committee. The revised recommendation language includes: Refer to the City Manager to develop a program and, if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to	Councilmembers		Lori Droste, Jesse Arreguin, Rigel Robinson, Kate Harrison		2020-12-25 17:00:00	Office of Economic Development	Work in Progress	2020-12-25 17:00:00		
2020-12-15	32	Deferral of Remaining Permit Fees for 2009 Addison Street	Refer to the City Manager to conduct a feasibility analysis and develop an MOU with the Berkeley Repertory Theater to defer $720,000 in remaining permit and inspection fees for Berkeley Repertory Theater's housing project at 2009 Addison Street (leaving flexibility for timing, setting of interest, schedule of payments, and fund sources).	Councilmembers		Jesse Arreguin, Susan Wengraf		2021-03-31 17:00:00	PLANNING & DEVELOPMENT	Work in Progress	2021-03-31 17:00:00		2021-02-05 11:19:27 - Melissa McDonough (Additional comments) The Planning and Development Department has started to analyze the permit service center fund and staff are meeting with Berkeley Rep to discuss the deferral referral.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	16	Providing Requested Direction to the City Manager and Planning Department on the Number of Cannabis Retail Establishments and the Creation of an Equity Program	That the Council provides requested direction to the Planning Department on how to proceed with the Equity Program recommended by the Cannabis Commission in the October 9, 2018 staff report; with the following specifications: Recommendation of creating 1 new dispensary license for equity applicants. It is envisioned as new licenses are created, such as, delivery, manufacturing, and micro-business, permits will be reserved for equity applicants for each new category.	Councilmembers		Ben Bartlett, Kriss Worthington, Cheryl Davila		2019-05-17 17:00:00	PLANNING & DEVELOPMENT	Work in Progress	2021-12-31 12:00:00		2021-01-15 13:24:28 - James Bondi (Additional comments) Equity program on hold pending additional staff resources. Planned end date pushed back, percent complete reduced to 25% 2020-04-15 11:32:41 - James Bondi (Additional comments) Planned end date moved back to Oct 2020, given delays to public processes and re-prioritization due to COVID response. 2019-11-06 09:58:01 - James Bondi (Additional comments) Planned end date changed to 3/24/2020. Cannabis actions coming to Council in Dec 2019 will NOT include the equity program as

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25		Public Toilet Policy	Refer to the City Manager to develop the following "Neighborhood Public Toilet Policy": Develop a process in which residents can obtain a permit for a neighborhood public toilet via an official petition; Residents should contact the City via 311 to obtain an official petition form to apply for a permit; In order to obtain the permit, the petition should be signed by at least 51% of residential addresses and business owners within the nearest two block radius of the proposed public toilet site; The City shall not fund or contribute to the financing of the public toilets or their	Council member				2020-12-31 17:00:00	CITY MANAGER'S OFFICE	Past Due	2020-12-31 17:00:00		2020-07-20 10:51:47 - Melissa McDonough (Additional comments) Response to the referral has been delayed due to the COVID-19 pandemic and its impact on available staffing to support the draft policy. In response to the pandemic, the City has placed and maintains several additional portable toilets and handwashing stations throughout the City. 2019-08-05 09:47:54 - Melissa McDonough (Additional comments) Staff have prepared a memo which will be submitted to Council in Fall 2019. 2019-04-24 15:13:54 - Melissa McDonough (Additional comments) Still on hold as staff

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-19	22	Develop Ordinance Prohibiting Companies Participating in the Construction of a Border Wall from Contracting with the City of Berkeley	Direct the City Manager to develop an ordinance prohibiting companies involved in the construction of a border wall from contracting with the City of Berkeley. Return to Council with the proposed ordinance within 90 days.	Council member		Ben Bartlett, Sophie Hahn, Cheryl Davila		2018-07-20 17:00:00	Finance	Pending Not On Schedule	2018-07-20 17:00:00		2020-04-16 10:57:58 - Melissa McDonough (Additional comments) October 2019 draft ordinance was sent to City Attorney for review. Remaining at 25% complete General Services Manager to commence follow up with City Attorney's Office following COVID-19 event and Emergency Operations Center deactivation. 2019-11-25 13:41:42 - Melissa McDonough (Additional comments) Draft ordinance sent to the City Attorney for review.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-04-02	18	Companion Report: Effective Enforcement of Safe Lead-Paint Practices - Update on Amendments	Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to: - Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement; - Identify what resources, staff capacity, and program structure would be required to expand	Councilmembers				2020-12-31 15:28:36	CITY MANAGER'S OFFICE	Pending Not On Schedule	2020-12-31 15:28:36		2020-04-02 13:24:58 - Melissa McDonough (Additional comments) Multi-department staff resources are required and are not available to address this request right now. 2019-10-03 13:55:00 - Melissa McDonough (Additional comments) Completed matrix 2019-09-12 08:32:23 - Melissa McDonough (Additional comments) Convened all City divisions which touch issue (Public Health, Environmental Health, Toxics, Building & Safety, 311). Mapped existing processes. Preparing draft consolidation plan. 2019-08-07 15:33:54 - Melissa McDonough (Additional comments)

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-03-14	24	Referral to Consider Caregiver Parking in Residential Shared Parking Pilot	Refer to the City Manager and Transportation Commission to consider a pilot program for caregiver parking permits in RPP zones in the goBerkeley Residential Shared Parking Pilot.	Council member				2020-06-12 17:00:00	Public Works	Pending On Schedule	2020-06-12 17:00:00		2021-01-14 17:36:21 - Nancy Melendez (Additional comments) Due to Covid-19 work remains suspended, and the new end date is likely to be 12-31-2021 2020-10-05 09:35:13 - Nancy Melendez (Additional comments) (no change) Due to the Shelter in Place order and temporary suspension of RPP, the schedule for this project is estimated to be delayed 6 to 12 months. The new planned end date is June 12, 2021 2020-06-30 15:24:51 - Nancy Melendez (Additional comments) Due to the Shelter in Place order and temporary suspension of RPP, the schedule for this

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Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2014-04-29	35	35. City Manager Referral: Policy for Companies Such as Airbnb to Pay Transient Occupancy Tax, as Currently Paid by Other Small Local Businesses	Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.	Council member	City Council District 7	Kriss Worthington		2014-10-24 17:00:00	PLANNING & DEVELOPMENT	Completed	2014-10-27 08:00:00	2016-09-07 00:00:00	
2014-12-16	25	Reconcile the West Berkeley Plan and the Zoning Code as it Pertains to Medical Uses	Refer to the Planning Commission the task of revising the current zoning ordinance so that it reflects the West Berkeley Plan's goals of encouraging medical uses in West Berkeley.	Council member	City Council District 2			2015-06-12 17:00:00	PLANNING & DEVELOPMENT	Completed	2015-06-15 08:00:00	2017-01-24 00:00:00	
2015-09-15	43	Prohibit Sales of Tobacco Products to Persons Under the Age of 21	Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.	Council member		Jesse Arreguin		2016-03-11 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-03-11 17:00:00		
2015-09-15	55	Referral to the Community Environmental Advisory Commission to Install 1.8 GPM Showerheads in All New Housing Projects or Any Renovation Over $50,000	Refer to the Community Environmental Advisory Commission to explore requiring a maximum of 1.8 GPM low flow showerheads in new housing projects and all housing renovations exceeding $50,000 throughout Berkeley.	Council member		Kriss Worthington		2016-03-11 17:00:00	PLANNING & DEVELOPMENT	Completed	2016-03-14 08:00:00	2016-07-19 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-11-10	1	Proposed Amendments to the Minimum Wage Ordinance; Amending Berkeley Municipal Code Chapter 13.99 (Continued from September 15, 2015)	Review and consider information regarding the activities and costs associated with implementing and enforcing the Commission on Labor's proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, non-profit organizations and community-based organizations, on-call workers and youth training program workers, and either: 1. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99, which					2016-05-06 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-05-09 08:00:00	2016-09-01 00:00:00	
2015-11-17	30	Fourth Ambulance Pilot Project 6-Month Update	No recommendation noted. Action: Moved to Consent Calendar and held over to January 19, 2016. Fire to report back in May 2016 for permanent program.					2016-05-13 17:00:00	FIRE & EMERGENCY SERVICES	Completed	2016-05-16 08:00:00	2018-07-01 00:00:00	
2015-12-01	22	City Manager Referral: Pilot Program to Implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley	Refer to the City Manager to adopt a Pilot Program to implement Solar Trash Compactors on Telegraph Avenue and Downtown Berkeley.	Council member		Kriss Worthington, Linda Maio, Susan Wengraf, Lori Droste		2016-05-27 17:00:00	Public Works	Completed	2016-05-30 08:00:00	2018-07-24 00:00:00	2019-02-05 16:44:20 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-01	33	City Manager and Planning Commission's Referral: Enable Implementation of Council Approved Floor Area Ratio in the Telegraph Commercial District between Dwight and Bancroft by Amending the Zoning Ordinance	Refer to the City Manager and Planning Commission an immediate implementation strategy to bring the City Zoning Ordinance in compliance with the policy adopted by City Council to increase Floor Area Ratio (FAR) in the Telegraph Commercial District between Dwight and Bancroft	Council member	City Council District 7	Kriss Worthington		2016-05-27 17:00:00	PLANNING & DEVELOPMENT	Completed	2016-05-30 08:00:00	2016-06-28 00:00:00	
		Google Translate Bar							Information Technology	Completed	2016-06-01 00:00:00	2016-06-01 00:00:00	
2015-12-15	35	Amending Open Government Ordinance to Allow Submission of Revised/Supplemental Items	Refer to the City Manager and City Attorney to draft an ordinance amending Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) to allow the submission of revised or supplemental agenda material for the Supplemental Communications Packet 2. The revised or supplemental material must be submitted no later than 12 noon the day of the City Council meeting at which the item is to be considered. The online version of the City Council agenda shall also contain a link to such items. If revised agenda	Council member		Jesse Arreguin, Susan Wengraf, Lori Droste		2016-06-10 17:00:00	City Clerk	Completed	2016-06-10 17:00:00		
2015-12-15	30	Provide Cost Estimates to Restore the Berkeley Pier	Refer to the City Manager to determine the cost to make the appropriate repairs so that it will be safe for public use.	Council member	City Council District 2			2016-06-10 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-06-13 08:00:00	2017-03-14 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2015-12-15	54	Referral to City Manager: Establishment of Affordable Housing Small Sites Program Revised Version	Refer to the City Manager to: 1. Look into the feasibility of creating a Small Sites Program to allow non-profits to purchase small multi-family buildings (5-25 units) to create and preserve affordable housing, with an emphasis on properties with a high potential for conversion to cooperative homeownership. 2. Develop an inventory of City-owned land and other land owned by public agencies in the City of Berkeley which could potentially be used to create below-market rate housing.	Council member		Jesse Arreguin		2016-06-10 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-06-13 08:00:00	2016-12-13 00:00:00	2019-02-05 16:47:39 - Melissa McDonough (Additional comments) 2 is completed. 1 was later prioritized long term as top priority of Council's housing action plan. Plan outline complete and will bring before HAC in July 2018.
2016-01-19	24	Tenant Buyout Agreement Ordinance	Refer to the City Manager and the Rent Stabilization Board to draft an ordinance regulating situations where a tenant agrees to vacate a rent-controlled unit in exchange for a sum of money, known as a buyout.	Council member		Jesse Arreguin		2016-07-15 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-07-18 08:00:00	2016-03-31 00:00:00	
2016-02-09	26	Develop a Provision for the Landmarks Preservation Ordinance to Allow for the De-designation of a Landmark Designation for a Building that has been Legally Demolished (Continued from January 12, 2016)	Refer to the City Manager to develop a provision for the Landmarks Preservation Ordinance (LPO) that would allow a landmark designation to be de-designated for a building that has been previously landmarked but subsequently has been legally demolished.	Council member				2016-08-05 17:00:00	CITY MANAGER'S OFFICE	Completed	2016-08-08 08:00:00	2016-05-10 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-02-09	15	Budget Referral: Including BigBelly Solar Compactor Bins Allocation in the 2016 Mid-Year Budget Process	Refer to the 2016 Mid-year budget process the purchasing of BigBelly Solar Compactor Bins in order to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Council member		Kriss Worthington, Lori Droste		2016-08-05 17:00:00	Public Works	Completed	2016-08-08 08:00:00	2018-07-24 00:00:00	2019-02-05 16:51:37 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
2016-03-15	6	Prioritize Installation of Bicycle Lane on Fulton Street	Direct the City Manager and Transportation staff to prioritize and expedite the installation of a bicycle lane on Fulton Street between Bancroft Way and Channing Way.	Council member		Jesse Arreguin		2016-09-09 17:00:00	Public Works	Completed	2016-09-12 08:00:00	2016-05-10 00:00:00	
2016-04-05	10	Modify the Proposed Early Mitigation Fee Discount and Preserve Revenue Towards Units At Or Below 50% AMI and Add Sunset Clause (Continued from February 23, 2016)	That the City of Berkeley amend Council Item 10a to remove the option of paying a substantially-reduced mitigation fee at the issuance of a permit, and to preserve revenue from the mitigation fees to maintain or increase the funds designated towards units for incomes at or below 50% AMI, and add a sunset clause.	Council member		Kriss Worthington		2016-09-30 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-10-03 08:00:00	2016-07-19 00:00:00	
2016-04-26	31	Creation of 311 Mobile Application	Refer to the City Manager to create a mobile application for the 311 system and improve the 311 Online Service Center.	Council member		Jesse Arreguin		2016-10-24 08:00:00	Information Technology	Completed	2016-10-24 08:00:00	2016-11-15 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-05-10	21	Resolutions Consenting to Inclusion of the City of Berkeley Properties in the California Home Finance Authority PACE Programs and Associate Membership in California Home Finance Authority	ABAG has a new report and the City Council has voted twice in favor; thus, the City of Berkeley should approve and sign an agreement for collaborative services for Property Assessed Clean Energy Financing (PACE) marketplace. Also, that the City of Berkeley approve and sign acknowledgement addendum of RCSA, as executed between ABAG and RPPs.	Council member		Kriss Worthington		2016-11-04 17:00:00	City Attorney	Completed	2016-11-07 08:00:00	2016-09-20 00:00:00	
2016-05-31	20	Requesting a Comprehensive Report on the State of Homeless Services within the City of Berkeley	Request the City Manager direct staff to prepare a report outlining the details of City funded homeless services. The purpose of this report is to help Council and the community understand the various factors related to the allocation of resources to address homelessness within the City. Once the report is complete, it is requested that city staff schedule a worksession to go over the findings.	Council member	City Council District 5			2016-11-25 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2016-11-28 08:00:00	2016-11-01 00:00:00	
2016-05-31	22	City Manager Referral: Consider Adding Energy Efficient Equity as an Additional Property Assessed Clean Energy Program	Refer to the City Manager to consider adding Energy Efficient Equity as an additional property assessed clean energy program.	Council member		Kriss Worthington		2016-11-25 17:00:00	PLANNING & DEVELOPMENT	Completed	2016-11-28 08:00:00	2016-09-20 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-06-28	47	City Manager Referral: Feasibility of Acquiring a High-Capacity Scanner for Multiple City Departments	Refer to the City Manager to consider investing in a high-capacity scanner to digitize City records for the Council and multiple City departments.	Council member		Kriss Worthington		2016-12-26 08:00:00	Information Technology	Completed	2016-12-26 08:00:00	2017-12-12 00:00:00	
2016-07-12	27	Refer to City Manager to Consider Applying for $100,000 from the Better Together Resilient Communities Grant Program	That the City Manager consider applying for the $100,000 grant that PG&E's Better Together Resilient Communities grant program will offer in the beginning of 2017.	Council member		Kriss Worthington		2017-01-06 17:00:00	PLANNING & DEVELOPMENT	Completed	2017-01-09 08:00:00	2016-12-31 00:00:00	
2016-07-19	41	Companion Report: Amend Berkeley Municipal Code Creating Community Health Commission	Refer to staff to write an ordinance based on the Community Health Commission (CHC) recommendation with the changes suggested by staff.		MAYOR AND COUNCIL			2017-01-13 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2017-01-16 08:00:00	2016-11-29 00:00:00	
2016-09-20	22	Amending Council Rules Regarding Removal of Commissioners	Direct staff to return with a policy recommendation consistent with the recommendations in this report, i.e., noting that as a matter of courtesy and respect, Councilmembers are expected to set the date a commissioner is to be replaced on a commission and communicate that date to the commissioner not less than two weeks from the official date of replacement.	Council member		Commission		2017-03-17 17:00:00	City Clerk	Completed	2017-03-20 08:00:00	2018-06-12 00:00:00	2019-02-05 17:02:37 - Melissa McDonough (Additional comments) Incorporating changes from City Council.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-09-20	21	City Manager Referral: Consider the Four Recommendations Contained in the Alameda County Grand Jury Report (Continued from July 19, 2016)	Refer to the City Manager to consider the four recommendations in response to the Alameda County Grand Jury Report recommendations.	Council member		Kriss Worthington		2017-03-20 08:00:00	Information Technology	Completed	2017-03-20 08:00:00	2016-10-20 00:00:00	
2016-09-20	32	City Manager Referral: Implementing BigBelly Solar Compactor Bins	Refer to the City Manager to examine the feasibility of procuring BigBelly Solar Compactor Bins to save money, meet zero waste goals, and reduce Berkeley's greenhouse gas emissions.	Council member		Kriss Worthington, Lori Droste		2017-03-17 17:00:00	Public Works	Completed	2017-03-20 08:00:00	2018-07-24 00:00:00	2019-02-05 17:04:44 - Melissa McDonough (Additional comments) 6/2018 RFPs received; 2 solar compactors to be issued contracts.
		Improved Emergency Notification System							Information Technology	Completed	2017-04-01 00:00:00	2017-06-05 00:00:00	
2016-10-18	25	Amendments to BMC 23C.23.050 to Allow a Third Option to Satisfy the Private Percent for Art Requirements	Request the City Manager draft an ordinance for Council adoption to revise BMC 23C.23.050, the One-Percent for Public Art on Private Projects Ordinance, to do the following: 1. Have 5% of the 1% requirement go directly to administration of the Public Art in Private Development program regardless of how the developer decides to satisfy the requirement;	Council member				2017-04-14 17:00:00	Office of Economic Development	Completed	2017-04-17 08:00:00	2017-01-24 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-10-18	41	City Plan for Emergency Shelter During Winter Season	Refer the following actions to the City Manager to consider in developing a plan for emergency shelter/services during the upcoming winter season. These actions will help implement Resolution No. 67,357-N.S. "Declaring a Homeless Shelter Crisis in Berkeley": 1. Allow full use of the Multi-Agency Service Center (MASC) at 1931 Center Street as a Warming Center. Direct the City Manager to study the feasibility of using the West Berkeley Senior Center as a day-time Warming Center or evening shelter. Engage in discussions with Dorothy Day	Council member		Jesse Arreguin		2017-04-14 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2017-04-17 08:00:00	2017-06-27 00:00:00	
2016-10-18	26	Revisions to the Public Art in Private Development Program	Request the City Manager draft a resolution to revise the Public Art in Private Development Program Guide to provide the Civic Arts Commission guidance and more flexibility in the use of the Cultural Trust Fund with the language suggested in the report.	Council member				2017-04-14 17:00:00	Office of Economic Development	Completed	2017-04-17 08:00:00	2016-12-13 00:00:00	
2016-11-01	15	City Manager Referral: Increasing Transparency in City Public Record Act Responses	Approved revised recommendation to request a report from the City Manager on how the City is using the permitted exemptions in compliance with the Public Records Act.	Council member		Kriss Worthington		2017-04-28 17:00:00	City Attorney	Completed	2017-05-01 08:00:00	2016-12-13 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2016-12-13	29	Ordinance for Standards for Testing and Certification of DAS Antennas	Request that the City Manager draft ordinance language to amend Section 16.10.100 of the Berkeley Municipal Code to include Standards for Testing and Certification of DAS Antennas and return to the City Council within 60 days.	Council member		Susan Wengraf		2017-06-09 17:00:00	City Attorney	Completed	2017-06-12 08:00:00	2017-03-28 00:00:00	
2017-01-24	38	Berkeley Mothers Initiative	Request that the City Manager ensure that all City buildings provide and maintain at least one private place reasonably close to an employee's workspace for breastfeeding mothers to pump.	Councilmembers		Lori Droste		2017-07-21 17:00:00	CITY MANAGER'S OFFICE	Completed	2017-07-24 08:00:00	2017-07-01 00:00:00	
2017-01-24	37	Berkeley BABIES Initiative	Request that the City Manager create a provision and enforcement mechanism to ensure that all publically-accessible City buildings install and maintain at least one baby diaper-changing accommodation that is accessible in both men and women's restrooms or a single diaper-changing accommodation that is accessible to all genders. In addition, request that the City Manager provide recommendations to mandate all businesses to provide changing stations in either women's and men's restrooms or gender-neutral restrooms.	Councilmembers				2017-07-24 08:00:00	CITY MANAGER'S OFFICE	Completed	2017-07-24 08:00:00	2017-07-01 00:00:00	

Completed Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-01-31	10	Medical Cannabis Ordinance Revisions and Cultivation Application Process	Request that the City Manager provide Council with analysis of the questions presented by Councilmember Sophie Hahn.	Council member				2017-07-28 17:00:00	PLANNING & DEVELOPMENT	Completed	2017-07-31 08:00:00	2017-11-07 00:00:00	
2017-02-14	11	Updated Information Report on Measure M	Request that the City Manager return to the City Council in April with an Information Report on Measure M implementation, expenditures, projected expenses and plans.	Council member				2017-08-11 17:00:00	Public Works	Completed	2017-08-14 08:00:00	2017-05-02 00:00:00	
2017-03-28	22	Security Camera Database	Request that the City Manager return to Council with an update on the referral to create a voluntary database of security cameras in Berkeley. With an increase in crime, residents are anxious to help the Berkeley Police Department solve cases and arrest the perpetrators - amended to include direction that guidelines protect privacy and prevent misuse of camera footage.	Council member				2017-09-25 08:00:00	Police	Completed	2017-09-25 08:00:00	2018-08-15 00:00:00	

Completed Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-03-28	33	Referral Response: Cigarette Butt Pollution Prevention	REFER to the City Manager to enact a pilot program in downtown Berkeley with the goal of greatly reducing cigarette butt litter that accumulates on sidewalks and curbsides, in a central location. This pilot program would: a) Place a total of four receptacles for cigarette butt disposal in front of three adult schools and a bus stop where smoking behavior continues despite its prohibition. The receptacles are to be placed in front of: i. Berkeley City College, 2050 Center Street; ii. Language Studies International on 2015 Center Street; iii.	Commission			Community Environmental Advisory Commission	2017-09-22 17:00:00	Office of Economic Development	Completed	2017-09-25 08:00:00	2017-05-30 00:00:00	
2017-07-25	40	Expediting Elements of Previous Council Referral to Study Possible Scenarios of the Loss of Federal Funds	Direct the City Manager to expedite the compilation and delivery of a list of federal funds that the City of Berkeley receives and the programs and facilities supported by such funds.	Council member		Sophie Hahn, Jesse Arreguin, Cheryl Davila, Kate Harrison		2018-01-19 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2017-10-23 00:00:00	2018-12-11 12:22:40	2019-02-05 17:14:03 - Melissa McDonough (Additional comments) HHCS is updating with the latest single audit findings.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-05-30	53	Eliminate the Required Affidavits of Residency for Commissioners	Eliminate the requirement for Commissioners to submit Affidavits of Residency when they are appointed, and annually thereafter, in pursuit of saving time and money for the City of Berkeley. Revised Materials - http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/2017-05-30_Item_53_Eliminate_the_Required_-_Rev.aspx	Council member				2017-11-24 17:00:00	City Clerk	Completed	2017-11-27 08:00:00	2017-09-12 00:00:00	
2017-06-27	32	Housing Inspection and Community Services Manager	Request the City Manager to create and fill the position of Housing Inspection and Community Services Manager.	Council member				2017-12-22 17:00:00	PLANNING & DEVELOPMENT	Completed	2017-12-25 08:00:00	2018-09-13 00:00:00	2019-02-05 17:13:07 - Melissa McDonough (Additional comments) New position approved by Personnel Board. Will bring to Council for adoption by November which will complete referral.
2017-10-03	7	Request for Information Regarding Grant Writing Services from Specialized Grant Writing Firms	Refer to the City Manager to issue a request for information to explore grant writing services from specialized municipal grant-writing firms, and report back to Council.	Council member		Sophie Hahn, Kate Harrison, Cheryl Davila, Ben Bartlett		2018-01-01 17:00:00	Finance	Completed	2018-01-01 17:00:00	2019-09-24 12:41:03	2019-04-12 15:07:44 - Melissa McDonough (Additional comments) Issued #18-11201 Feb. 5, 2018 as an RFI (Request for information); closed March 1, 2018. Received 13 information responses for review. Next Steps: use responses to inform scope of work, then release as RFP.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25	51	Commercial Cannabis Regulations and Licensing	Refer to the City Manager and Cannabis Commission the proposed local ordinances to establish a licensing process for Commercial Cannabis operations, as permitted under Proposition 64, Adult Use of Marijuana Act. The Council requests that the City Manager and Cannabis Commission report to the City Council on its recommendations on regulations and licensing for commercial cannabis businesses before the end of 2017.	Council member				2018-01-19 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-01-22 08:00:00	2018-09-13 00:00:00	2019-02-05 17:15:33 - Melissa McDonough (Additional comments) Lengthy process involving 3 Commissions and many City departments. Some Ordinance changes will be at Council 9/13/18. But more will be needed. Council Worksession scheduled for 10/9/18, then adoption of more Ordinance changes expected by end of year, which will close this referral.
2017-10-31	17	Expanded Criteria for the Installation of Stop Signs	1. Refer to the Transportation Commission consideration of additional or supplemental stop sign criteria which addresses the needs of vulnerable populations, the presence of bicycle boulevards, and the difficulty of crossing particular intersections. 2. Direct that staff consult with the Bicycle Subcommittee of the Transportation Commission when making decisions impacting bicycle boulevards, whenever possible. 3. Request that the City Manager provide an informational report on the particular state and federal warrants	Council member		Kate Harrison, Ben Bartlett, Lori Droste	Transportation Commission	2018-01-29 17:00:00	Public Works	Completed	2018-01-29 17:00:00	2019-11-12 17:00:00	2019-09-25 08:55:09 - Melissa McDonough (Additional comments) Commission Recommendation and City Manager Companion report are under review and tentatively scheduled for council approval in Nov 2019 2019-02-05 16:27:28 - Melissa McDonough (Additional comments) Transportation Commission formed a subcommittee and held first meeting 6/11/18, additional meetings to be planned by subcommittee.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-09-12	33	Voter Registration Forms in All City Buildings on Their Main Floors	Direct the City Manager to provide voter registration forms on the main floor of all designated city buildings that are open to the public and in all Community based organizations within the city limits. Community based organizations that are funded by the City of Berkeley will be required to pick up the voter registration forms from the City Clerk's Office and that should be clearly stated in their respective contracts.	Council member		Cheryl Davila, Kate Harrison, Sophie Hahn		2018-03-09 17:00:00	City Clerk	Completed	2018-03-12 08:00:00	2017-11-08 00:00:00	
2017-10-03	24	Parallel Permitting Process	Request that the City Manager in coordination with the Director of Planning and the Chief Building Official work to establish a voluntary parallel permitting process for applications to construct housing in the City of Berkeley.	Council member		Susan Wengraf, Linda Maio, Lori Droste, Jesse Arreguin		2018-03-30 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-04-02 08:00:00	2017-11-01 00:00:00	2019-02-05 17:23:50 - Melissa McDonough (Additional comments) This voluntary parallel permitting option already exists. Following October 2017 referral we advised Building staff to be sure to make option known to interested applicants.
2017-10-03	21	Referral to the City Manager to Provide a Public Master List of the Legislation on which the City Council Has Taken a Position	Request that the City Manager work with the City's lobbyist to create and maintain a master list of the legislation on which the City Council has taken a formal position of support or opposition through passage of an item.	Council member		Kate Harrison, Sophie Hahn, Cheryl Davila		2018-03-30 17:00:00	City Clerk	Completed	2018-04-02 08:00:00	2018-01-23 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-01-23	27	Open the West Campus Pool All Year Round and Start the Shower Program at the West Campus Pool	Short Term Referral to City Manager to assess the feasibility to keep the West Campus Pool open all year round and to start COB Shower Program at the West Campus Pool. Keeping the West Campus Pool open all year round will provide equitable swimming options in both North Berkeley and in South/West Berkeley and provide another location available for our community to shower.	Council member		Cheryl Davila, Ben Bartlett		2018-07-20 17:00:00	Parks, Recreation & Waterfront	Completed	2018-04-23 00:00:00	2018-10-16 10:14:13	2019-02-05 17:38:54 - Melissa McDonough (Additional comments) a) On June 12, 2018, Council received an Off Agenda Memo that identifies the cost to establish a shower program at West Campus Pool. B) In mid-September 2018, Council will receive an Off Agenda Memo that describes the feasability of keeping West Campus pool open year-round.
2017-10-31	30	Short-Term Referral to the City Manager, a Process for Relocation of a Permitted Cannabis Dispensary	Refer to the City Manager to approve a process for the relocation of Apothecarium, a cannabis dispensary with valid permits.	Council member				2018-04-27 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-04-30 08:00:00	2018-01-23 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-12-05	18	City Manager Referral: Prioritizing New Business Before Old Business at City Council Meetings	Prioritize new business before old business at City Council Meetings by: 1. Altering the Council rules of procedure as adopted May 24, 2016 so that new business comes before old business. The reformatted section will read "The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, New Business, Old Business); Information Reports;	Council member				2018-06-01 17:00:00	City Clerk	Completed	2018-06-04 08:00:00	2018-01-30 00:00:00	
2018-02-13	17	Referral to the City Manager to Submit a Filing to the CPUC Recommending Adjusting Electric Rule 20 to Better Serve the City of Berkeley and Other Communities with Very High Fire Hazard Severity Zones	A referral to the City Manager to submit a filing with the California Public Utilities Commission (CPUC) concerning the CPUC's current review of Electric Rule 20. The CPUC is considering, among other things, how the existing program is administered by the various utility companies operating in California and the definition of what projects are to be included in the public interest.	Council member		Susan Wengraf, Sophie Hahn, Jesse Arreguin, Lori Droste		2018-08-10 17:00:00	Public Works	Completed	2018-08-10 17:00:00		
2018-02-13	26	Referral to the City Manager on Gender Options of the General Application for City Boards and Commissions	Refer to the City Manager to add a nonbinary gender option on the General Application for appointment to Berkeley boards and commissions.	Council member		Lori Droste, Linda Maio, Susan Wengraf, Worthington		2018-08-10 17:00:00	City Clerk	Completed	2018-08-13 08:00:00	2018-03-01 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-02-27	22	Wildland Urban Interface Fire Safety and Fire Safety Education	Commission Referral #5 revised to read: 5. Refer to the Planning Commission to consider Accessory Dwelling Units (ADUs) in the Very High Hazard Fire Zone to review public safety issues especially relevant to the risk of WUI fires. Amend Section 23D.10 to incorporate greater public safety considerations to be met before issuing an Administrative Use Permit (AUP);		City Council and Mayor			2018-08-24 17:00:00	FIRE & EMERGENCY SERVICES	Completed	2018-08-24 17:00:00		
2018-03-13	17	Referral to the Arts Commission and the City Manager: Cost Estimate and Plan for Installation of Sculpture Lighting into Adjacent Street Lights for the William Byron Rumford Statue on Sacramento and Julia St	Refer to the City Manager a request to develop a cost estimate and an installation plan for installing sculpture lighting into adjacent street lights for the William Byron Rumford statue on Sacramento and Julia Street. Refer the cost estimate and plan to the Arts Commission.	Council member				2018-09-07 17:00:00	Public Works	Completed	2018-09-07 17:00:00		

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-01-30	14	Direction and Referral to the City Manager Regarding “Premier Cru” Property	3. The Berkeley Way Affordable Housing Project is the City's top affordable housing priority. Premier Cru, as a City property, to be developed for affordable housing falls under the "High Priority" on the list of housing initiatives passed by Council on November 28, 2017. In light of the above, refer to the City Manager to take the following actions to move Premier Cru forward as a High Priority initiative: a. Based on recommendations from Health, Housing and Community Services and other Departments, the Housing Advisory	Council member		Sophie Hahn, Jesse Arreguin, Linda Maio, Kate Harrison		2018-09-07 17:00:00	PLANNING & DEVELOPMENT	Completed	2018-09-10 08:00:00	2018-05-29 00:00:00	
2017-12-19	41	Companion Report: Public Works Commission Recommendation for the Five-Year Paving Plan	Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2018 to FY 2022. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.					2018-09-21 17:00:00	Public Works	Completed	2018-09-24 08:00:00	2018-07-24 00:00:00	
2017-12-05	24	Ordinance Amending the Berkeley Municipal Code to Establish Ability to Pay Provisions Regarding Parking Fines and Fees in Accordance with Guidelines Established in Assembly Bill 503	to refer the item as written in Supplemental Reports Packet #2 to the City Manager to conduct an analysis of the item, including a review of current indigency procedures and coordination with similar efforts in the City of Oakland, and report back to the Council in 90 days.	Council member			Transportation Commission	2018-09-28 17:00:00	Finance	Completed	2018-09-28 17:00:00	2018-07-02 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-04-24	17	Refer the Housing Advisory Commissions Questions on the Smoke-Free Residential Housing Ordinance to Staff and Berkeley Considers	The Housing Advisory Commission respectfully requests that the Council direct the City Manager to assist the HAC in its review of the Smoke-Free Residential Housing Ordinance, a regulation of tobacco use, as follows: 1. By responding to the HAC's questions enumerated in the report with any readily available responsive information. 2. By facilitating the conduct of a "Berkeley Considers" questionnaire about the Smoke-Free Residential Housing Ordinance, questions for which are proposed in the report.	Commission				2018-10-19 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-10-19 17:00:00	2019-03-17 14:41:36	
2017-07-25	10	Authorizing City Manager Approval for Community Development Block Grant (CDBG) Community Facility Improvement Contracts Under $200,000; Amending BMC Chapter 7.18	Adopt first reading of an Ordinance, by two-thirds vote of the Council, amending Chapter 7.18 of the Berkeley Municipal Code to authorize the City Manager to enter into and amend contracts of up to $200,000 with applicants recommended for funding by staff and the Housing Advisory Commission under the City's Community Development Block Grant (CDBG) program for community facility improvements.					2018-10-19 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-10-22 08:00:00	2018-04-24 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-07-31	10	Direction to the City Manager Regarding the Community Service In Lieu of Parking Penalties Program	Direct the City Manager to amend the eligibility requirements of the Community Service In Lieu of Parking Penalties Program in order to allow all indigent individuals to be eligible to participate in the program (regardless of the registration status of a potential participant's vehicle).	Council member		Ben Bartlett, Cheryl Davila, Kate Harrison, Sophie Hahn		2018-10-29 17:00:00	Public Works	Completed	2018-10-29 17:00:00	2019-01-19 15:21:35	2019-08-27 15:23:33 - Nancy Melendez (Additional comments) FJ/DP: Aside from the fact that Public Works is not actually involved in citations or citation payment plans or alternatives, this program exists and the FAQ at the link below was updated January 2019. https://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/COMMUNITY%20SERVICE.pdf 2019-02-05 15:38:44 - Melissa McDonough (Additional comments) Because this is a multidepartmental task assigned to Public Works, involving Finance and City Attorney, and administered by the City
2018-05-15	23	Transgender Health Access Training at City of Berkeley Clinics	Adopt a Resolution providing $2,400 from the General Fund to support a half-day Transgender Health Access Training for City of Berkeley Public Health staff in June 2018.	Commission				2018-11-09 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-11-10 17:00:00	2019-02-04 10:22:57	2019-04-15 10:25:13 - Laura Schroeder (Additional comments) On February 4, 2019 staff from public health and mental health attended a training on Transgender Access to Public Health
	24	Budget Referral: Increasing Safety at San Pablo Park	Request the City Manager perform traffic assessments to gather data and refer any needed improvements to the FY 2020 – FY 2021 budget process.	Councilmembers		Cheryl Davila		2018-11-13 17:00:00	Public Works	Completed	2018-11-13 17:00:00	2019-05-16 00:00:00	

Completed Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-05-29	14	Implementation of Secure Storage Program	1. Direct the City Manager to expedite implementation of two publicly available, secure storage facilities to accommodate as many individuals as possible, based on the parameters set in staff's March 2, 2018 RFI: Downtown Homeless Storage Pilot - Staffing and Operations and on additional parameters outlined in Program Details, below. 2. Direct the City Manager to publicize the locations, hours, and rules applicable to new storage facilities through normal outreach channels (website, press release, etc.) and through direct	Council member				2018-11-23 17:00:00	HEALTH, HSG & COMMUNITY SVC	Completed	2018-11-26 08:00:00	2018-07-24 00:00:00	
2018-12-11	23	Short-term referral to City Attorney and Health Housing and Community Service to amend Berkeley Municipal Code 7,441-N.S. to expand the control of flavored tobacco across the City of Berkeley toward preventing youth and young adult tobacco use	Short-term referral to City Manager to amend Berkeley Municipal Code 7,441-N.S. according to the changes made in the attached amended ordinance to prohibit the sale of flavored tobacco products and require a minimum package size for cigars and little cigars across the City of Berkeley. The primary purpose of the amendment to the ordinance is to do more to prevent youth and young adult tobacco use.	Councilmembers		Cheryl Davila		2018-12-11 17:00:00	City Attorney	Completed	2018-12-11 17:00:00	2019-09-10 13:15:43	

Completed Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-09-13	31	Short-Term Referral to City Manager re: Emergency Standby Officers Qualifications	Referral to the City Manager to consider the following suggestions for requirements and qualifications for Emergency Standby Officers and return to Council within 90 days with recommendations. P ossible requirements may include: - Trainings in roles and responsibilities to serve as a standby officer possibly including: ethics and workplace harassment. -City government experience. -Council District residency. - Require standby officers to meet the same qualifications, including restrictions on conflict of interest,	Council member		Susan Wengraf, Jesse Arreguin, Sophie Hahn		2018-12-11 17:00:00	City Clerk	Completed	2018-12-11 17:00:00	2019-05-02 12:02:38	2019-02-05 15:21:26 - Melissa McDonough (Additional comments) Ongoing discussion with City Attorney regarding potential criteria
2018-07-10	17	Referral to City Manager to Consolidate all City Commission Workplans in One Place for Easy Access for Staff, the Public, and Elected Officials	Make a referral to the City Manager to consolidate all City Commission Workplans in one place for easy (electronic) access for staff, the public, and elected officials.	Council member				2019-01-04 17:00:00	City Clerk	Completed	2019-01-07 08:00:00	2018-09-13 00:00:00	
2018-10-30	20	Proposed Portland Loo Installations in Telegraph Commercial District	Short-Term Referral to the City Manager to identify costs for the installation of a "Portland Loo" type of bathroom facility in Telegraph Commercial District. Costs should be comprehensive and include, but not be limited to: the facility, infrastructure, design, construction, oversight and any contingencies.	Councilmembers		Jesse Arreguin, Sophie Hahn		2019-01-31 17:00:00	Public Works	Completed	2019-01-31 17:00:00	2019-02-27 00:00:00	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-11-13	23	Clarifying Jurisdiction of Ohlone Greenway	Refer to the City Manager to review the recommendation to place the Ohlone Greenway under park rules and policies with the intent of revising the BMC to include the Ohlone Greenway as open space and enforce park-like rules.	Councilmembers		Linda Maio, Sophie Hahn, Kate Harrison		2019-02-13 17:00:00	City Attorney	Completed	2019-02-13 17:00:00	2019-09-17 10:57:38	2019-09-17 10:57:27 - Christopher Jensen (Additional comments) Referral response complete; Public Works is providing assistance on right-of-way issues. 2019-04-24 10:04:24 - Mark Numainville (Additional comments) City Attorney provided legal opinion to PRW. PRW to report to Council.
2017-05-02	27	Berkeley Bicycle Plan 2018	Adopt a Resolution approving the Berkeley Bicycle Plan 2017, and directing the City Manager to pursue implementation of the Plan as funding and staffing permit.					2019-02-15 17:00:00	Public Works	Completed	2019-02-15 17:00:00		
2015-11-17	28	Improve Conditions on Our Community Sidewalks; Amending Berkeley Municipal Code Chapters 13.36 and 14.48	Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinaces: 1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places. 2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks. 3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees. Additional Services: 1. Create a secure storage facility for personal	Council member		Linda Maio, Lori Droste		2019-02-28 16:00:00	CITY MANAGER'S OFFICE	Completed	2019-02-28 16:00:00	2019-02-28 16:00:00	2019-10-15 14:27:16 - Melissa McDonough (Additional comments) Staff has prepared an overview of the outcomes from the pilot implementation of the Shared Sidewalk Policy , and anticipates presenting its findings to Council in Fall 2019. The ongoing program is currently in place. 2019-08-07 14:46:28 - Melissa McDonough (Additional comments) Storage is done as is mobile showers and expansion of bathrooms, 14.48 re: sidewalks is done. 2019-04-24 15:08:11 - Melissa McDonough (Additional comments) Outreach information disseminated to people on streets; another

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-11-13	24	Budget Referral: Increasing Safety at San Pablo Park	4. Develop, implement and coordinate drills for active shooter and other emergency protocol at San Pablo Park: Create protocol with input from community partners, then orient licensed daycare providers, coaches, trainers and program staff who operate out of the park, and conduct drills with City staff operating the Center and providers in order to prepare for emergencies and how to use the Center as a shelter during or following them.	Councilmembers		Cheryl Davila		2019-03-01 17:00:00	Police	Completed	2019-03-01 17:00:00	2019-03-30 15:34:27	2019-04-24 15:35:06 - Melissa McDonough (Additional comments) Training class conducted March 30
2017-12-05	17	City Manager Referral: Consider CPUC Interconnection Applications	Refer to the City Manager consideration of applying for CPUC interconnection applications.	Council member				2019-03-04 16:00:00	Public Works	Completed	2019-03-04 16:00:00	2018-04-04 00:00:00	
2018-09-13	18	Adopt a Resolution in Support of Appropriate City Enforcement Measures to Mitigate Damages Resulting from the Removal of Trees at 1698 University Avenue	Amended to be a referral to the City Manager regarding enforcement of measures to mitigate damage to the general welfare of the City and neighborhood resulting from the damage and subsequently-required removal of trees at 1698 University Avenue.	Council member		Kate Harrison		2019-03-11 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-03-11 16:00:00	2018-10-01 15:56:16	
2018-09-25	22	Safe storage of firearms - Revised materials (Supp 2)	Refer to the City Manager to review draft Safe Storage of Firearms ordinance, identify and resolve issues, and return to Council within 90 days.	Council member		Susan Wengraf, Sophie Hahn		2019-03-22 17:00:00	City Attorney	Completed	2019-03-23 16:00:00	2018-12-24 16:21:16	

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-10-02		Lobbyists Registration and Regulation Ordinance; Amendments to Existing Revolving Door Ordinance	Request an analysis from the City Manager before the November budget discussion on the administrative impacts and cost to implement the lobbyist ordinance.	Council member	MAYOR AND COUNCIL			2019-03-29 17:00:00	City Attorney	Completed	2019-03-30 16:00:00	2019-01-22 12:32:26	
2018-10-02	9	Amend BMC Chapters 6.24 and 14.52 to Authorize Paid Parking on Shattuck Avenue between Carleton Street and Ward Street and add the Northside (Euclid/Hearst) Metered Parking Area to the goBerkeley Program; and Authorize Paid Parking at the City-Owned Adeline/Alcatraz Parking Lot	Request staff to perform an analysis of the parking in the Northside area during the academic year to be completed within six months.	Council member	MAYOR AND COUNCIL			2019-04-02 17:00:00	Public Works	Completed	2019-04-02 17:00:00	2019-08-01 15:29:17	2019-08-27 15:29:52 - Nancy Melendez (Additional comments) GH: Staff conducted an analysis of the parking in the Northside area in spring 2019, roughly six months after goBerkeley price and time limits went into effect on November 1, 2018. As summarized in the June 25, 2019 Information Report submitted to Council, the data showed that goBerkeley changes are working as intended to increase parking availability in the area. Two minor adjustments to prices and time limits in "Value" zones went into effect August 1, 2019 2019-02-05 16:25:11 - Melissa McDonough (Additional comments)

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-10-30	35	City Manager referral: Initiate a franchise agreement with FlixBus	That the Council refer to the City Manager initiation of a franchise agreement with FlixBus, requiring a permit issued by the Director of Public Works, establishing a fee for the issuance of the permit, establishing administrative penalties for failure to obtain a permit or violation of permit requirements, and providing a procedure for the assessment and collection of administrative penalties for permit violations.	Councilmembers		Kriss Worthington		2018-10-30 17:00:00	Public Works	Completed	2019-05-01 11:39:27	2019-05-23 00:00:00	2019-04-23 11:49:56 - Mark Numainville (Additional comments) Resolution of Intent adopted on 3/26/19; Public Hearing set for 4/30/19
2018-10-16	25	Welcome to Berkeley Signage	Refer to the City Manager on a short term basis to replace all the Welcome to Berkeley signs with the Option B design per the Transportation Commission recommendation, including "Ohlone Territory" but not a second motto. Also, leave space on the sign to add a policy message and consult with Ohlone leaders on the use of the word "territory."	Councilmembers	City Council District 2	Cheryl Davila		2018-10-16 17:00:00	Public Works	Completed	2019-05-03 12:00:00	2019-02-07 00:00:00	

Completed Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-02-19	21	Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation	1) Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by April 30, 2019. 2) Refer to the Planning Commission	Councilmembers		Kate Harrison, Rigel Robinson, Sophie Hahn		2019-05-21 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-05-21 17:00:00	2019-06-11 09:40:07	2019-04-15 09:44:51 - James Bondi (Additional comments) Scheduled for Council 4/30/19. 2019-04-12 16:04:35 - Melissa McDonough (Additional comments) May be done at Council 4/30/19, pending recommendation from Planning Commission (special Public Hearing 4/3/19).
2019-02-19	9	Short-Term Referral: Develop Ordinance permitting Cannabis Events and designate Cesar Chavez Park as an Approved Venue	Short-Term Referral to the City Manager to develop ordinance amendments permitting up to three cannabis events per year in the first year in the City of Berkeley and designating Cesar Chavez Park as the sole approved location for cannabis events, provided such events are organized and licensed as required by the State of California. The ordinance shall: 1. reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2. specify procedures for such events that replicate similar alcohol related event	Councilmembers		Jesse Arreguin		2019-05-21 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-05-22 00:00:00	2019-04-15 09:54:32	2019-04-15 09:54:26 - James Bondi (Additional comments) Council considered and opted not to adopt policy, 4/2/19. 2019-04-12 16:02:31 - Melissa McDonough (Additional comments) Pending Council adoption of Cannabis Ordinance revisions scheduled for April 2 (second reading April 23).

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2017-07-25	37	Reviewing the GIG Car Share Pilot Program	Refer to the City Manager and Transportation Department a review of the concerns, emerging regarding some features of the recently implemented GIG Car Share pilot program, request adjustments before the two-year pilot program from staff.	Council member		Linda Maio, Susan Wengraf		2019-05-28 17:00:00	Public Works	Completed	2019-05-28 17:00:00	2019-05-28 11:39:27	2019-02-05 15:16:47 - Melissa McDonough (Additional comments) The program evaluation will be conducted in early 2019 and an action report prepared for Council to continue, modify, or discontinue the pilot.
2019-03-26	23	Referral to City Manager to Scope Process and Estimate Cost of New General Plan	Referral to the City Manager to return to City Council with an outline of the process for creating a new City of Berkeley General Plan. The cost for the first two years of work will be included in the report for consideration during the upcoming 2020-2021 Budget Process.	Councilmembers		Jesse Arreguin, Cheryl Davila		2019-06-21 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-06-21 17:00:00	2019-06-12 09:41:11	2019-04-15 09:53:31 - James Bondi (Additional comments) Scoping has begun. Off-Agenda Memo will provide answers (date TBD)

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-12-11	26	Referral to the City Manager and Planning Commission to Update the Housing Pipeline Report to Address Timeline between Planning Entitlements and Submission of Building Permit Applications and Consider Reasons for Delay	Referral to the City Manager to include in the Housing Pipeline Report an analysis of the time between planning entitlements and building permit requests for all projects of five units or greater over the past five years. On an ongoing basis, refer to the City Manager and Planning Commission to propose changes to current Planning approval process to address the causes of delays between entitlements and building permits for construction or substantial rehabilitation of five or more dwelling units.	Councilmembers		Kate Harrison		2018-12-11 17:00:00	PLANNING & DEVELOPMENT	Completed	2019-07-16 16:43:23	2019-07-23 11:40:57	
2019-03-26	15	Ensuring the Sustainability of the Berkeley Flea Market	Short-term referral to the City Manager to provide material and strategic assistance to the Berkeley Flea Market, to sustain and enhance its ability to serve both merchant participants and the community at large.	Council member		Ben Bartlett, Sophie Hahn, Cheryl Davila		2019-05-27 17:00:00	Office of Economic Development	Completed	2019-07-30 11:38:31	2019-07-30 11:38:31	2019-12-25 20:59:26 - Jordan Klein (Additional comments) Info report to Council on January 21, 2020 (Referral Response: Small Business Retention Programs) includes a summary of the assistance provided to CSU / Berkeley Flea Market, and includes their new strategic plan as an attachment. OED will continue to provide support to the Flea Market, directly and through our partner organizations. 2019-11-25 13:18:59 - Melissa McDonough (Additional comments) Community Services United (nonprofit that runs the flea market) submitted their strategic plan for the flea market to OED on November

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2018-11-13	18	Short-Term Referral to City Manager to Complete Steps Necessary to Establish Lava Mae Services in Berkeley	Short-term referral to the City Manager to coordinate with Fire, Planning and Public Works Department Heads to provide permits, identify locations and allow access to water and disposal hook-ups necessary to bring Lava Mae shower services to Berkeley's homeless populations within 90 days for a 6-8 week pilot. This includes: - Determining locations to set up portable shower; and - Identifying water source for hook ups designated to dispense water for showers, either fire hydrants (preferred) or garden hose spigots; and -Parking	Councilmembers		Cheryl Davila, Sophie Hahn		2019-09-10 17:00:00	CITY MANAGER'S OFFICE	Completed	2019-09-10 17:00:00	2019-09-12 08:29:03	2019-09-12 08:30:15 - Melissa McDonough (Additional comments) Report on Council agenda. 2019-08-07 15:07:11 - Melissa McDonough (Additional comments) Sites and hook-ups have been established.
2019-09-10	55	Game Day Parking - Minor Update to include RPP area K	Refer to the City Manager the modification of parking restrictions in specified RPP Zones on UC Berkeley home football game days as follows: establish "Enhanced Fine Areas" to prohibit parking without a valid RPP permit to include RPP Zone K; and install new RPP signs in zone K to clearly indicate UC Berkeley home football game day parking prohibitions.	Council member		Lori Droste, Jesse Arreguin		2019-09-16 17:00:00	Public Works	Completed	2019-09-16 17:00:00	2019-09-16 17:00:00	2020-10-28 16:19:57 - Mark Numainville (Additional comments) Item 13 on the 10-27-2020 agenda 2020-06-30 15:27:04 - Nancy Melendez (Additional comments) There is no known plan for Cal Football this fall. So the program is not expected to occur this year. Work to include area K has not started. 2019-11-26 14:14:38 - Melissa McDonough (Additional comments) Scheduled for Council action spring 2020.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-07-16	14	Opportunity Zone Project Guidelines for the City Manager	Refer to the City Manager the priorities listed below for investment in Berkeley's Opportunity Zones for proactive outreach and marketing to investors or Opportunity Funds, and to guide any discussions or negotiations regarding development projects in Opportunity Zones. The priorities are: Construction of new Affordable Housing units or acquisition and preservation of affordable housing; Preservation of historic buildings; Cultural Institutions and Performing Arts Venues; Civic Uses (Government Offices, Libraries, Schools	Councilmembers		Ben Bartlett, Kate Harrison, Jesse Arreguin, Cheryl Davila		2019-07-22 17:00:00	Office of Economic Development	Completed	2019-09-25 11:01:10	2020-01-24 10:52:16	2020-04-16 10:52:40 - Melissa McDonough (Additional comments) Off-agenda memo released on 1/24/20: https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Opportunity%20Zones%20012320.pdf 2019-11-25 13:28:38 - Melissa McDonough (Additional comments) Information report postponed pending further analysis. 2019-11-05 13:31:36 - Jordan Klein (Additional comments) Information report submitted for 12/3/19 Council Meeting 2019-09-24 07:59:59 - Melissa McDonough (Additional comments)
2019-11-12	18	Request for Information: Police Dispatch	Refer to the City Manager a request for information clarifying: 1. when non-emergency phone calls to the police are directed to the Berkeley Police Department and when to the California Highway Patrol or other outside agencies, and 2. what staffing or technological changes would be needed to direct more calls to Berkeley dispatch.	Councilmembers		Kate Harrison		2019-11-20 17:00:00	Police	Completed	2019-11-20 17:00:00	2019-11-20 17:00:00	2020-10-26 10:56:20 - Melissa McDonough (Additional comments) Off agenda memo submitted 10/26 2020-08-05 09:43:23 - Melissa McDonough (Additional comments) Completion pending submittal of memo to Council documenting work.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2019-09-10	35	1281 University Avenue Request for Proposals	Refer to the City Manager to issue a Request for Proposals (RFP) for residential development at the City-owned site at 1281 University Avenue with a requirement that 100% of the on-site units to be restricted to 80% AMI or below households with at least 10% at 50% AMI, with consideration given to accommodations that serve unhoused or homeless households, including nontraditional living arrangements such as tiny homes and that Council consider interim use for the site for housing purposes.	Commission			Housing Advisory Commission	2019-11-29 17:00:00	Health, Housing and Community Services	Completed	2019-11-29 17:00:00	2019-11-29 17:00:00	2019-12-02 14:11:54 - Melissa McDonough (Additional comments) RFP issued, responses due 12/12/19
2019-09-10	30	Referral Response: Proposed New BMC Ordinance Adding Chapter 9.26 Live Animal Sales – Disclosure Requirements	In lieu of approving the ordinance, encourage Berkeley live animal retailers to provide purchasers with information regarding the sourcing of their animals by utilizing one or two of the following designations describing the sourcing of the particular animal: 'captive bred;' 'hobby breeder' or 'licensed breeder;' 'rescue;' 'wild caught;' or 'imported.'	Commission			Animal Care Commission	2019-12-16 17:00:00	CITY MANAGER'S OFFICE	Completed	2019-12-16 17:00:00	2019-10-03 17:00:00	2019-10-15 14:28:21 - Melissa McDonough (Additional comments) Staff developed a set of standard terms and sent a letter to all animal retailers on 10/3/2019, encouraging them to use the designations. Staff has prepared and submitted a referral response via off-agenda memo.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-03-10	23	Directing the City Manager to Lease Caltrans Property at University and West Frontage Road	Direct the City Manager to: 1. Negotiate a lease agreement with the California Department of Transportation (Caltrans) for the leasing of state property at University Avenue and West Frontage Road as indicated in Attachment 1. The property will be used for a temporary outdoor shelter with restrooms, hand washing stations and garbage service. The City Manager should also inquire about whether additional Caltrans parcels adjacent to those being offered are also available for lease. The City Manager should utilize funding	Councilmembers		Jesse Arreguin, Rigel Robinson, Kate Harrison, Sophie Hahn		2020-03-23 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-03-23 17:00:00	2020-03-23 17:00:00	
2020-04-14	0	Save Our Small (SOS) Business Loan Fund	Refer to the City Manager to rapidly explore and, if feasible, pursue the creation of a special structured financial recovery loan fund to provide a supplemental source of capital for Berkeley small businesses impacted by the COVID-19 emergency. Among other considerations, the City Manager is requested to consider whether the City of Berkeley should act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City of Berkeley to lower the risk of the product and support low	Councilmembers		Sophie Hahn, Jesse Arreguin, Susan Wengraf, Kate Harrison		2020-04-16 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-04-16 17:00:00	2020-04-16 17:00:00	2020-10-21 11:31:46 - Melissa McDonough (Additional comments) ee off agenda memo: (April 27)https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Business%20and%20Arts%20Organization%20Continuity%20Grant%20Programs%20042720.docx.pdf

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-06-02	11	Berkeley Safe Open Air Dining	1. Refer to the City Manager to explore and identify, on an expedited basis, potential public locations throughout Berkeley, including but not limited to wide sidewalks, street medians, building curtilages, parking bays and strips, streets and portions of streets, parking lots, and parks, for the temporary placement of tables and chairs to be used, if and when safe and feasible, for open air dining to support restaurants, cafes, food shops, and other small businesses impacted by the COVID-19 emergency, and to increase capacity for pedes-	Councilmembers		Sophie Hahn, Jesse Arreguin, Rigel Robinson, Kate Harrison		2020-06-10 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-06-10 17:00:00	2020-06-10 17:00:00	
2020-01-21	32	Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability	Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new	Councilmembers		Cheryl Davila, Ben Bartlett		2020-01-23 17:00:00	PLANNING & DEVELOPMENT	Completed	2020-07-31 17:00:00	2020-07-21 17:00:00	2020-07-24 13:25:25 - James Bondi (Additional comments) Completed at Council 7/21/2020. Council action to accept report also created new long-term referral, to be tracked separately. 2020-07-01 13:12:14 - James Bondi (Additional comments) Referral response scheduled for Council 7/21/20. 2020-04-15 11:31:10 - James Bondi (Additional comments) Work has begun, draft report to Council prepared, but put on hold until budget recommendations can be considered in larger City budget context given COVID impacts.

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-09-15	27	Outreach and Technical Assistance for Berkeley Small Businesses Eligible to Participate in the California Rebuilding Fund	Refer to the City Manager to engage in robust outreach to small businesses and organizations in Berkeley that may be eligible to participate in the California Rebuilding Fund, a new public-private partnership based on the SOS Small Business Loan model Berkeley passed in April 2020, that will leverage government backed capital to support small enterprises in California. It is our understanding that loans will be made in part on a first come, first served basis, so time is of the essence for staff to do outreach. The City Manager is	Councilmembers		Sophie Hahn		2020-09-25 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-09-25 17:00:00	2020-09-25 17:00:00	2020-10-21 11:30:40 - Melissa McDonough (Additional comments) This effort will dovetail with the expanded RLF program (called "RLP", resiliency loan program) the federal funds are to be accepted and approved by council 10/27/20.
2020-09-15	31	Preserving Our Children's Recreation Areas	Request the City Manager implement the following recommendations for Willard Park and utilize them for other parks where appropriate: 1. Increase nighttime enforcement and enable the enforcement of park rules and ordinances. 2. Consider the presence of needles and feces a Public Health threat and enable the Public Health Department to cordon off areas of encampment for the purpose of clearing the areas of contamination and ensuring the areas are safe for public use. 3. Determine where	Councilmembers		Lori Droste, Jesse Arreguin		2020-09-25 17:00:00	CITY MANAGER'S OFFICE	Completed	2020-09-25 17:00:00	2020-09-25 17:00:00	

Completed Short Term Referrals | 4th Quarter 2020

Meeting Date	Agenda Item Number	Project Name	Recommendations	Referral by	Referral District	Sponsor	Referral Commission	Original end date	Lead City Department	State	Planned end date	Actual end date	Additional comments
2020-10-13	17	Removal of Traffic Bollards on the Intersection at Fairview and California St.	Refer to the City Manager to remove the traffic bollards at the intersection at Fairview and California St. for the following reasons: 1. To allow residents, emergency responders, street cleaning and garbage disposal services, and delivery vehicles ease of access to enter and exit Fairview Street; 2. To allow residents of the 1600 block of Fairview St. access to additional parking spots because the current capacity is inadequate; and 3. To decrease illegal dumping that has been incentivized by the traffic bollards and eliminate the harborage of junk,			Ben Bartlett		2020-10-22 17:00:00	Public Works	Completed	2020-10-22 17:00:00	2020-10-22 17:00:00	2021-01-14 17:42:45 - Nancy Melendez (Additional comments) The bollards have been removed.
2020-06-16	24	Lessons Learned in Organizational Management During Crisis	Refer to the City Manager to include insights and reflections on organizational management in any comprehensive report regarding the City response to the COVID-19 Emergency. Information should include but not limited to: an overview of how the City was structured and functioned differently during activation of the Emergency Operations Center, the benefits and challenges with cross departmental collaborations, and strategies or structures worth instituting and incorporating into	Councilmembers		Jesse Arreguin, Kate Harrison, Sophie Hahn, Susan Wengraf		2021-01-15 17:00:00	CITY MANAGER'S OFFICE	Completed	2021-01-15 17:00:00	2021-01-15 17:00:00	2020-10-28 16:18:36 - Mark Numainville (Additional comments) Presentation made and report submitted at 10-27-2020 council meeting 2020-10-16 15:22:51 - Melissa McDonough (Additional comments) Report and presentation on 10/27 City Council Meeting Agenda 2020-07-14 14:04:25 - Melissa McDonough (Additional comments) The report on our emergency response will be provided culminating a year of activities.

Office of the City Manager

INFORMATION CALENDAR
February 23, 2021

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: Partnership for the Bay's Future and Current Anti-Displacement Initiatives

INTRODUCTION

Displacement and housing insecurity (or risk of displacement) have negative impacts on individuals, families, and communities. Market-based pressures, locally and in the greater Bay Area region, continue to focus these impacts on Berkeley's low-income households and communities of color, particularly the city's African American population.

The City of Berkeley is at the forefront of local governments working to mitigate and prevent displacement. This report provides an overview of the anti-displacement policies and programs currently being implemented and developed for the Berkeley community.

SUMMARY

Staff recognize residential displacement continues to negatively impact Berkeley despite the wide-breadth of local anti-displacement strategies in practice. The need for additional residential support is one of the community's primary concerns.

The City recently joined the multi-jurisdictional Partnership for the Bay's Future (PBF) to continue to incubate and implement new anti-displacement strategies. PBF brings together other jurisdictions, community-based organizations, and philanthropic partners to develop innovative anti-displacement strategies for the local community and the broader region.

PBF provides the City with a Fellow with experience in anti-displacement work and funds to support a community partner, the East Bay Community Law Center (EBCLC). The Fellow and EBCLC are working closely with HHCS staff to develop Council's top anti-displacement referrals: affordable housing preferences and a Tenant Opportunity to Purchase Act (TOPA). The Fellow and EBCLC are coordinating a variety of community engagement efforts to inform this work.

This new initiative is complimented by 21 anti-displacement policies and programs the City of Berkeley provides to support local community members. These strategies are

reflective of national best practices and local community advocacy over the past four decades. Analysis from UC Berkeley's Urban Displacement Project demonstrates Berkeley is a leader across the region for anti-displacement strategies at the local level.

These policies are organized within the "Three P's": protection, preservation, and production. Anti-displacement advocates use this framework to organize an effective and balanced anti-displacement response.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley offers 21 anti-displacement policies and programs. They demonstrate the City's commitment to a well-balanced, people-oriented approach to anti-displacement strategies.

The Urban Displacement Project (UDP) is a research and action initiative of UC Berkeley dedicated to creating more equitable and inclusive cities. UDP analyzed all jurisdictions in the nine-county Bay Area to assess how communities are enacting anti-displacement policies and strategies[1]. Berkeley is implementing 12 of the 14 best practices identified by UDP for local governments.

These strategies were developed and implemented over the past four decades, often as the result of local community advocacy and city council initiatives. Staff are providing the UDP framework to detail Berkeley's existing efforts. While Berkeley is still struggling with displacement, the City continues to demonstrate leadership across the region to address the issue within the capacity of local government.

These policies are organized below under the "Three P's" framework: Protection, Preservation, and Production. The Three P's are promoted by housing advocates as a balanced approach to preventing displacement by protecting current at-risk community members, preserving existing affordable housing, and producing new affordable housing.

Protection – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Eviction Moratorium	The Berkeley City Council adopted the Berkeley Emergency Response Ordinance to protect residents from evictions if they are unable to pay rent due to COVID-19's impacts.	

[1] https://www.urbandisplacement.org/policy-tools/bay-area

Protection – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Fair Chance to Housing for Formerly Incarcerated People	Property owners are prohibited from using criminal background checks to screen tenant applications.	
First Source Hiring	First Source hiring ordinances ensure that City residents are given priority for new jobs created by municipal financing and development programs.	X
Home Retention/Rental Assistance	o The City provides financial assistance up to $5,000 for low-income residents at risk of eviction to remain in their current living arrangement. o Residents impacted by COVID-19 are eligible for up to an additional $10,000.	
Just Cause for Eviction ordinance	Nearly all 26,000 rental units in Berkeley have eviction protections for no-fault causes.	X
Landlord/Tenant Mediation	The Rent Board offers landlord/tenant mediation to settle disputes and facilitate positive long-term relationships.	X
Rent Stabilization/Rent Control	Over 19,000 units (approx. 70%) are subject to rent stabilization ceilings.	X
Relocation Protections and Assistance	Tenants who are mandated to vacate their unit temporarily or permanently at no-fault are provided protections (including a right to return) and relocation funding (provided by the landlord).	

Protection – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Rent Review Board	The Rent Board provides education to tenants and landlords on tenant's rights related to Just Cause Evictions and Rent Stabilization.	X
Source of Income Protection	Property owners are prohibited from refusing to rent to an applicant based on their source of income (e.g. Section 8 and other Housing Choice Voucher programs, Social Security, disability, unemployment or veterans benefits).	

Preservation – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Community Land Trusts	Northern California Community Land Trust (NCLT) and Bay Area Community Land Trust (BACLT) serve Berkeley and receive direct support from the City for the acquisition and rehabilitation of local properties as well as organizational capacity building.	X
Condominium Conversion Regulations	The Condo Conversion ordinance limits the conversion of rental units to condominiums to 100 per year and includes an Affordable Housing Mitigation Fee for each unit converted. Fees generated from condo conversions provided $3M in revenue for the Housing Trust Fund program since 2009.	X

Preservation – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Senior and Disabled Rehabilitation Loan Program	The City offers deferred, no-interest loans to assist low-income senior and disabled homeowners in repairing/modifying their homes to eliminate conditions that pose a threat to their health and safety and to help preserve the City's housing inventory.	
Single Room Occupancy (SRO) Preservation	The Berkeley Housing Authority provides subsidies for 98 SROs.	X
Small Sites Program (SSP) Pilot	o The SSP Pilot supported the acquisition and renovation of small, multifamily rental properties with up to 25 units. The City received one application during the pilot and awarded $1.6M to BACLT for the renovation of Stuart Street Apartments. o There are currently no funds available in this program.	
Foreclosure/Mortgage Assistance	The City participates on the Mortgage Credit Certificate (MCC) Program through Alameda County. MCC recipients may take up to 15% of their annual mortgage interest payments as a dollar for dollar tax credit against their federal income taxes. Qualified homebuyers can adjust their federal income tax withholdings, which will increase their income available to pay the monthly mortgage	X

Production – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Commercial Linkage Fee	o This linkage fee on new commercial development generates revenue dependent on the type of development: Office $5.00/sf, Retail $5.00/sf, Industrial $2.50/sf when greater than 7,500 sf. ▪ 20% of fees go towards childcare programs o The Commercial Linkage fee has generated over $4.4M in revenue for the HTF program since 1992.	X
Housing Trust Fund (HTF) program	o The City supports the development and rehabilitation of non-profit affordable housing properties via the HTF program. The HTF is supported by a combination of federal, state and local sources, including the Affordable Housing Mitigation fee. o Voters adopted Measure O in 2018 to provide the City with $135M in bond funding for affordable housing.	X

Production – Existing Programs		
Policy	**Description**	**UDP Local Government Best Practice**
Jobs-Housing Linkage fee (Affordable Housing Mitigation fee)	o All new market-rate housing developments are subject to an Affordable Housing Mitigation fee (AHMF) of $39,746 per unit for each market rate unit built with an option to provide Below Market Rate (BMR) units onsite in-lieu of the fee. ▪ The fee adjusts biennially to reflect the Construction Cost Index (CCI). o The AHMF generates the majority of the City's local contribution to the HTF program, with over $12.6M in revenue since 2015. o The in-lieu BMR option has provided over 400 permanently affordable units onsite.	X
Public Land Survey	o HHCS conducted a survey to identify opportunities for affordable housing development on City-owned property in 2017 and 2019. o West Berkeley Service Center was identified by Council as an opportunity site for future affordable housing development. o Vacant City properties were converted into shelters to house homeless individuals at high-risk of COVID-19.	

In addition to these anti-displacement practices, Berkeley also addresses displacement through the City's homeless services.

Homeless Services	
Homeless Shelters	The City funds local service providers to offer 256 shelter beds across the community.
Pathways STAIR Navigation Center	o STAIR Navigation Center offers a 45-bed, 24/7, service-rich shelter to get people living on the streets sheltered and housed as soon as possible. o Employs an outreach team to connect with residents in encampments and bring them into shelter. o Provides services to transition unhoused people into permanent supportive housing.
Rapid Rehousing	The City connects homeless households with housing navigators and provides financial assistance to transition people into housing and help them sustain their rent overtime.

The remaining two best practices not being implemented are mobile home rent control (the City does not have mobile home parks) and a local density bonus ordinance. Density bonuses allow developers of market-rate housing to build higher-density housing in exchange for dedicating a portion of their units as affordable housing. The State of California allows for density bonuses in new development, which the City accommodates via the BMR program.

Berkeley does not offer a City-wide local density bonus but provides a local bonus program for developers to exceed the height standards in the Commercial Downtown Mixed Use (D-DMU) district in exchange for a Community Benefits Agreement. This was established in the Downtown Area Plan (adopted in 2012). Up to five buildings may take advantage of this benefit; one is under construction (2129 Shattuck), two are entitled (2190 Shattuck& 2190 Shattuck), and two permits are still available. The proposed zoning in the draft Adeline Corridor Specific Plan also includes a tiered local density bonus that increases a project's density allowances contingent on the amount of on-site BMR units. Planning is currently working with Street Level Advisors to consider a city-wide policy.

Partnership for the Bay's Future Challenge Grant

HHCS is participating in the Partnership for Bay's Future (PBF) Challenge Grant[2] to develop two new anti-displacement policies: an affordable housing preference policy and a Tenant Opportunity to Purchase Act (TOPA) ordinance. Council designated these policies as the top two housing referrals to staff in 2019.

The PBF also provides the City the opportunity to connect with other jurisdictions and community-based organizations to innovate and share together. The grant includes a full-time fellow and a partnership with the East Bay Community Law Center to conduct community engagement, research, and policy development.

Policies in Development	
Affordable Housing Preference Policy	A preference policy would provide households with ties to Berkeley a priority in applying for new affordable housing units based on specific criteria. Multiple preferences can be layered to create a preference ranking system (e.g., displaced from Berkeley, neighborhood proximity, families with small children).
Tenant Opportunity to Purchase Ordinance (TOPA)	o TOPA provides tenants the right to purchase a rental property when the owner puts it on the market or accepts an offer from another potential buyer. The housing would be transitioned into permanently affordable housing or land trusts. o Tenants may assign their rights to a qualified affordable housing provider or community land trust.

Supporting anti-displacement initiatives is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members and to champion and demonstrate social and racial equity.

[2] https://baysfuture.org/challenge-grant-fellowship/

BACKGROUND

Residential displacement is the process by which a household is forced to move from its residence or is prevented from moving into a neighborhood that was previously accessible to them because of conditions beyond their control[3]. Despite being at the forefront of local government action to stem the tide of displacement through a wide variety of policies and programs, it continues to be a problem in Berkeley. Displacement is especially problematic for us as a city as we continue to lose low-income households and communities of color, in particular the African-American population.

Community concerns that city programs are not sufficient to stop displacement have been voiced by many. City staff applied to participate in the Partnership for the Bay's Future to enhance our anti-displacement work by developing and recommending innovative ways to fight displacement at the local and regional level. The PBF brings together jurisdictions, community-based organizations, and philanthropic partners to develop and implement innovative anti-displacement strategies across the region. This effort is consistent with the City's efforts to be a leader in innovative anti-displacement initiatives.

The PBF and its outcomes are building off the City's commitment to work directly with the community to better understand their needs and how the City can assist. Most recently, the Adeline Corridor Specific Plan development process brought together local community-based organizations and residents for over four years to directly address displacement concerns. The draft plan includes a number of policies and actions that reflect and respond to community concerns about displacement, and will inform future City strategies.

ENVIRONMENTAL SUSTAINABILITY

Displacement can lead to increased greenhouse gas (GHG) emissions as people must commute from farther away to access their jobs, schools, spiritual and social networks. Infill affordable housing development is generally considered to be a best practice for reducing GHG emissions.

POSSIBLE FUTURE ACTION

Staff anticipate presenting the two PBF anti-displacement measures to Council in 2021. Preference policies will be responsive to new affordable housing production, while TOPA will serve as a preservation strategy for existing low-income tenants.

The City Council has an outstanding referral to the Housing Advisory Commission (HAC) to explore additional anti-displacement strategies and hear from the local

[3] https://www.urbandisplacement.org/resources#section-56

community's lived experiences. The HAC anticipates taking up the referral when the normal commission schedules resume.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The fiscal impacts of a local preference policy and TOPA will ultimately be decided by the scope of each ordinance. Implementing each ordinance may require additional staff capacity.

Providing supplemental funds to existing programs will depend on availability of funds and Council direction. Substantial increases to funding and programs may also require additional staff capacity to meet increased demand.

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, Health, Housing and Community Services, (510) 981-5114

Civic Arts Commission

INFORMATION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Civic Arts Commission

Submitted by: Jennifer Lovvorn, Secretary, Civic Arts Commission

Subject: FY2021 Public Art Plan and Budgets

INTRODUCTION

The City of Berkeley's Public Art Budgets for Fiscal Year (FY) 2021 were adopted by the Civic Arts Commission (M/S/C Passmore/Blecher; Ayes — Anno, Blecher, Bullwinkel, Covarrubias, Ozol, Passmore, Ross, Tamano; Nays — None; Abstain — None; Absent — Slattery) at its regularly scheduled commission meeting on December 9, 2020. These budgets are the financial plan that guide the City's public art investments and project management for the fiscal year, implemented through partnerships of the Commission, Civic Arts Program staff in the Office of Economic Development, other City departments, and consultant teams.

CURRENT SITUATION AND ITS EFFECTS

The City has two annual budgets for public art, which are approved by the Civic Arts Commission every fiscal year. The approved Public Art Budgets for FY2021 are as follows:

1. The "Percent for Art" Budget for FY 2021 (Attachment 1) contains revenues totaling $104,202 to be used for public art. These revenues are generated through the City's Percent for Art policy (Resolution No. 60,048-N.S., established in 1999), whereby a sum equal to 1.5% of eligible municipal capital project budgets is transferred to the Public Art Fund (Fund 150). FY 2021 revenues include committed and uncommitted rollover of the FY 2020 Public Art Fund balance and the annual 1.5% contribution for FY 2021 reflecting 1.5% of this fiscal year's baseline municipal capital projects.

   The "Percent for Art" Budget contains projected expenditures totaling $104,202 including: Commissioning of two original sound compositions for the Downtown Berkeley BART Plaza; Artwork purchases for the Civic Art Collection for display in Civic Center; City flag project; Conservation and installation of turtle sculptures and medallions in association with the future renovation of Civic Center Park; and a contingency amount for use during the implementation of the FY 2021 projects. Any unspent funds from the FY 2021 "Percent for Art" budget will be carried forward and available for public art in FY 2022.

2. The “Public Art in Private Development” Budget for FY 2021 (Attachment 2) contains revenues totaling $916,097 to be used for public art. The City’s Public Art in Private Development Ordinance (Berkeley Municipal Code Chapter 23C.23, established in 2016) generates in-lieu fees from private development to the Cultural Trust Fund (Fund 148) valued at 0.8% of a private development’s construction costs of any of the following: new multifamily residential projects of five or more dwelling units; new commercial structures; new industrial structures; and all construction of building additions exceeding 10,000 square feet. FY 2021 revenues include committed and uncommitted rollover of the FY 2020 Cultural Trust Fund balance and the sum of any new 0.8% fees collected in the prior fiscal year after the FY 2020 budget was approved.

   The “Public Art in Private Development” Budget contains projected expenditures totaling $916,097 including: Artwork conservation contracts to maintain and repair public art owned by the City; Installation of restored of the “s-Hertogenbosch” sculpture; Removal of “Berkeley Big People” sculptures; Fabrication of plaque stand with artwork bell for the “Earth Song” sculpture; Restoration and fabrication of mosaics by Diana Maria Rossi for the Live Oak Community Center Playground; Commissioning of grinding rock and sculptural seating for Ohlone Park by Jean LaMarr; Artwork exhibitions in the City’s “Cube Space” gallery in the Center Street Garage; Sculpture by Mildred Howard for green space at Adeline Street and Martin Luther King Jr. Way; COVID-19 Community Recovery Temporary Public Art Projects; Set-aside for memorial to Irish students killed in the 2015 balcony collapse; Administration funds set-aside; and a contingency amount for use during the implementation of the FY 2021 projects. Any unspent funds from the FY 2021 budget will be carried forward and available for public art in FY 2022.

Note that the attached budgets do not include public art projects related to the Measure T1 bond, which is budgeted separately and totals $350,000 through the first half of FY 2021.

BACKGROUND

The City’s “Percent for Art” policy requires the Civic Arts Commission to develop an annual plan and budget for public art projects, to be presented informationally to the City Council. The “Public Art in Private Development” policy also requires a regular annual public process for deciding how the “Cultural Trust Funds” will be allocated in accordance with the priorities of the Arts and Cultural Plan, following the Guidelines for Public Art in the City of Berkeley. Each year, Civic Arts staff works with the Civic Arts Commission’s Public Art Committee and other City departments to develop these budgets simultaneously.

In FY 2020, the Civic Arts Program implemented a portfolio of public art projects valued at $113,637 with funds allocated in the FY 2020 Public Art Program budgets. Those projects include:

- Completed Civic Art Collection Inventory and Condition Assessment for all the artwork owned by the City of Berkeley.
- Implemented public art database to catalogue artworks owned by the City. The new public art database includes a web integration feature allowing the artwork collection to be published to the City's upcoming new website (currently under development).
- Conservation and reinstallation of two prominent sculptures ("s-Hertogenbosch" by John Toki and "Earth Song" by Wang Po Shu) in the downtown which were relocated due to the Shattuck Realignment Project.
- Launched Downtown Berkeley BART Plaza Public Art and Cultural Programming including:
    - Commissioning and presentation of the two original sound compositions for the sound poles.
    - Prior to COVID-19, presentation of cultural performances on the plaza stage co-produced with the Downtown Berkeley Association.
- Exhibitions for Cube Space multimedia art installation venue on the ground floor of the Center Street Garage including:
    - Presentation of four site specific installations.
    - Selection and contract with new Cube Space curator.
- Planning and electrical engineering for lighting of Rumford statue on Sacramento Street (at Julia Street).
- Planning and installation of nine poetry plaques as part of the Addison Street Poetry Walk, half which had been displaced by construction and half found in storage.
- Routine waxing of Rumford statue, and vandalism abatement from the Rumford statue and Ohlone mural.
- Purchase of framed artwork for the Permit Center and Civic Center building and framing for previously unframed works on paper owned by the City.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The budgets include likely future expenditures on potential public art projects around the City. The Civic Arts Commission may make modifications to this budget over the course of the fiscal year as additional needs and funding opportunities arise.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

All future public art revenues and expenditures will be tracked and accounted for. If necessary, an additional Information Report will be submitted to the City Council.

CONTACT PERSON

Jennifer Lovvorn, Secretary, Civic Arts Commission, 981-7533

Attachments:
1: Percent for Art Budget for FY 2021
2: Public Art in Private Development Budget for FY 2021

PRIVATE PERCENT FOR ART FUND BUDGET - FY21		
FUND 148		
Date: 12/9/20 (Approved by Civic Arts Commission)		
FY21 FUNDING		
CARRY FORWARD BALANCE FROM PRIOR YEARS		$294,326
Uncommitted Art Carryforward from FY19 & FY20	$48,602	
Committed Art Carryforward from FY19 & FY20	$210,885	
Admin Carryforward from FY19 & FY20	$34,839	
IN-LIEU PAYMENTS IN FY20		$616,585
2580 Bancroft	$235,570	
2628 Shattuck	$88,879	
999 Anthony	$25,200	
2100 San Pablo	$144,000	
2072 Addison	$74,936	
2028 Bancroft	$48,000	
ON-SITE ART ADMIN FEES IN FY20		$5,186
2556 Telegraph	$5,186	
TOTAL FUNDS AVAILABLE FOR FY21		**$916,097**
FY21 PRIVATE PERCENT FOR ART ADMINISTRATION FUNDING		
Carryforward of balance from FY20		$34,839
On-Site Art Administration Set Aside FY21 (5% of Art Cost)		$5,186
In-Lieu Fee Administration Set Aside FY21 (20% per guidelines)		$123,317
Admin Costs FY21		-$22,380
Subtotal (Carryforward to future fiscal year)		**$140,962**
FY21 BUDGET PROJECTS		**Budget**
CONSERVATION PROJECTS		
Balance prior Conservation Set Asides	No carry forward from prior years	$0
Conservation Set Aside (10%) FY21	Conservation Contracts for FY21 Conservation Projects	$61,658
Subtotal		**$61,658**
FY21 PUBLIC ART PROJECTS	**Total Committed Public Art Projects from FY19 & FY20**	
John Toki Sculpture Restoration	Conservation Cost - Install to be paid for by PW	$6,006
Removal of Big People		$60,366
Installation of Queen Sculpture		$20,000
Contract with Wang Po Shu - Earthsong modifications	Rough Order of Magnitude Estimate	$20,000
Install Diana Rossi Mosaic - Live Oak Community Center Playground	Commission approved other $5K from T1 Contingency for wall	$5,000
Second Rossi Mosaic for Back of Wall - Live Oak Playground		$5,000
Ohlone Mural Project Additions	Carved Seating, Grinding Rock	$34,000
Graphic Design (Exhbition Announcments + Signage)		$5,000
BART Plaza Sound System	Repair of speaker and back up battery	$2,045
Public Art Archive Database (Cloud-Based)	Annual cost	$348
CUBE SPACE		
Cube Space Curator	Leila Weefur -- 4 Exhibitions	$10,000
Cube Space Artist Fees	4 Exhibitions @ $1,000 each	$4,000
Vinyl Signage (4 Exhibitions)	4 Exhibitions @ $200 each	$800
Cube Space Contingency	For supplies & equipment	$5,000
Photography of public art projects		$5,000
Artwork Preparator to Install Purchased Works		$3,000
Mildred Howard Sculpture	For installation in triangle at MLK and Adeline	$210,000
Homeless Social Practice Project		$15,000
Covid-19 Recovery Temporary Art Projects	Approximately 25-30 projects @ up to $10,000/each (budgets vary)	$200,000
Memorial for Irish Students Killed in Balcony Collapse (Contribution to support project)		$30,000
FY21 Contingency + Unallocated Balance	If not needed, will roll over to next year's budget process	$50,532
Subtotal		**$691,097**
Remaining Balance		**$0**

PUBLIC ART FUND BUDGET - FY21		
Fund 150		
Date: 12/9/20 (Approved by Civic Arts Commission)		
FY21 FUNDING	**Description**	**Amount**
Carryforward balance from FY20		$ 52,708.65
FY21 Total 1.5% Allocation		$ 64,367.00
Minus Administration Portion (.5% per Resolution)		$ (12,873.40)
TOTAL FUNDS AVAILABLE FOR FY21		**$ 104,202.25**
FY21 PUBLIC ART FUND ADMINISTRATION FUNDING		
Carryforward of balance from FY20		$ -
Minus Administration Portion (.5% per Resolution)		$ 12,873.40
Admin Costs FY21		$ -
Subtotal (Carryforward to future fiscal years)		**$ 12,873.40**
FY21 PROJECTS		Amount
BART Plaza Ambient Sound Installation Commissions	Commissioning 2 Artists @ $4K ea. (Already Selected)	$ 8,000.00
BART Plaza Artwork Plaques	4 signs at $200 ea.	$ 800.00
Civic Center Artwork Purchases		$ 30,000.00
Artwork Purchase Civic Center Art Exhbition Cal Yr 2020	Artwork purchase from Current Exhibition	$ 5,000.00
Council Referral for City Flag	Rough Order of Magnitude Estimate	$ 25,000.00
Conservation and Installation of Turtles & Medallions	Rough Order of Magnitude Estimate	$ 25,000.00
Contingency		$ 10,402.25
Subtotal		**$ 104,202.25**
Remaining Balance		**$ -**
Removed from Budget by Council June 2020:		
Center Street Garage - Additional 1% Funds (does not include .5% for Admin)		$ 54,620.67

Community Environmental Advisory Commission

INFORMATION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Community Environmental Advisory Commission (CEAC)

Submitted by: Ben Gould, Chairperson, CEAC

Subject: Community Environmental Advisory Commission 2021 Work Plan

INTRODUCTION

The Community Environmental Advisory Commission (CEAC) is responsible for developing a plan, prioritizing strategies, and making recommendations for environmental protection, hazardous materials and reduction, with outreach to and education of the public, small businesses and industry.

The members of CEAC also consider climate adaptation and environmental justice to fall under the scope of the commission. A recommendation pending before City Council would officially incorporate this scope into the mission of CEAC.

CEAC has historically worked on a wide range of topics. Past projects include recommending a phase out of natural gas in new construction, a proposed ordinance requiring CO_2 warning labels on gas station pumps, a cigarette butt recycling receptacle pilot program in Downtown Berkeley, recommendations on mitigating stormwater and lead paint hazards, policies to address greenhouse gas emissions from transportation, and more.

CEAC commissioners bring a wide range of expertise in federal, state, and local government, as well as academia, nonprofit, and private sector environmental work. These backgrounds inform CEAC's work and help it to consider diverse and equitable approaches to addressing the City's environmental challenges.

On December 10, 2020 the Commission voted to adopt this as the CEAC workplan for 2021 by a unanimous vote (6-0-0-0; AYES Simmons, Varnhagen, Ticconi, Hetzel, De Leon, Gould; NOES none, ABSTAIN none, ABSENT none).

This work plan is intended to provide a guide to the work CEAC plans to take on in 2021. As additional items or issues arise, or are referred to the Commission from Council, CEAC will adjust this plan accordingly.

BACKGROUND & 2019 WORK PLAN RESULTS

Currently, there are numerous City commissions dealing with a range of environmental issues. Because of the specialized expertise available on those commissions, and the

broad scope of its mission of “environmental protection”, CEAC frequently serves as a catch-all for environmental issues.

CEAC identified the following projects as goals for 2019. The results are indicated below:

Project	**Goal**	**Outputs**	**Target Date**	**Result / Status**
Cigarette Butt Receptacles	Evaluate pilot program and provide recommendations	Commission report and recommendation to Council	July 2019	Developing recommendations
Gas Station CO_2 Labeling	Request Council elevate priority of item	Letter to Council	July 2019	Held pending Supreme Court decision, which was resolved in December 2019
Green Stormwater Infrastructure	Work with Council and Staff to improve recommendations on GSI	Recommendation to Council	September 2019	Resolved through Council action
Community Reporting of Pollutants	Develop a booklet on community reporting of pollutants	Booklet for distribution	June 2019	Explored; did not advance
Vegetation & Fire Safety	Develop a booklet on fire-safe vegetation and plant management approaches	Booklet for distribution	September 2019	Did not advance
Environmental Legislation Literacy	Develop strategies and guidance for enhancing community understanding of environmental legislation	TBD	December 2019	Did not advance
Electric Vehicles	Request hotels and Airbnb to provide information on EV charging availability at time of booking	Draft letter for Council to send to hotels and Airbnb	June 2019	Did not advance; developed alternative recommendations
Green Open Space	Provide recommendations to Council on strategies to	Recommendation to Council	December 2019	Did not advance

	increase and enhance green open space in Berkeley			
Lead Paint	Support Council and Staff in developing a robust lead paint education and enforcement program	Staff produce an interim report	December 2019	Did not advance
Bee City	Provide recommendations to Council on strategies for supporting bee habitats in Berkeley	Recommendation to Council	July 2019	Maintained communication with key stakeholders
Bird Safety	Provide draft ordinance for Council to adopt to require bird safety practices for new construction	Recommendation to Council	May 2019	Recommendation sent to Council
Sustainable Built Environment	Provide recommendations to Council on strategies to enhance sustainability and reduce carbon footprints in the built environment	Recommendation to Council	December 2019	Explored; continuing forward
Departmental Coordination for Environmental Protection	Analyze City interdepartmental environmental coordination efforts, e.g. managing firefighting foam runoff, and provide an analysis and recommendations	Report for Council, the City Auditor, and the City Manager	December 2019	Recommendation sent to Council

Cigarette Butt Receptacles: CEAC is evaluating the Downtown Berkeley pilot project and providing recommendations on expanding, including to other parts of Berkeley.

Gas Station CO_2 Labeling: In 2015 a referral was passed to require gas stations to label pumps with a CO_2 warning.

Green Open Space: Working to identify and recommend strategies to increase and enhance green open space in Berkeley, ensure it is healthy and safe to use, and provide habitat and nourishment for desirable flora and fauna.

Bee City: CEAC is supporting and coordinating with UC Berkeley students through CalPIRG, and working with the Parks & Waterfront Commission. Parks Department staff are implementing the vision of Bee City.

Sustainable Built Environment: Researching and recommending strategies to ensure a sustainable built environment.

CURRENT SITUATION AND ITS EFFECTS

The global COVID-19 pandemic has led to an emergency declaration that has suspended all non-essential commission meetings indefinitely. Recently, at the October 12, 2020 Agenda & Rules Committee meeting, the City Manager presented a proposal, approved by the Committee, to allow all commissions to meet under limited circumstances.

The guidelines provided by the City Manager emphasize that commissions may be authorized to meet to work on statutorily, budgetary, or COVID-19 required items, as well as council-adopted or voter-adopted mission critical projects and programs. Anticipated staff demands above and beyond baseline are also to be taken into consideration, as many staff are tasked with additional responsibilities with the City Emergency Operations Center or other pandemic-related duties.

In line with this guidance, CEAC has prepared a limited work plan that focuses on addressing climate action goals in line with Council-adopted, voter-adopted, and strategic plan targets including becoming a fossil free city, achieving carbon neutrality, and reaching 100% sustainable trips by 2040.

2021 WORK PLAN

To the extent permitted, CEAC anticipates working on the following projects in 2021:

Project	**Goal**	**Commission Outputs**	**Target Date**	**Lead**
Cigarette Butt Receptacles	On hold until end of pandemic			Varnhagen
Gas Station CO_2 Labeling	Request City Attorney complete review and send to Council		June 2021	TBD
Sustainable Transportation	Provide recommendations to Council on strategies to encourage zero-emission transportation and eliminate fossil fuels	Recommendation(s) to Council	December 2020	Gould

Bee City	No Commission work needed before end of pandemic			Ticconi
Community Engagement & Outreach	Improve community awareness and garner greater engagement in environmental issues.	Webinars & community forums on environmental issues	December 2021	Simmons
Sustainable Built Environment	Track BESO update process and provide input to staff	N/A (provide comments as individuals)		N/A

ENVIRONMENTAL SUSTAINABILITY

The projects which CEAC is working on will improve environmental sustainability through a wide variety of methods.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Future action items that CEAC may send to City Council could require staff time to develop, finalize, and/or implement. CEAC strives to ensure proposals provide significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, equity, and economic impacts.

CONTACT PERSON

Ben Gould, Chair, Community Environmental Advisory Commission, 510-725-9176
Viviana Garcia, Commission Secretary, 510-981-7460

Housing Advisory Commission

INFORMATION CALENDAR
February 23, 2021

To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: 2021 Housing Advisory Commission Work Plan

INTRODUCTION

On March 17, 2020, the City Council adopted Resolution No. 69,331-N.S. which placed limitations of the meetings of City legislative bodies, including all boards and commissions. On October 22, the City Manager authorized commissions to meet to adopt a Work Plan. The Housing Advisory Commission (HAC) held a special meeting on November 12, 2020 to create a Work Plan for Fiscal Year (FY) 2020-2021.

CURRENT SITUATION AND ITS EFFECTS

In July 2016, the City Council directed all commissions (with certain exceptions) to submit a work plan detailing its goals and objectives for the year. Plans will be submitted at the start of the fiscal year, annually. The plan for FY 20/21 was halted due the suspensions of regular commission meetings due to COVID-19.

At our November 12, 2020 meeting the Housing Advisory Commission provided updates to its annual Work Plan. The strategies in this Work Plan are intended to advance our goal to create affordable housing and housing support services for our most vulnerable community members. The strategies presented below are based on the 2020 Work Plan with some adjustments.

The adopted Work Plan for FY20/21 is as follows:

- Continue the process of developing a Fall U1 Report that the Vice Chair and Chair will draft and bring to the full HAC for review

- Develop additional strategies using affordable housing funds to expand the supply of permanent affordable housing with funding proposals to provide to the City Council

- Develop a program/structure for supporting low income homeowners and landlords to navigate/find funding that will facilitate the implementation of actual construction/repairs needed for them to keep their properties safe, livable, affordable and up to code

- Review agency applications for City funding
- Allocate funding to Community Land Trusts and other democratized forms of housing
- Explore COVID-19's impacts on housing
- Address Council Referral: Research and Recommend Policies to Prevent Displacement and Gentrification of Berkeley Residents of Color and African Americans
- Address Council Referral: Small Sites Loan Program Recommendations
- Identify additional revenue sources for local housing
- Receive an update from the City on temporary and permanent housing opportunities for people currently unhoused in City of Berkeley

The HAC adopted this work plan with the Following vote: M/S/C (Simon-Weisberg/Sargent) to adopt a Work Plan for FY 20/21 that includes the recommendations from Commissioner Wolfe as well as the following additions:

- Explore COVID-19's impacts on housing
- Address Council Referral: Research and Recommend Policies to Prevent Displacement and Gentrification of Berkeley Residents of Color and African Americans
- Address Council Referral: Small Sites Loan Program Recommendations
- Identify additional revenue sources for local housing
- Receive an update from the City on temporary and permanent housing opportunities for people currently unhoused in City of Berkeley

Vote: Ayes: Johnson, Lee-Egan, Mendonca, Sargent, Simon-Weisberg, Twu, and Wolfe. Noes: None. Abstain: None. Absent: Sharenko (unapproved).

Adopting a housing-focused Work Plan is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BACKGROUND

This year's work plan reflects the Commission's engagement with housing affordability and ongoing responsibilities of the Commission. The Commission is contemplating non-traditional housing ownership, tenancy, and development models.

ENVIRONMENTAL SUSTAINABILITY
There are no direct environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION
This Work Plan may result in future recommendations for policy, programs, and budget referrals to support local housing and anti-displacement initiatives.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
It is possible that adoption of new programs, revised programs, or need for staff time could result in some fiscal impacts to the City. Additional discretionary funds may be necessary to fund activities in response to Council referrals including outreach, videography, and meeting space.

CONTACT PERSON
Mike Uberti, Commission Secretary, HHCS (510) 981-5114

Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online
http://www.cityofberkeley.info/recordsonline

To search for communications associated with a particular City Council meeting using Records Online:

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3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF